

STATE OF SOUTH CAROLINA
In the South Carolina Supreme Court

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May 09 2023

Appeal from Berkeley County
The Honorable Clifton Newman, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2023-000072

Darius Darnell Hamilton....., Petitioner,

v.

The State of South Carolina, Respondent.

APPENDIX

ALAN WILSON
Attorney General

MEAGAN JOHNSON
ELIZABETH FRANKLIN-BEST

MEGAN JAMESON
Assistant Attorney General

Elizabeth Franklin-Best, P.C.
3710 Landmark Drive, Suite 113
Columbia, South Carolina 29204

WILLIAM BLITCH
Assistant Attorney General

Attorneys for Petitioner

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Attorneys for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE OF SOUTH CAROLINA

vs.

DARIUS DARNELL HAMILTON

Defendant

COURT OF GENERAL SESSIONS

DOCKET NO. 2016-GS-08-0807

2016-GS-08-0808

2016-GS-08-0809

2016-GS-08-0810

2016-GS-08-0812

TRANSCRIPT OF RECORD

November 1, 2018

Moncks Corner, S. Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

WILTON MCNEELY, ESQ.
Attorney for the State

STEVE DAVIS, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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No exhibits were introduced

PROCEEDINGS

THE COURT: Darius Kemp.

[Whereupon, Mr. Kemp comes forward]

THE COURT: Mr. Davis could you have your client or
you date this forfeiture?

[Whereupon, Mr. Davis complies]

THE COURT: Mr. Sanford, any recommendations or
negotiations?

MR. SANFORD: Just time served along with that
forfeiture, Judge.

THE COURT: And how much time was that?

MR. SANFORD: I believe it was three or four days.

THE COURT: Does he have any record?

MR. SANFORD: No record.

MR. DAVIS: None, Your Honor.

THE COURT: And how much time is he going to need
to pay his court cost, Mr. Davis?

[Whereupon, Mr. Davis confers with his client]

MR. DAVIS: He tells me 60 days, Your Honor.

THE COURT: How much is it going to be?

[Whereupon, the Court confers with the Clerk]

MR. DAVIS: Twenty-eight dollars?

THE COURT: One twenty-eight seventy five.

MR. DAVIS: Thirty days, Your Honor; two weeks.

He's saying one week now, Your Honor. He's waiting for

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1 me to say I'm going to pay it but that's not going to
2 happen.

3 THE COURT: Not going to happen. Omaine Thomas.
4 [Whereupon, Mr. Thomas comes forward]

5 MR. DUQUETTE: Good morning, Your Honor.

6 THE COURT: Good morning. Any recommendations or
7 negotiations?

8 MR. DUQUETTE: The recommendation is a suspended
9 YOA.

10 THE COURT: Does he have any record?

11 MR. DUQUETTE: No, Your Honor.

12 THE COURT: Hamilton.

13 MR. MCNEELY: Darius Hamilton, Your Honor?

14 THE COURT: Uh Huh.

15 [Whereupon, Mr. Hamilton comes forward]

16 THE COURT: Any recommendations or negotiations?

17 MR. MCNEELY: Your Honor, this plea is without
18 recommendation other than a cap of 30 years on the
19 burglary first charge. Mr. Davis I believe would be
20 requesting the minimum 15 years sentence on the burglary
21 first charge. The State would be asking for a more
22 significant sentence.

23 THE COURT: Does he have any record?

24 MR. MCNEELY: He does not.

25 THE COURT: Victim or victims notified?

1 MR. MCNEELY: The grandmother of the deceased
2 victim, Kadeem [phonetic] Johnson is present, Your Honor.
3 The rest were notified and did not choose ---
4 THE COURT: --- when you say deceased not as a
5 result of this incident?
6 MR. MCNEELY: Yes, Your Honor. This was the
7 multiple defendant murder trial.
8 THE COURT: Oh, okay.
9 MR. MCNEELY: It was tried in August.
10 MR. DAVIS: A proffer agreement, Your Honor.
11 THE COURT: Is this the young man that testified?
12 MR. DAVIS: That's correct.
13 MR. MCNEELY: He is, Your Honor.
14 THE COURT: Deandre Rivers.
15 [Whereupon, Mr. Rivers comes forward]
16 THE COURT: Any recommendations or negotiations?
17 MR. MCNEELY: No, Your Honor.
18 THE COURT: Does he have any record?
19 MR. MCNEELY: He does.
20 THE COURT: I'm listening.
21 MR. MCNEELY: 2015 PWID marijuana, possession of
22 marijuana, and unlawful carrying of a hand gun; 2014 PWID
23 marijuana and possession of marijuana.
24 MR. DAVIS: He's currently serving a YOA on that,
25 Your Honor.

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1 THE COURT: A suspended Y?

2 MR. DAVIS: No, he's actively -- he served his
3 time.

4 THE COURT: So he's on YOA parole?

5 MR. DAVIS: That's correct, Your Honor.

6 THE COURT: Okay. You've explained to him how that
7 works?

8 MR. DAVIS: I have, Your Honor.

9 THE COURT: Do y'all have any record of his YOA
10 parole and what is left on it?

11 MR. MCNEELY: The State does not, Your Honor.

12 THE COURT: Pardon me?

13 PROBATION AGENT: I couldn't hear you.

14 THE COURT: Do you have any record of what is left
15 on his YOA?

16 PROBATION AGENT: Yes, it's to 2021.

17 THE COURT: Okay. And do you have any indication
18 whether they are going to do a revocation?

19 PROBATION AGENT: I do not, Your Honor. That will
20 be before a hearing officer and then the Parole Hearing
21 Board after that.

22 THE COURT: Okay. But have they -- I guess what
23 I'm asking is have they set that already?

24 PROBATION AGENT: No ma'am, they have not.

25 THE COURT: Do you have any indication of when they

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1 will?

2 PROBATION AGENT: No. After he pleads guilty today
3 it will trigger a violation and he will go to an
4 administrative hearing at that point.

5 THE COURT: Okay. Mr. Davis, have you explained to
6 your clients the charges contained in the indictments,
7 the possible punishment and their constitutional rights?

8 MR. DAVIS: I have, Your Honor.

9 THE COURT: Do you believe they understand the
10 charge, the punishment, and their rights?

11 MR. DAVIS: I believe they do, Your Honor.

12 THE COURT: Do your clients wish to plead guilty or
13 not guilty?

14 MR. DAVIS: Guilty, Your Honor.

15 THE COURT: Do you agree with that decision?

16 MR. DAVIS: I do, Your Honor.

17 THE COURT: To your knowledge have your clients
18 ever had to be evaluated to determine their competency?

19 MR. DAVIS: Not to my knowledge, Your Honor.

20 THE COURT: Gentlemen, please raise your right
21 hands to be sworn.

22 [Whereupon, the defendants comply]

23 THE COURT: Do you swear or affirm the testimony
24 you give will be the truth, Mr. Kemp?

25 MR. KEMP: Yes, ma'am.

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1 THE COURT: Mr. Thomas?
2 MR. THOMAS: Yes, ma'am.
3 THE COURT: Mr. Hamilton?
4 MR. HAMILTON: Yes, ma'am.
5 THE COURT: And Mr. Rivers?
6 MR. RIVERS: Yes, ma'am.
7 THE COURT: I need you all to slide just a little
8 for me so the court reporter can hear my last gentleman
9 in the line.
10 [Whereupon, the defendants comply]
11 THE COURT: Y'all are so soft spoken I need you to
12 speak a lot more loudly and clearly than you're speaking.
13 I'm going to ask you all a series of questions. I need
14 you to answer those questions in the order you're
15 standing, which means we will start with Mr. Kemp and end
16 with Mr. Rivers. Again, I need you to answer loudly and
17 clearly. The court reporter has to take down everything
18 that we're saying as well as on a backup tape. So again,
19 speak loudly and clearly, individually and don't speak
20 over one another. Please state your full name for the
21 record?
22 MR. KEMP: Darius Marquise Kemp.
23 THE COURT: Next in line.
24 MR. THOMAS: Omaine Jamar [phonetic] Thomas.
25 MR. HAMILTON: Darius Darnell Hamilton.

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1 MR. RIVERS: Deandre Javon [phonetic] Rivers.
2 THE COURT: How old are you?
3 MR. KEMP: 19.
4 MR. THOMAS: 23.
5 MR. HAMILTON: 20.
6 MR. RIVERS: 25.
7 THE COURT: How far have you gone in school?
8 MR. KEMP: High school graduate.
9 MR. THOMAS: I graduated.
10 MR. HAMILTON: High school graduate.
11 MR. RIVERS: Graduated high school.
12 THE COURT: What do you do for a living?
13 MR. KEMP: --
14 THE COURT: If y'all could speak up a little bit
15 more please.
16 MR. KEMP: Landscaping.
17 MR. THOMAS: I'm a forklift operator but I'm in the
18 process of getting a job today --
19 THE COURT: You're in the process of doing what?
20 MR. THOMAS: I'm in the process of working today,
21 ma'am.
22 THE COURT: You said you're a forklift operator,
23 right?
24 MR. THOMAS: Yes, ma'am.
25 MR. HAMILTON: Certified welder.

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1 MR. RIVERS: I work at --
2 THE COURT: Gildan?
3 MR. RIVERS: Yes, ma'am.
4 THE COURT REPORTER: At where?
5 THE COURT: G-I-L-D-A-N. Are you married?
6 MR. KEMP: No, ma'am.
7 MR. THOMAS: No, ma'am.
8 MR. HAMILTON: No, ma'am.
9 MR. RIVERS: No, ma'am.
10 THE COURT: Do you have any children? If so, tell
11 me how many and their ages?
12 MR. KEMP: No, ma'am.
13 MR. THOMAS: I have a son; he's three.
14 MR. HAMILTON: No, ma'am.
15 MR. RIVERS: I have one on the way.
16 THE COURT: When is that child due?
17 MR. RIVERS: In April.
18 THE COURT: Are you currently on probation or
19 parole?
20 MR. KEMP: No, ma'am.
21 MR. THOMAS: No, ma'am.
22 MR. HAMILTON: No, ma'am.
23 MR. RIVERS: Yes, ma'am.
24 THE COURT: Do you understand sir that as a result
25 of this plea the YOA program could revoke your parole?

1 MR. RIVERS: Yes, ma'am.

2 THE COURT: Do you also understand that the way
3 they calculate sentences that if you receive a sentence
4 today that they have the option of doing away with your
5 YOA, anything that is remaining, and have you serve your
6 adult time or they could make you serve your YOA time as
7 well as any additional time you receive today?

8 MR. RIVERS: Yes, ma'am.

9 THE COURT: And that it does not run concurrently?

10 MR. RIVERS: Yes, ma'am.

11 THE COURT: Okay. Have you ever been treated for
12 the abuse of alcohol, drugs or mental illness?

13 MR. KEMP: No, ma'am.

14 MR. THOMAS: No, ma'am.

15 MR. HAMILTON: No, ma'am.

16 MR. RIVERS: No, ma'am.

17 THE COURT: Have you had any drugs or alcohol or
18 medication in the last 72 hours?

19 MR. KEMP: No, ma'am.

20 MR. THOMAS: No, ma'am.

21 MR. HAMILTON: No, ma'am.

22 MR. RIVERS: No, ma'am.

23 THE COURT: Are you aware of where you are right
24 now and what you're doing?

25 MR. KEMP: Yes, ma'am.

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1 MR. THOMAS: Yes, ma'am.

2 MR. HAMILTON: Yes, ma'am.

3 MR. RIVERS: Yes, ma'am.

4 THE COURT: And Mr. Davis have you explained to Mr.
5 Kemp and Mr. Thomas their right -- as well as Mr. Rivers
6 their right of presenting their indictments?

7 MR. DAVIS: I have, Your Honor ---

8 THE COURT: --- do they wish to waive that right?

9 MR. DAVIS: They do by -- reflected by their
10 signatures, Your Honor.

11 THE COURT: Mr. Kemp, do you wish to waive
12 presentment of your indictment?

13 MR. KEMP: Yes, ma'am.

14 THE COURT: On the charge of unlawful possession of
15 a gun how do you -- unlawful carrying of a pistol how do
16 you plead?

17 MR. KEMP: Guilty.

18 THE COURT: Do you understand that carries a
19 maximum of one year and or a maximum fine of 1,000
20 dollars?

21 MR. KEMP: Yes, ma'am.

22 THE COURT: And do you also understand that you
23 forfeited the gun?

24 MR. KEMP: Yes, ma'am.

25 THE COURT: Mr. Thomas, do you wish to waive

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1 presentment of your indictment?

2 MR. THOMAS: Yes, ma'am.

3 THE COURT: On the charge of unlawful carrying of a
4 gun how do you plead?

5 MR. THOMAS: Guilty.

6 THE COURT: Do you understand that carries a
7 maximum of one year and or a maximum fine of 1,000
8 dollars?

9 MR. THOMAS: Yes, ma'am.

10 THE COURT: And on the charge of possession with
11 the intent to distribute marijuana how do you plead?

12 MR. THOMAS: Guilty.

13 THE COURT: You understand that carries a maximum
14 of five years and or a maximum fine of 5,000 dollars?

15 MR. THOMAS: Yes, ma'am.

16 THE COURT: Has your lawyer explained to you the
17 enhancement provisions of drug offenses?

18 MR. THOMAS: Yes, ma'am.

19 THE COURT: Mr. Hamilton, on the charge of armed
20 robbery, two counts of armed robbery how do you plead?

21 MR. HAMILTON: Guilty.

22 THE COURT: Do you understand that each carries a
23 minimum of ten years and a maximum of 30 years?

24 MR. HAMILTON: Yes, ma'am.

25 THE COURT: Do you understand no portion of that

1 can be suspended nor probation given?

2 MR. HAMILTON: Yes, ma'am.

3 THE COURT: Do you also understand it is classified
4 as most serious and violent?

5 MR. HAMILTON: Yes, ma'am.

6 THE COURT: Do you understand that under South
7 Carolina law that subjects you to enhanced penalties?

8 MR. HAMILTON: Yes, ma'am.

9 THE COURT: Do you understand that if you receive
10 an additional most serious offense you could face life
11 without the possibility of parole.

12 MR. HAMILTON: Yes, ma'am.

13 THE COURT: On two counts of kidnapping how do you
14 plead?

15 MR. HAMILTON: Guilty.

16 THE COURT: Do you understand that each of those
17 carries a maximum penalty of 30 years?

18 MR. HAMILTON: Yes, ma'am.

19 THE COURT: And do you understand that likewise
20 they are also classified as most serious and violent?

21 MR. HAMILTON: Yes, ma'am.

22 THE COURT: And on the charge of burglary in the
23 first degree how do you plead?

24 MR. HAMILTON: Guilty.

25 THE COURT: Do you understand that that carries a

1 minimum of 15 years and a maximum penalty of life?

2 MR. HAMILTON: Yes, ma'am.

3 THE COURT: And do you understand that likewise it
4 is also classified as most serious and violent?

5 MR. HAMILTON: Yes, ma'am.

6 THE COURT: Do you understand that the violent
7 classification affects how you will serve your time?

8 MR. HAMILTON: Yes, ma'am.

9 THE COURT: You may have discussed parole or parole
10 eligibility with your lawyer or with others but until
11 you're sentenced no one can tell you when, if ever, you
12 will be eligible for parole or under what conditions.
13 You should assume that you will serve the entire time in
14 jail that you are sentenced to, day for day, do you
15 understand?

16 MR. HAMILTON: Yes, ma'am.

17 THE COURT: And do you understand that the armed
18 robberies are what we call a no parole offense?

19 MR. HAMILTON: Yes, ma'am.

20 THE COURT: And that you will have to serve at
21 least a minimum of seven years before the State
22 Department of Corrections makes any consideration of your
23 eligibility?

24 MR. HAMILTON: Yes, ma'am.

25 THE COURT: Mr. Rivers, do you wish to waive

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1 presentment of indictments 2018-2270, 2271, and 2272?

2 MR. RIVERS: Yes, ma'am.

3 THE COURT: On the charge of failure to stop for a
4 blue light how do you plead?

5 MR. RIVERS: Guilty.

6 THE COURT: Do you understand -- I need you to
7 speak up.

8 MR. RIVERS: Guilty.

9 THE COURT: Do you understand that carries a
10 minimum of 90 days, a maximum of three years and a
11 maximum fine of 500 dollars?

12 MR. RIVERS: Yes, ma'am.

13 THE COURT: On the charge of possession with the
14 intent to distribute -- two counts of possession with the
15 intent to distribute marijuana second how do you plead?

16 MR. RIVERS: Guilty.

17 THE COURT: Do you understand that each carries a
18 maximum penalty of -- I think I wrote something down
19 wrong. Bear with me one second.

20 [Whereupon, the Court reviews documents]

21 THE COURT: Sir, on two counts of possession with
22 the intent to distribute marijuana second how do you
23 plead?

24 MR. RIVERS: Guilty.

25 THE COURT: Do you understand that each carries a

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1 maximum of ten years and or a maximum fine of 10,000
2 dollars?

3 MR. RIVERS: Yes, ma'am.

4 THE COURT: On the charge of possession of cocaine
5 how do you plead?

6 MR. RIVERS: Guilty.

7 THE COURT: Do you understand that carries a
8 maximum of three years and or a maximum fine of 5,000
9 dollars?

10 MR. RIVERS: Yes, ma'am.

11 THE COURT: And possession with the intent to
12 distribute cocaine how do you plead?

13 MR. RIVERS: Guilty.

14 THE COURT: Do you understand that carries a
15 maximum of 15 years and or a maximum fine of 25,000
16 dollars?

17 MR. RIVERS: Yes, ma'am.

18 THE COURT: On the charge of resisting arrest under
19 the (A) section of the statute how do you plead?

20 MR. RIVERS: Guilty.

21 THE COURT: Do you understand that that carries a
22 maximum of one year and or a minimum fine of 500 dollars
23 and a maximum fine of 1,000 dollars?

24 MR. RIVERS: Yes, ma'am.

25 THE COURT: Has you lawyer explained to you the

1 enhancement provisions of drug offenses?

2 MR. RIVERS: Yes, ma'am.

3 THE COURT: I want you all to listen carefully to
4 the facts starting with Mr. Kemp.

5 MR. SANFORD: Thank you, Judge.

6 THE COURT: You're welcome.

7 MR. SANFORD: On May 31st, 2018 Goose Creek Police
8 Department executed a search warrant at 123-A South Goose
9 Creek Boulevard in the Goose Creek area of Berkeley
10 County after reports of suspected narcotics activity and
11 after smelling the odor of marijuana from the business on
12 prior occasions. During that search the officers located
13 a Taurus .9 millimeter pistol located on the floorboard
14 of the car where this defendant was sitting.

15 MR. DAVIS: It wasn't a car. It was a business.

16 MR. SANFORD: The car was at the business.

17 MR. DAVIS: It was inside the business.

18 THE COURT: Read the facts again for me please.

19 MR. SANFORD: Goose Creek Police Department
20 conducted a search warrant at 123-A South Goose Creek
21 Boulevard after reports of suspected narcotics activity
22 and after smelling the odor of marijuana from the
23 business on prior occasions. During that search officers
24 located a Taurus .9 millimeter pistol on the floorboard
25 of a car where this defendant was sitting. That car was

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1 parked at this business and it was searched subject to
2 the same warrant.

3 THE COURT: Sir, do you agree or disagree with the
4 facts?

5 MR. KEMP: Disagree.

6 THE COURT: What do you disagree with?

7 MR. KEMP: The gun was inside the building.

8 THE COURT: I don't think it -- does it really
9 matter where the gun was?

10 MR. DAVIS: It doesn't, Your Honor, it doesn't.
11 He's only ---

12 THE COURT: --- it's not an element of the offense.

13 MR. DAVIS: We wouldn't be here, Your Honor if he
14 hadn't given a statement so move on son.

15 THE COURT: Did you have the gun?

16 MR. KEMP: Yes, ma'am.

17 THE COURT: All right. And did you have -- under
18 South Carolina law were you entitled to have the gun?

19 MR. KEMP: No, ma'am.

20 MR. DAVIS: Underage, Your Honor.

21 THE COURT: All right. Anything else you feel
22 needs to be changed or added to the facts?

23 MR. KEMP: No, ma'am.

24 THE COURT: Are you pleading guilty because you're
25 guilty?

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1 MR. KEMP: Yes, ma'am.

2 THE COURT: As regards Mr. Thomas?

3 MR. DUQUETTE: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MR. DUQUETTE: September 21, 2017 deputies with
6 Berkeley County Sheriff's Office performed a traffic stop
7 on a vehicle which the defendant was the driver on
8 Highway 52 in Berkeley County. Upon making contact with
9 the vehicle deputies smelled marijuana coming from the
10 vehicle and observed a handgun on the floorboard beneath
11 the defendant's feet and could see marijuana throughout
12 the vehicle.

13 A subsequent search yielded marijuana in the
14 defendant's pocket as well as digital scales and Mason
15 jars containing individually wrapped amounts of marijuana
16 located throughout the vehicle. The total weight of the
17 various bags was approximately 94 grams. The handgun was
18 found to be loaded and the defendant did not have a CWP.

19 THE COURT: Sir, do you agree or disagree with the
20 facts?

21 MR. THOMAS: I agree.

22 THE COURT: Do you feel anything needs to be
23 changed or added to the facts?

24 MR. THOMAS: No, ma'am.

25 THE COURT: Are you pleading guilty sir because

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1 you're guilty?

2 MR. THOMAS: Yes, ma'am.

3 THE COURT: As regards Mr. Hamilton.

4 MR. MCNEELY: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MR. MCNEELY: As previously stated Your Honor
7 presided over the trial of the co-defendants in this
8 matter on August 27th, 2018; those were Jacob Mouzon
9 [phonetic], Kenneth Campbell, Drake Campbell and Sharod
10 [phonetic] Palmer after which defendants Jacob Mouzon
11 [phonetic], Kenneth Campbell, and Drake Campbell were
12 found guilty of multiple offenses related to this
13 incident. It arises out of an incident on July 21st,
14 2016 at approximately 3 a.m. Berkeley County deputies
15 responded to 135 Martha Lane in the Huger area of
16 Berkeley County in reference to a shooting. Upon arrival
17 deputies found one victim, Kadeem [phonetic] Johnson in
18 the bedroom who had his hands bound with tape before
19 being killed by a single gunshot wound to the head.

20 The other victim Crystal Snipe had also had her
21 hands bound with tape before being shot multiple times.
22 After the incident she was able to call 911. She told
23 police that when she and Johnson arrived home five
24 suspects who were masked and armed were waiting outside
25 in the woods at their home. As they got out of their car

1 all five approached them with guns and all five demanded
2 items from them. While being held at gunpoint in the
3 driveway the Hello Kitty bag containing drugs was taken
4 from Kadeem [phonetic] Johnson and they were ordered into
5 the house at gunpoint. They were escorted into the
6 bedroom where Kadeem [phonetic] Johnson was made to get
7 on his knees and Ms. Snipe was made to sit on the bed.

8 While being watched by co-defendant Jacob Mouzon
9 [phonetic] at gunpoint this defendant Darius Hamilton
10 bound their hands with clear tape. While binding Kadeem
11 [phonetic] Johnson's hands he removed a gold bracelet
12 from his wrist. The male that was standing guard over
13 them, co-defendant Jacob Johnson was not wearing a mask
14 at one point inside the house and was able to be
15 identified by Crystal Snipe who survived the incident.
16 She stated several items were taken from the residence
17 including a T.V. and other property.

18 After this defendant and the other co-defendants
19 exited the trailer co-defendant Jacob Mouzon [phonetic]
20 shot Kadeem [phonetic] Johnson in the head killing him
21 and then opened fire on Ms. Snipe causing injuries to
22 her. All of the co-defendants then collectively took off
23 in two separate Crown Victorias that belonged to the
24 victims at the residence. One, a white one, was observed
25 by deputies responding to the incident on Highway 402 and

1 co-defendants Jacob Mouzon [phonetic], Drake Campbell,
2 and Kenneth Campbell fled into the woods at that point
3 and they were soon apprehended. In the day following at
4 that time this defendant was identified and came to
5 Eccles Church to speak with deputies who were
6 investigating the incident at the command post.

7 During that initial interview Mr. Hamilton told
8 police that he drove the other co-defendants to the
9 victim's residence but did not go into the house. He
10 subsequently entered into a proffer agreement with the
11 State at which time he admitted being at the scene and
12 taping their hands but claims to have never gone into the
13 house. During a pretrial meeting with the State Mr.
14 Hamilton added the additional detail that he was there
15 when the crimes occurred, that he had gone into the
16 trailer to tape their hands and took the bracelet off the
17 victim Kadeem Johnson. He still claimed at a pretrial
18 meeting that he ran after the shooting, left in his truck
19 alone and never saw them after that.

20 In a subsequent meeting he added that he left in one
21 of the victim's Crown Victorias with co-defendant Sharod
22 [phonetic] Palmer but that Palmer dropped him off at his
23 car and had no further contact with him. Then when he
24 testified at trial he changed his version of events again
25 to add that after he left the scene in the Crown Victoria

1 with Sharod [phonetic] Palmer while travelling up Cain
2 Hoy Road observed Mr. Palmer out of the Crown Victoria,
3 picked him up in his truck and he drove Sharod [phonetic]
4 Palmer to Saint Stephen away from the scene dropping him
5 off at his home. This version of the events had never
6 been told to the State in any pretrial meeting.

7 The State's position is that he violated his proffer
8 multiple times. His trial testimony while debatably
9 helpful in some ways was so inconsistent with his prior
10 accounts that he actually did irreparable harm to the
11 case against Sharod [phonetic] Palmer and threatened the
12 entire case against the other co-defendants.

13 In addition while the jury clearly spoke to their
14 belief that Jacob Mouzon [phonetic] acted alone in
15 murdering Kadeem [phonetic] Johnson and shooting Crystal
16 Snipe this defendant is at least the second most culpable
17 for the crimes in that he was the one who taped their
18 hands and rendered them helpless before they were shot in
19 their home.

20 THE COURT: Sir, do you agree or disagree with the
21 facts?

22 MR. HAMILTON: Agree.

23 THE COURT: Do you feel anything needs to be
24 changed or added to the facts?

25 MR. HAMILTON: No, ma'am.

1 THE COURT: Are you pleading guilty, sir because
2 you're guilty?
3 MR. HAMILTON: Yes, ma'am.
4 THE COURT: As regards Mr. Rivers?
5 MR. MCNEELY: Mr. Rivers' offenses arise out of
6 four separate incidents, Your Honor.
7 THE COURT: Okay.
8 MR. MCNEELY: On December 3rd, 2016 Berkeley County
9 deputies conducted a felony traffic stop on a BMW vehicle
10 on Harbor Lake Drive in the Goose Creek area of Berkeley
11 County based on that vehicle matching a suspect vehicle
12 in a murder investigation. The deputy made contact with
13 the driver, this defendant, and immediately observed an
14 odor of marijuana coming from the vehicle.
15 A probable cause search revealed a large bag of
16 marijuana; 3.2 ounces, a bag of white powder which SLED
17 confirmed as cocaine with a weight of .77 grams as well
18 as a digital scale and 1,500 dollars in cash. The second
19 incident on August 2, 2017 Berkeley County deputies
20 initiated a traffic stop on a Honda on Old Back River
21 Road in the Goose Creek area of Berkeley County ---
22 THE COURT: --- tell me that date again; I'm sorry.
23 MR. DAVIS: August 2nd, Your Honor.
24 MR. MCNEELY: August 2, 2017.
25 THE COURT: Thank you.

1 MR. MCNEELY: For observed equipment violations by
2 activating lights and sirens. The driver, this
3 defendant, failed to stop and accelerated away making
4 several evasive turns. After an approximately three mile
5 chase the defendant stopped the vehicle and surrendered
6 and was placed under arrest.

7 The third incident on November 16th, 2017 at
8 approximately 5:30 p.m. Berkeley County deputies were
9 conducting street patrol on Pine Shadow Drive in the
10 Goose Creek area of Berkeley County. At that time they
11 observed a group of young males standing in front of 180
12 Pine Shadow and a strong odor of marijuana was coming
13 from the vicinity of the group. Deputies approached the
14 group and one subject took off and was observed dropping
15 narcotics. This defendant was detained in the group at
16 that time.

17 After the fleeing subject was detained and narcotics
18 recovered a K-9 swept the cars adjacent to the group and
19 alerted to three of them. One, a Honda, was registered
20 to this defendant. A probable cause search revealed
21 paperwork belonging to the defendant as well as a bag of
22 marijuana weighing 55 grams and a bag of cocaine weighing
23 approximately 42.98 grams as confirmed by SLED. The
24 defendant was placed under arrest for that charge. And
25 subsequently on May 2nd, 2018 Berkeley County deputies

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1 initiated a traffic stop on an Infiniti vehicle on Red
2 Bank Road in the Goose Creek area of Berkeley County for
3 an observed equipment violation. The deputy made contact
4 with the driver and immediately observed an odor of
5 marijuana coming from the vehicle. The defendant was
6 asked to exit at which time he became loud and began
7 cursing the deputy. He was detained and placed in a
8 patrol vehicle while his vehicle was searched revealing
9 marijuana, bags, a digital scale, cash and several cell
10 phones.

11 The deputy informed the defendant he was under
12 arrest at which time he began kicking the doors of the
13 patrol vehicle. They attempted to hobble him but he
14 would not stop kicking his feet and resisting. They were
15 eventually able to restrain him at which time he
16 continued to curse the deputies. The door of the patrol
17 vehicle was damaged during the incident by the defendant
18 who was kicking which required repair.

19 THE COURT: Is there any restitution?

20 MR. MCNEELY: Not seeking restitution, Your Honor.

21 THE COURT: Sir, do you agree or disagree with the
22 facts?

23 MR. THOMAS: I agree.

24 THE COURT: Feel anything needs to be changed or
25 added to the facts?

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1 MR. THOMAS: No, ma'am.

2 THE COURT: Are you pleading guilty sir because
3 you're guilty?

4 MR. THOMAS: Yes, ma'am.

5 THE COURT: I want you all to listen carefully.
6 When you plead guilty you give up your constitutional
7 rights. Those include your right to a jury trial. At a
8 jury trial you're entitled to a presumption that you're
9 innocent. The State has the burden of proving your guilt
10 beyond a reasonable doubt.

11 You would have the right to confront and cross-
12 examine the State's witnesses, call your own witnesses,
13 present any defenses that you may have, challenge any
14 statements you may have made as well as remain silent and
15 your silence could not be used against you. Do you
16 understand your rights?

17 MR. KEMP: Yes, ma'am.

18 MR. THOMAS: Yes, ma'am.

19 MR. HAMILTON: Yes, ma'am.

20 MR. RIVERS: Yes, ma'am.

21 THE COURT: Do you understand you're giving up your
22 rights?

23 MR. KEMP: Yes, ma'am.

24 MR. THOMAS: Yes, ma'am.

25 MR. HAMILTON: Yes, ma'am.

1 MR. RIVERS: Yes, ma'am.

2 THE COURT: Other than what I've been told are
3 there any other deals you're relying on in pleading
4 guilty?

5 MR. KEMP: No, ma'am.

6 MR. THOMAS: No, ma'am.

7 MR. HAMILTON: No, ma'am.

8 MR. RIVERS: No, ma'am.

9 THE COURT: Have you ---

10 MR. DAVIS: --- except for -- I didn't mean to cut
11 you off Your Honor. Darius Hamilton the State has agreed
12 to give him credit from the day of arrest up to the
13 present day in reference to his sentence, Your Honor.

14 THE COURT: Y'all will have to -- I mean we'll -- I
15 can't -- what am I trying to say? Calculation of time is
16 a Department of Corrections under the regulation so I
17 can't ---

18 MR. DAVIS: --- what I mean by that, Your Honor is
19 that he has been incarcerated this period of time, two
20 years and six months or whatever that period of time is.

21 THE COURT: If y'all want to do a supplemental
22 consent order to send to them you can do that. But they
23 took the line off that sheet for a reason.

24 MR. DAVIS: Okay, Your Honor.

25 THE COURT: The only reason I write it on there is

1 for the jail next door when I do a time served sentence
2 otherwise they won't release them.

3 MR. DAVIS: Okay.

4 THE COURT: But otherwise I don't have the
5 authority to because if I give him -- let's say for
6 example he has 100 days but I only give him two that's
7 all he's going to get. That's why they get all the
8 records and when he sees his R & E counselor they figure
9 out how much time you are entitled to so that we won't --
10 because I'm not in the business of calculating time
11 because I don't want to give somebody the misapprehension
12 that I have that authority when I don't.

13 So if y'all want to check with R & E and figure out
14 what you need to do, if y'all do a consent order and
15 they're happy with it I'm happy to sign it. But there is
16 no place on the sentence sheet for me -- all I can do is
17 check the box that says credit for time served.

18 MR. DAVIS: Oh, that's all you can do?

19 THE COURT: That's all I can do.

20 MR. DAVIS: Fair enough, Judge, fair enough ---

21 THE COURT: --- and 24-13-40 then gives them the
22 authority to calculate it.

23 MR. DAVIS: Thank you, Your Honor.

24 THE COURT: I forgot where I was.

25 MR. DAVIS: I want to hear the Solicitor confirm

1 that, Your Honor, on the record.

2 THE COURT: Are there any other deals you're
3 relying on in pleading guilty that I've not been told
4 about?

5 MR. KEMP: No, ma'am.

6 MR. THOMAS: No, ma'am.

7 MR. HAMILTON: No, ma'am.

8 MR. RIVERS: No, ma'am.

9 THE COURT: Ms. Joy, what was the question I asked
10 before me and Mr. Davis started talking?

11 MR. DAVIS: Had they been promised anything or ---

12 THE COURT: --- I'm sorry, was that the last
13 question?

14 MR. DAVIS: That was, Your Honor.

15 THE COURT: I hadn't gotten to where they were
16 satisfied with your services?

17 MR. DAVIS: No.

18 THE COURT REPORTER: No, you had not.

19 MR. DAVIS: That's coming up now, Your Honor.

20 THE COURT: Okay. Have you been satisfied with
21 your lawyer's services?

22 MR. KEMP: Yes, ma'am.

23 MR. THOMAS: Yes, ma'am.

24 MR. HAMILTON: Yes, ma'am.

25 MR. RIVERS: Yes, ma'am.

1 THE COURT: Have they answered all of your
2 questions? Has he rather answered all of your
3 questions?
4 MR. KEMP: Yes, ma'am.
5 MR. THOMAS: Yes, ma'am.
6 MR. HAMILTON: Yes, ma'am.
7 MR. RIVERS: Yes, ma'am.
8 THE COURT: Done all you've asked or expected in
9 representing you?
10 MR. KEMP: Yes, ma'am.
11 MR. THOMAS: Yes, ma'am.
12 MR. HAMILTON: Yes, ma'am.
13 MR. RIVERS: Yes, ma'am.
14 THE COURT: Anything more you would have him do
15 that he has not done?
16 MR. KEMP: No, ma'am.
17 MR. THOMAS: No, ma'am.
18 MR. HAMILTON: No, ma'am.
19 MR. RIVERS: No, ma'am.
20 THE COURT: Any complaints about his services?
21 MR. KEMP: No, ma'am.
22 MR. THOMAS: No, ma'am.
23 MR. HAMILTON: No, ma'am.
24 MR. RIVERS: No, ma'am.
25 THE COURT: Has anyone promised you anything or

1 held out any hope of reward to cause you to plead guilty?
2 MR. KEMP: No, ma'am.
3 MR. THOMAS: No, ma'am.
4 MR. HAMILTON: No, ma'am.
5 MR. RIVERS: No, ma'am.
6 THE COURT: Has anyone used threats, coercion,
7 force, pressure, intimidation or duress to cause you to
8 plead guilty?
9 MR. KEMP: No, ma'am.
10 MR. THOMAS: No, ma'am.
11 MR. HAMILTON: No, ma'am.
12 MR. RIVERS: No, ma'am.
13 THE COURT: Are you pleading guilty freely and
14 voluntarily and of your own will?
15 MR. KEMP: Yes, ma'am.
16 MR. THOMAS: Yes, ma'am.
17 MR. HAMILTON: Yes, ma'am.
18 MR. RIVERS: Yes, ma'am.
19 THE COURT: And have you had enough time to make up
20 your mind about pleading guilty?
21 MR. KEMP: Yes, ma'am.
22 MR. THOMAS: Yes, ma'am.
23 MR. HAMILTON: Yes, ma'am.
24 MR. RIVERS: Yes, ma'am.
25 THE COURT: Have you understood my questions?

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1 MR. KEMP: Yes, ma'am.
2 MR. THOMAS: Yes, ma'am.
3 MR. HAMILTON: Yes, ma'am.
4 MR. RIVERS: Yes, ma'am.
5 THE COURT: Do you need to ask me about anything
6 we've been over?
7 MR. KEMP: No, ma'am.
8 MR. THOMAS: No, ma'am.
9 MR. HAMILTON: No, ma'am.
10 MR. RIVERS: No, ma'am.
11 THE COURT: Have you been truthful in your answers?
12 MR. KEMP: Yes, ma'am.
13 MR. THOMAS: Yes, ma'am.
14 MR. HAMILTON: Yes, ma'am.
15 MR. RIVERS: Yes, ma'am.
16 THE COURT: Do you understand that you have the
17 right to appeal this guilty plea and sentence of the
18 Court but that you must do so in writing within 10 days
19 of today?
20 MR. KEMP: Yes, ma'am.
21 MR. THOMAS: Yes, ma'am.
22 MR. HAMILTON: Yes, ma'am.
23 MR. RIVERS: Yes, ma'am.
24 THE COURT: Do you understand that if you cannot
25 afford counsel, counsel will be appointed to represent

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1 you?

2 MR. KEMP: Yes, ma'am.

3 MR. THOMAS: Yes, ma'am.

4 MR. HAMILTON: Yes, ma'am.

5 MR. RIVERS: Yes, ma'am.

6 THE COURT: I find there is a substantial factual
7 basis for each plea, that each defendant has entered the
8 plea freely, voluntarily, knowingly, and intelligently.
9 They have each had the advice and assistance of counsel
10 with whom they have indicated to the Court they are each
11 satisfied and I will accept each plea. Anything further
12 from the State regarding Mr. Kemp?

13 MR. SANFORD: Nothing, Judge.

14 THE COURT: Anything further? Mr. Davis, I've
15 accepted the recommendations.

16 MR. DAVIS: Nothing further, Your Honor.

17 THE COURT: Sir, you're sentenced to one year
18 suspended to time served. You have until December 7th of
19 2018 to pay your Court cost. If you fail to do so a
20 bench warrant will be issued for your arrest. Do you
21 understand?

22 MR. KEMP: Yes, ma'am.

23 THE COURT: Anything further from the State
24 regarding Mr. Thomas?

25 MR. DUQUETTE: Yes, Your Honor. I believe I said

1 the 21st. The incident was on September 2, 2017.

2 THE COURT: Did he spend any time pre-detention,
3 Mr. Davis?

4 [Whereupon, Mr. Davis confers with his client]

5 MR. THOMAS: Yes, ma'am.

6 THE COURT: How much time?

7 MR. DAVIS: Two days, Your Honor.

8 THE COURT: Anything further from the State?

9 MR. DUQUETTE: No, Your Honor.

10 THE COURT: Anything further, Mr. Davis? I've
11 accepted the recommendation.

12 MR. DAVIS: Nothing, Your Honor. Thank you very
13 much.

14 THE COURT: You're welcome. Sir, I need to explain
15 something to you. While your lawyer has worked out a
16 recommendation of a YOA sentence, a suspended YOA
17 sentence for you, I need to advise you that if you fail
18 in any particulars to comply with your probation and this
19 sentence is revoked that you go into the authority and
20 custody of the Department of Corrections, that what I say
21 on this sentence sheet is not controlling. The YOA is a
22 separate program and they can keep you up to six years,
23 do you understand that?

24 MR. THOMAS: Yes, ma'am.

25 THE COURT: And that if you are revoked and you go

1 serve time they do it in increments and you'll also be on
2 YOA parole, which means if you do anything afoul of what
3 they require they can keep sending you back, do you
4 understand that?

5 MR. THOMAS: Yes, ma'am.

6 THE COURT: On the PWID sir you're sentenced under
7 the Youthful Offender Act to a period not to exceed five
8 years and on the gun one year. Both are suspended to 18
9 months of probation. You'll get credit pursuant to 24-
10 13-40. But as a practical matter under the YOA program
11 you don't get any credit. You're to have random drug and
12 alcohol tests and substance abuse counseling if you test
13 positive.

14 MR. DAVIS: Thank you, Your Honor.

15 THE COURT: You're welcome. Anything further from
16 the State regarding Mr. Hamilton?

17 MR. MCNEELY: Yes, Your Honor.

18 THE COURT: I'm listening.

19 MR. MCNEELY: The co-defendants were sentenced by
20 Your Honor following trial as follows: Jacob Mouzon
21 [phonetic] was given 40 years after being found guilty of
22 murder as well as the burglary first, armed robberies,
23 kidnappings, and the possession of a weapon during the
24 commission of a violent crime. Co-defendant Kenneth
25 Campbell was subject to life without parole so he was

1 sentenced to that on the armed robberies, kidnappings and
2 possession of a weapon during the commission of a violent
3 crime. He was acquitted on the murder, attempted murder,
4 and burglary first.

5 Likewise defendant Drake Campbell was found guilty
6 on two armed robberies, two kidnappings, and possession
7 of a weapon during the commission of a violent crime. He
8 also had no record and was sentenced to 20 years by Your
9 Honor following the trial.

10 Given the situation with this defendant the State is
11 mindful of his cooperation however he breached the
12 proffer agreement and is arguably more culpable in this
13 incident than Drake Campbell given that he was the one
14 that bound their hands and Mr. Campbell was not as
15 directly involved in the execution of the incident.

16 THE COURT: But would you have had a case without
17 him? He was the only direct witness wasn't he?

18 MR. MCNEELY: Yes, we would have Your Honor. I ---

19 THE COURT: --- now having said that I don't think
20 he ever came clean completely about what happened. You
21 know I'm direct, Mr. Davis. I don't know any other way
22 to be ---

23 MR. DAVIS: --- I understand. Fair enough, Your
24 Honor, fair enough ---

25 THE COURT: --- but I don't know whether that was

1 precipitated by fear or if that was precipitated by
2 malice or some malignant intent. And I never -- I don't
3 know -- if I was clairvoyant I could be like the Great
4 Tarnac --

5 MR. MCNEELY: --- I understand the ---

6 THE COURT: --- Carnac. Is that what -- I'm
7 telling my age but when Johnny Carson put the turban on.

8 MR. DAVIS: Yes, Carnac.

9 THE COURT: I just haven't really been able to sort
10 -- I couldn't understand whether his lack was fear or
11 whether he just didn't want to admit his own culpability.

12 MR. MCNEELY: The State is also unclear on that,
13 Your Honor. The State does believe that the most
14 accurate recitation of the events in many ways came from
15 the witness stand during trial. And we are not positive
16 as to why he did not inculcate Mr. Palmer more so during
17 our pretrial meetings. But whatever reason he chose not
18 to do so.

19 Given the serious consequences for the victims in
20 this case and his direct involvement we believe he should
21 be sentenced to a sentence more than 20 years. Obviously
22 we've taken life off the table given his cooperation and
23 involvement.

24 THE COURT: Do any of the victims wish to be heard?

25 MR. MCNEELY: I don't believe the victim's

1 grandmother wishes to speak, Your Honor. She does not.

2 THE COURT: And neither does Ms. Snipe?

3 MR. MCNEELY: She is not present.

4 THE COURT: Okay. Mr. Davis, I'll be glad to hear
5 from you.

6 MR. DAVIS: Judge, I've given you some character
7 witnesses that speaks volumes of this young man. And I
8 have a litany of individuals who are present in the
9 courtroom. I have the Mayor of Saint Stephens, the
10 Honorable John Rivers. I have Pastor Michael R.E.
11 Reformed Church, 1st Lady; I have two uncles,
12 grandparents, mother, father, and sister.

13 Judge, we're not here to retry the case. I called
14 the South Carolina Bar the other day and they told me Mr.
15 Davis you became a member of the Bar on November 5th,
16 1982. I don't need any more continuing legal education.
17 I see that as a milestone, Your Honor, because I have to
18 deal with the hands that have been dealt.

19 I put this young man in what I would say in the most
20 favorable position I could have having been in the
21 position that he had already given two statements to law
22 enforcement and he is the only one that actually
23 participated in cooperation. And I too take the position
24 that his cooperation was very instrumental despite the
25 fact that the State didn't get everything that they

1 wanted; and that was Mr. Sharod [phonetic] Palmer. And
2 Judge I want to share with you that I was at every
3 instance. This has been the third Solicitor that has
4 spoken in this matter; Chip Cannon, Bryan Alfaro did the
5 trial and now this morning Mr. McNeely. That's not a
6 reflection of the State; it's a reflection of the whole
7 totality of the circumstances in this instance, Your
8 Honor.

9 I think that they greatest tragedy here was the
10 death and the incident that took place. But even a
11 greater tragedy as to Mr. Darius Hamilton's failure to
12 really come to grips with any involvement. He just
13 couldn't push himself to that. So the day in the midst
14 of the trial that he's supposed to testify he calls me
15 and says Mr. Davis there is one little point I want to
16 share with you is that Sharod [phonetic] Palmer I did
17 give him a ride to Saint Stephens. What should I do?

18 Well, Your Honor, I told him that he understood that
19 we were involved in a proffer agreement. He was released
20 from the Berkeley County Detention Center because of his
21 cooperation and to be truthful in all manners thereto.
22 Also, Your Honor I share this aspect about fear. Fear
23 can make a person move forward or fear can make a person
24 stand still. In this instance Darius moved but then in
25 essence he remained in the same position to some extent

1 when it came to his involvement. Darius comes from a
2 wonderful family where I have been inundated from people
3 who speak volumes of this young man. He knows the right
4 thing because he had proper training, Your Honor.
5 Sometimes our relationships and who we associate with can
6 make tremendous consequences.

7 In relationship to all these young men who have
8 stood before you this morning they have really violated
9 one of my cardinal rules; 85 percent of all the people in
10 the Department of Corrections don't have a high school
11 education. This young man has a high school education,
12 a welding certificate which Your Honor speaks volumes of
13 him. He has worked continuously since he has been
14 released from jail on bond.

15 And last night I called to speak with the family and
16 they were out trick or treating, the family, doing what
17 they always do. The mother works at the school system,
18 the Saint Stephen Elementary School. They are going out
19 and making other people and other family's lives more
20 better. And he himself was also participating.

21 I don't have all the answers in relationship to why
22 he couldn't come to grips fully because I believe if he
23 had come to grips fully in his testimony we wouldn't be
24 here at this instance. But Your Honor, this young man
25 has come before the Court, admit his involvement

1 understanding the tragedy and the disappointment he has
2 lodged in reference to his family and all those strong
3 supporters who have lent support by their presence, their
4 letters and their prayers.

5 Judge, I'm asking you in all due sincerity that he
6 should receive or consider the minimum sentence of 15
7 years. I say this Judge because in essence but for the
8 fact of that one statement that day of his testimony it
9 would have been tremendously different. The State would
10 have been offering me something tremendously different
11 than what is before you today because in my role as a
12 prosecutor for 10 years sometime we have to use certain
13 individuals to get some measure of justice.

14 And I don't think in an awkward way that there has
15 been some measure of justice in this matter already. And
16 Judge I'm asking that further justice would be to give
17 this young man the minimum sentence. He's going to have
18 hanging over his life when he comes out the possibility
19 of life without parole if he gets involved or engaged in
20 any other criminality.

21 And Your Honor he only was 18 years of age at the
22 time. He's about to lose primarily what people cherish,
23 which is the youth of his life; something that can never
24 be given back. Not to demean or diminish the criminality
25 of what happened to the victim in this matter, Your

1 Honor, but I'm asking in all due respect and mercy that
2 the Court consider the minimum sentence in relationship
3 of this matter, Your Honor.

4 THE COURT: Sir, is there anything you would like
5 to state for the record on your own behalf?

6 MR. HAMILTON: Yes, ma'am. First of all I want to
7 apologize to the family and I want to apologize to the
8 Court. Honestly, I shouldn't even be in this situation.
9 Everything that went down that night was just -- when
10 you're young you got a young mindset. And after all that
11 happened I had to grow up fast. And I understand that I
12 lied on the first two statements because I was still
13 scared. Everything that happened I just feel is wrong.
14 That's all I got --

15 THE COURT: I'm sorry; I didn't hear you. Was
16 there something else? I -- your voice went low and I
17 didn't -- I wanted to make sure I heard you.

18 MR. HAMILTON: I just feel like I've shamed my
19 parents and my family for my involvement in these
20 activities. And what made it worse today is it is my
21 Mom's birthday and I'm pleading guilty to these crimes.

22 MR. DAVIS: Judge, just to add he's going to prison
23 but his mother is going to prison too, father is going to
24 prison; all the people that he touched in his life is
25 going to prison. On a personal note I had a nephew his

1 age, 17; serious offense. My sister was involved with a
2 prison mentality until he was released. And that was
3 over 13 or 14 years. So the tragedy here is severe not
4 only just for him. And I just hope that Darius
5 appreciates the magnitude of his actions that night. I
6 think that's what you want to know more than anything
7 else, Your Honor.

8 THE COURT: How much time pre-detention did he
9 serve? Did he bond right out?

10 MR. DAVIS: No, Your Honor.

11 MR. MCNEELY: He was arrested on August 3rd, 2016
12 Your Honor. After the initial proffer on November 3rd,
13 2016 he was given a bond hearing. I'm not exactly
14 positive the date but I think he bonded out prior to the
15 end of 2016 following a bond hearing.

16 MR. DAVIS: After he did a proffer agreement, Your
17 Honor, that's when the bond was put in position. He had
18 to be under house arrest and that's why we took the
19 position that that should be considered time ---

20 THE COURT: --- yeah, you'll have to check with the
21 Department of Corrections and see because I don't want to
22 mislead him. And like I said the only box I can check is
23 to give him credit and whether it is consecutive or
24 concurrent. And I don't know whether they are going to
25 give him credit for that. I have no idea.

1 MR. DAVIS: Could we at least give him the credit
2 initially, Your Honor for the ---

3 THE COURT: --- they'll give him, what they'll do
4 is once he goes to the Department of Corrections he is
5 going to go to the Reception and Evaluation Center. They
6 will get all his records and they'll sit down with him
7 and tell him what credit they think he's entitled to.

8 MR. DAVIS: Okay.

9 THE COURT: That's my understanding of how it
10 works.

11 MR. DAVIS: I trust your understanding.

12 THE COURT: But it changes day to day; that's why
13 they took that line off the form. Oh, you had some extra
14 copies of some letters.

15 MR. DAVIS: Yes, please.

16 THE COURT: I put the other letters in his file.

17 MR. DAVIS: Thank you.

18 [Whereupon, Mr. Davis provides documents to the
19 Court]

20 THE COURT: So I don't want to tell him something
21 that might be inaccurate. Now if you want to check with
22 the Department of Corrections and see if they will give
23 him credit for that and what you need to do to accomplish
24 that you're free to do that. And if y'all need my
25 assistance, I mean if they say you can do a consent order

1 I don't have any problem, and y'all do it that's fine; I
2 don't have a dog in the fight. But I don't want to do
3 anything that runs afoul of their rules. Anything
4 further from the State?

5 MR. MCNEELY: No, Your Honor.

6 THE COURT: Anything further from the defense?

7 MR. DAVIS: Nothing, Your Honor.

8 THE COURT: Sir, on each offense you're sentenced
9 to the State Department of Corrections for a period of 15
10 years. These sentences are concurrent. You'll get
11 credit for any time pursuant to 24-13-40 to be calculated
12 and applied by the Department of Corrections. You might
13 want to leave any valuables with your family.

14 MR. DAVIS: Thank you very much, Your Honor.

15 THE COURT: Anything further from the State
16 regarding Mr. Rivers?

17 MR. MCNEELY: Yes, Your Honor. Given that this
18 defendant was on YOA parole at the time he committed
19 multiple offenses in succession the State believes that a
20 sentence of 15 years is appropriate for this defendant.

21 THE COURT: How long did he spend pre-detention?

22 MR. MCNEELY: I'd have to look at the bonds for
23 each ---

24 THE COURT: --- because they're all different ---

25 MR. MCNEELY: --- there are six of them ---

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1 THE COURT: --- so it's all different timeframes.

2 MR. DAVIS: Mr. Davis, I'll be glad to hear from
3 you.

4 MR. DAVIS: Judge, I understand we're going to be
5 standing before you. The Solicitor was fair to agree to
6 a negotiated five years and I think the Court should know
7 that. And I'll tell you why we didn't accept it, Your
8 Honor. I've been following this young man for some period
9 of time. Judge, if you listen to the facts closely,
10 which I know you do, twice is equipment violation. And
11 maybe that's just what it is.

12 THE COURT: I'm going to tell you what my daddy
13 says. You don't go out on the highway and do something
14 and get upset because the police stopped you.

15 MR. DAVIS: I understand, Your Honor ---

16 THE COURT: --- you just shouldn't be -- that's
17 just -- at some point you just have to be realistic with
18 yourself and stop making excuses.

19 MR. DAVIS: I agree. Judge, I was representing
20 this young man on one of his parole ---

21 THE COURT: --- and most young men should know that
22 that's what they're going to stop you for.

23 MR. DAVIS: Yes, but they don't listen. He's 25
24 years of age, Your Honor. I represented him on his
25 parole violation. Judge, it seems ---

1 THE COURT: --- I'm not making light of it but
2 reality is reality ---

3 MR. DAVIS: --- I understand the predicament he's
4 in. Judge, this young man has been gainfully employed
5 one year consistently two jobs in this whole process.
6 He's 25 years of age. He finished high school, Your
7 Honor. I believe Your Honor that he could withstand the
8 rigors of staying out here. I really do believe that in
9 all due candor, Your Honor. If the YOA parole individual
10 felt otherwise I think they would have already moved
11 against ---

12 THE COURT: --- no, they wait until there is a
13 plea. He's probably going to get revoked. There is no
14 need in me being flowery about it. He had four separate
15 incident dates. They used to revoke you right away.
16 They don't anymore. They wait until you plead guilty
17 then almost immediately he is going to have an
18 administrative hearing.

19 And depending on how much time he gets today they
20 may decide that he's not worth bothering with anymore and
21 send him straight to an adult institution or they may
22 make him serve the balance of his YOA and make him serve
23 whatever -- but I have no control over that and you never
24 know what they're going to do; it just depends.

25 MR. DAVIS: Okay, Judge.

State v Darius Darnell Hamilton
Guilty Plea
November 1, 2018

1 THE COURT: It depends on a lot of factors.
2 MR. DAVIS: Tell the Judge about yourself. Go
3 ahead.
4 [Whereupon, Mr. Davis confers with his client]
5 MR. RIVERS: I'm working.
6 MR. DAVIS: Have you learned anything in this whole
7 process?
8 MR. RIVERS: Yes, sir.
9 MR. DAVIS: What have you learned?
10 MR. RIVERS: There is no shortcuts in life.
11 MR. DAVIS: No shortcuts in life. So the marijuana
12 is a shortcut process?
13 MR. RIVERS: I thought it was.
14 MR. DAVIS: Do you have a father, son?
15 MR. RIVERS: Yes, sir.
16 MR. DAVIS: Where is he?
17 MR. RIVERS: He's working. He stays in Georgia.
18 MR. DAVIS: Where's he at?
19 MR. RIVERS: In Georgia.
20 MR. DAVIS: Do you have a mother?
21 MR. RIVERS: Yes, sir.
22 MR. DAVIS: Where's your mother?
23 MR. RIVERS: Working.
24 MR. DAVIS: Where is she working?
25 MR. RIVERS: She works somewhere in Moncks Corner

State v Darius Darnell Hamilton
Guilty Plea
November 1, 2018

1 at the hospital.

2 MR. DAVIS: Do you have a relationship with your
3 parents?

4 MR. RIVERS: Yes, sir.

5 MR. DAVIS: Why are they not here today?

6 MR. RIVERS: They're working. I told them not to
7 come.

8 MR. DAVIS: Sir? You told them not to come?

9 MR. RIVERS: Not to take off work because I got a
10 little brother.

11 MR. DAVIS: How old is your little brother?

12 MR. RIVERS: Eleven.

13 MR. DAVIS: You finished high school did you not?

14 MR. RIVERS: Yes, sir.

15 THE COURT: How much time did he serve pre-
16 detention Mr. Davis?

17 [Whereupon, Mr. Davis confers with his client]

18 THE COURT: Or did he bond right out?

19 MR. DAVIS: No, he did not bond out.

20 MR. RIVERS: I didn't bond out.

21 MR. MCNEELY: If you wait one moment, Your Honor, I
22 can tell you based on ---

23 THE COURT: --- I need to know how much time he
24 served on the failure to stop, and the possession of
25 cocaine, and the resisting arrest.

State v Darius Darnell Hamilton
Guilty Plea
November 1, 2018

1 MR. MCNEELY: As to the December 3rd, 2016 incident
2 which was a PWID marijuana and possession of cocaine he
3 was arrested on December 3rd and bonded out on December
4 9th.

5 THE COURT: So that's six days.

6 MR. MCNEELY: As to the August 2nd, 2017 incident
7 which was the failure to stop for a blue light he was
8 arrested on August 2nd and he bonded out on that charge
9 on August 3rd.

10 THE COURT: Okay. So that's one day.

11 MR. MCNEELY: As to the November 16th, 2017
12 incident he was actually arrested on December 1, 2017 ---

13 THE COURT: --- that's the resisting arrest or
14 which one?

15 MR. MCNEELY: No, that's the PWID cocaine and the
16 other PWID marijuana.

17 THE COURT: Marijuana. He was arrested on what
18 date?

19 MR. MCNEELY: December 1st and he bonded out on
20 December 2nd.

21 THE COURT: So that's one day.

22 MR. MCNEELY: And then on the resisting arrest from
23 May 2nd, 2018 he was arrested that day and he bonded out
24 that day.

25 THE COURT: Anything further, Mr. Davis?

State v Darius Darnell Hamilton
Guilty Plea
November 1, 2018

1 MR. DAVIS: Nothing further, Your Honor.

2 THE COURT: Does the State take any position?

3 MR. MCNEELY: Yes, Your Honor. The State believes
4 it is beyond time that Mr. Rivers go to prison. I was
5 prepared to negotiate a five year sentence as Mr. Davis
6 suggested. He requested that we not do the negotiation
7 and that it be straight up. I think the multiple charges
8 have earned him a trip to SCDC, Your Honor.

9 THE COURT: Sir, on each of the possession with the
10 intent to distribute marijuana second you're sentenced to
11 the State Department of Corrections for a period of two
12 years. On the possession of cocaine first degree you're
13 sentenced to the State Department of Corrections for a
14 period of two years.

15 On the resisting arrest you're sentenced to one
16 year. On the failure to stop for a blue light 90 days
17 suspended to time served and the PWID cocaine first three
18 years. All these sentences are concurrent with one
19 another and you'll get credit pursuant to 24-13-40.

20 MR. DAVIS: Thank you very much, Your Honor.

21 THE COURT: Thank you.

22 MR. MCNEELY: Thank you, Your Honor.

23 *****END OF TRANSCRIPT OF RECORD*****
24
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Berkeley County, South
Carolina on the 1st day of November, 2018.

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

December 1, 2018

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF **BERKELEY**

STATE VS.

DARIUS DARNELL HAMILTON

AKA:

Race: **Black/African American**Sex: **M**DOB: **[REDACTED]** SS#: **[REDACTED]**Address: **[REDACTED]**City, State, Zip: **Saint Stephen, SC 29479-3322**DL# **[REDACTED]** SID# **[REDACTED]***CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADSTO: **Armed Robbery**In violation of § **16-11-0330(A)** of the S.C. Code of Laws, bearing CDR Code # **0139**☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

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

ATTEST:

Bryan A. Alfaro, Deputy Solicitor 70502 SC Bar #

Defendant **[Signature]**Attorney for Defendant **[Signature]** 1587 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of **15** 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: **all of 11/1/18**☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐**FILED**☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning **NOV - 1 2018**Substance Abuse Counseling ☐ CASE **NO**MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SCRandom Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ **100.00**

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

§56-5-2995 (DUI Assessment) \$12 \$ _____

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

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

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

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

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

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

3% to County (if paid in installments) \$ **3.75**TOTAL \$ **128.75**☐ 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 **Andrea Howell**
Court Reporter: **Joyce Rieger**Presiding Judge: **[Signature]**Judge Code: **2128**Sentence Date: **11/1/18**

BAA/0320332

WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-07054016

ARREST WARRANT NUMBER

2016A0810401115

DATE OF ARREST

08/03/2016

ACTION OF GRAND JURY

True Bill

Ch n D Kent 4/26/17
Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-08-00807

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2017

THE STATE

VS.

DARIUS DARNELL HAMILTON

B/M DOB: [REDACTED]

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)

CDR Code: 0139

FILED
17 APR 26 PM 2:39
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

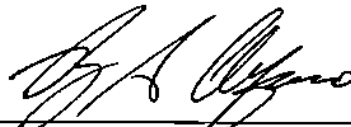
INDICTMENT

At a Court of General Sessions, convened April 2017, the Grand Jurors of Berkeley County present upon their oath:

ARMED ROBBERY

That on or about July 21, 2016, in Berkeley County, South Carolina, the Defendant, Darius Darnell Hamilton, while acting in concert with co-defendants, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Kadeem Johnson with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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



BRYAN A. ALFARO
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF **BERKELEY**

STATE VS.

DARIUS DARNELL HAMILTON

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Saint Stephen, SC 29479-3322DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADSTO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury

(dcf.'s initials)

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

ATTEST:

Bryan A. Alfaro, Deputy Solicitor SC Bar # 70502Defendant [Signature]Attorney for Defendant [Signature] SC Bar # 1587

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 11/1/18☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives HearingTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Ordered PTUP days/hours Public Service EmploymentObtain GED ☐**FILED**☐ Set by SCDPPPS Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso (Public Def/Probation) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Attend Voc. Rehab. Or Job Corp. NOV - 1 2018May serve W/E beginning Substance Abuse Counseling YES P BROWN CLERK OF COURTRandom Drug/Alcohol Testing ☐ BERKELEY COUNTY, SC

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ 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: Andrea HowellCourt Reporter: Joyce KuegerPresiding Judge: [Signature]Judge Code: 2128Sentence Date: 11/1/18

BAA/0320332

WITNESSES

[Signature]
Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-07054016

ARREST WARRANT NUMBER

2016A0810401116

DATE OF ARREST

08/03/2016

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

4/26/17
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-08-00808

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2017

THE STATE

VS.

DARIUS DARNELL HAMILTON

B/M DOB: [REDACTED]

Indictment for

KIDNAPPING

SC Code: § 16-03-0910

CDR Code: 0095

17 APR 26 PM 2:39
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

[Signature]
FILED

650

[Signature]

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened April 2017, the Grand Jurors of Berkeley County present upon their oath:

KIDNAPPING

That in Berkeley County, South Carolina on or about July 21, 2016, the Defendant, Darius Darnell Hamilton, while acting in concert with co-defendants, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Kadeem Johnson, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

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



BRYAN A. ALFARO
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

DARIUS DARNELL HAMILTON

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Saint Stephen, SC 29479-3322DL# [REDACTED]SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADSTO: Armed RobberyIn violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Bryan A. Alfaro, Deputy Solicitor

70502

SC Bar #

D. H. Jones, Defendant[Signature], Attorney for Defendant

1587

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 15 days/months/years ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and or paymentof \$; 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 Service standard conditions of probation, which are incorporated by reference.

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Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ OrderedPTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐**FILED**☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp.

NOV - 1 2018

May serve W/E beginning Substance Abuse Counseling ☐CASE

NO

MARY P. BROWN CLERK OF COURT

Random Drug/Alcohol Testing ☐

BERKELEY COUNTY, SC

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Recipient: *Fine: \$ §14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso (Public Def/Probation) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court (Deputy Clerk): Andrea HawellCourt Reporter: Joyce RiegerPresiding Judge: [Signature]Judge Code: 2128Sentence Date: 11/1/18

BAA/0320332

WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-07054016

ARREST WARRANT NUMBER

2016A0810401117

DATE OF ARREST

08/03/2016

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

4/15/17
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-08-00809

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2017

THE STATE

VS.

DARIUS DARNELL HAMILTON

B/M DOB: [REDACTED]

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)

CDR Code: 0139

MAURY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

17 APR 26 PM 2:39

FILED

062

[Signature]

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

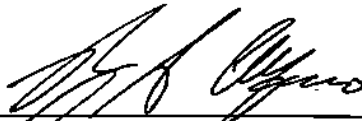
INDICTMENT

At a Court of General Sessions, convened April 2017, the Grand Jurors of Berkeley County present upon their oath:

ARMED ROBBERY

That on or about July 21, 2016, in Berkeley County, South Carolina, the Defendant, Darius Darnell Hamilton, while acting in concert with co-defendants, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Krystal Snipe with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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



BRYAN A. ALFARO
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

DARIUS DARNELL HAMILTON

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Saint Stephen, SC 29479-3322DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADSTO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Bryan A. Alford, Deputy Solicitor 70502
SC Bar #D. Hamilton
DefendantAttorney for Defendant 1587
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 15 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 Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 11/1/18
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

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

§56-5-2995 (DUI Assessment) \$12 \$ _____

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

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

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

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

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

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

3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. Or Job Corp. NOV - 1 2018

May serve W/E beginning _____

Substance Abuse Counseling ☒ CASE NO. MARY P BROWN CLERK OF COURTRandom Drug/Alcohol Testing ☐ BERKELEY COUNTY, SC

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: Andrea HowellCourt Reporter: Joyce KuegerPresiding Judge: [Signature]Judge Code: 2128Sentence Date: 11/1/18

BAA/0320332

WITNESSES

5-608
Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-07054016

ARREST WARRANT NUMBER

2016A0810401118

DATE OF ARREST

08/03/2016

ACTION OF GRAND JURY

True Bill

Don W. D. Will
Foreperson of Grand Jury

4/26/17
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-08-00810

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2017

THE STATE

VS.

DARIUS DARNELL HAMILTON

B/M DOB: [REDACTED]

Indictment for

KIDNAPPING

SC Code: § 16-03-0910

CDR Code: 0095

JFH
FILED
MARTY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

17 APR 26 PM 2:39

590

JFH

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened April 2017, the Grand Jurors of Berkeley County present upon their oath:

KIDNAPPING

That in Berkeley County, South Carolina on or about July 21, 2016, the Defendant, Darius Darnell Hamilton, while acting in concert with co-defendants, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Krystal Snipe, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

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



BRYAN A. ALFARO
DEPUTY SOLICITOR

OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUIT

INDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment per Form)

Name: Darius Darnell Hamilton

Indictment #: 2017-GS-08-00811

Race: B

Sex: M

Warrant Number: 2016A0810401119

Year of Birth:

Case Number: 0320332

Disposition (Check One)

☐ Dismissed (44)

☒ Nolle Prosequi (43)

*REASON (44 OR 43):

Pled to other related charges after testifying against co-defendants in their trial.

☐ Remanded (7)

Charge: _____

Municipal Court: _____

Magistrate Court: _____

Judge: _____

☐ Failure to Appear (9)

Date Bench Warrant Issued: _____

Trial/Plea Docket Week: _____

PROSECUTOR: _____

Bryan A. Alfaro, Deputy Solicitor

Date: 11/1/18

CODE: DPPOC

CLERK OF COURT'S DATE/TIME STAMP: _____	RECEIVED BY: _____
	DATE: _____

* Questions regarding the reason for disposition should be directed to the Solicitor's Office.

Defense Attorney: Steve C. Davis

2018 NOV - 1 PM 4:18
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY S.C.

FILED

BAA/0320332

WITNESSES

[Signature]
Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-07054016

ARREST WARRANT NUMBER

2016A0810401119

DATE OF ARREST

08/03/2016

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

4/16/17
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-08-00811

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2017

THE STATE

VS.

DARIUS DARNELL HAMILTON

B/M DOB: [REDACTED]

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR Code: 3410

FILED
17 APR 26 PM 2:39
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

JFH

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

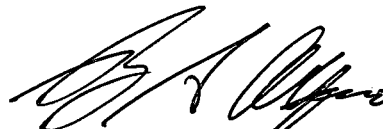
INDICTMENT

At a Court of General Sessions, convened April 2017, the Grand Jurors of Berkeley County present upon their oath:

ATTEMPTED MURDER

That in Berkeley County, South Carolina, on or about July 21, 2016, the Defendant, Darius Darnell Hamilton, while acting in concert with co-defendants, did, with intent to kill and malice aforethought, attempt to kill Krystal Snipe. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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



BRYAN A. ALFARO
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

DARIUS DARNELL HAMILTON

AKA:

Race: Black/African AmericanSex: MDOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Saint Stephen, SC 29479-3322DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADSTO: Burglary First DegreeIn violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☒ Recommendation by the State. Cop 30

ATTEST:

Bryan A. Alfaro
Bryan A. Alfaro, Deputy Solicitor70502
SC Bar #[Signature]
Defendant[Signature]
Attorney for Defendant1587
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 15 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 Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All by 11/1/18☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐**FILED**☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

NOV - 1 2018

May serve W/E beginning _____

Substance Abuse Counseling ☐

CASE

NO. 101Random Drug/Alcohol Testing ☐

MARY P. BROWN CLERK OF COURT

BERKELEY COUNTY, SC

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.

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

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

§56-5-2995 (DUI Assessment) \$12 \$ _____

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

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

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

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

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

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

3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: Andrea HowellCourt Reporter: Joyce WegerPresiding Judge: [Signature]Judge Code: 2128Sentence Date: 11/1/18

BAA/0320332

WITNESSES

[Signature]
Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2016-07054016

ARREST WARRANT NUMBER

2016A0810401120

DATE OF ARREST

08/03/2016

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

4/26/17
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-08-00812

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2017

THE STATE

VS.

DARIUS DARNELL HAMILTON

B/M DOB: [REDACTED]

Indictment for

BURGLARY FIRST DEGREE

SC Code: § 16-11-0311

CDR Code: 0079

17 APR 26 PM 2:38
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY S.C.

dfh
FILED

170

dfh

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened April 2017, the Grand Jurors of Berkeley County present upon their oath:

BURGLARY FIRST DEGREE

That in Berkeley County, South Carolina on or about July 21, 2016, the Defendant Darius Darnell Hamilton, while acting in concert with co-defendants, did enter the dwelling of Kadeem Johnson without consent and with the intent to commit a crime therein. That, in addition, said entry or remaining occurred in the nighttime; and/or the defendant caused physical injury to a person who was not a participant in the crime; and/or the defendant displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; and/or the defendant was armed with a deadly weapon or explosive; in violation of § 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


BRYAN A. ALFARO
DEPUTY SOLICITOR

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

DARIUS DARNELL HAMILTON #378157)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019-CP-08-954

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution, 386 Redemption Way
McCormick, SC 29899
2. Name and location of Court which imposed sentence Berkeley County Court of General
Sessions, 300-B California Avenue, Moncks Corner, SC 29461
3. Name(s) of co-defendant(s) (if any) Jacob Mouzon, Sherrod Palmer, Drake Campbell,
Kenneth Campbell
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 17GS0800812 - Burglary 1st Degree
 - (b) 17GS0800810 - Kidnapping
 - (c) 17GS0800809 - Armed Robbery

(d) 17GS0800808 - Kidnapping

(e) 17GS0800807 - Armed Robbery

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

(a) November 1, 2018 - 15 years concurrent

(b) November 1, 2018 - 15 years concurrent

(c) November 1, 2018 - 15 years concurrent

(d) November 1, 2018 - 15 years concurrent

(e) November 1, 2018 - 15 years concurrent

6. Check whether a finding of guilty was made:

(a) after a plea of guilty X

(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?

Yes

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

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

i. Court of Appeals

ii. _____

iii. _____

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

i. Withdrawn/Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. December 17, 2018

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) Involuntary guilty plea
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) To be Amended
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____

- iv. _____
 - (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (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? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Steve Davis, Esq., 431 East Main Street, Moncks Corner, SC 29461
- ii. Tommy A. Thomas, Esq., P.O. Box 88, Irmo, SC 29063
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Plea and sentencing
- ii. Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
- New Trial
20. Are you now under sentence from any other court that you have not challenged?
- no

STATE OF SOUTH CAROLINA)
)
County of McCormick)

VERIFICATION

I, Darius Hamilton, 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.

Darius Hamilton

SWORN to and subscribed before me this 4
day of April, 2019.

B. D. Waldman (L.S.)
Notary Public

My Commission Expires: 9.30.26

2019 APR 12 PM 3:19
LEAH GUERRY DUFFREE
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

[Handwritten signature]

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

I, Darius Hamilton, 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.

Darius Hamilton

Applicant

SWORN or affirmed to and subscribed before me this
4 day of April, 2019.

Bruce J. Wideman
Notary Public

My Commission Expires: 9-30-26

2019 APR 12 PM 3:19
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

H

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

TELEPHONE:
(803) 732-5507
(803) 732-5508

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

FACSIMILE:
(803) 781-4226

INMATE LINE
(803) 732-6542

April 8, 2019

Berkeley County Clerk of Court
P.O. Box 219
Moncks Corner, SC 29461

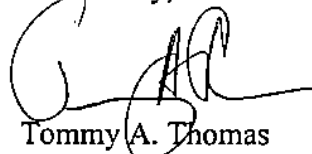
RE: Darius Darnell Hamilton v. State

Dear Sir or Madam:

Enclosed please find for filing an original and a copy of an Application for Post Conviction Relief and Coversheet in the above referenced matter.

Please return a clocked copy to me in the enclosed envelope. Thank you.

Yours truly,


Tommy A. Thomas
Attorney at Law

TAT/jem

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

DARIUS DARNELL HAMILTON #378157

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

____ - CP - ____ - ____

2019-CP-08-954

(Please Print)

Submitted By: Tommy A. Thomas

Address: 7588 Woodrow Street
Irmo, SC 29063

SC Bar #: 005536

Telephone #: (803) 732-5507

Fax #: (803) 781-4226

Other:

E-mail: thomaslaw@me.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☒ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Other (699) | | |

Submitting Party Signature: _____

Date: April 8, 2019

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCR, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



ALAN WILSON
ATTORNEY GENERAL

August 23, 2019

The Honorable Leah Guerry Dupree
Clerk of Court - Berkeley County
Post Office Box 219
Moncks Corner, South Carolina 29461-0219

LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

FILED
AUG 26 PM 3:07

Re: Darius Hamilton, #378157 v. State of South Carolina
2019-CP-08-954

Dear Ms. Dupree:

Enclosed please find the original Return and Partial Motion to Dismiss of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Benjamin H. Limbaugh
Assistant Attorney General

BHL/jaj
Enclosure

cc: Tommy A. Thomas, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Darius Hamilton #378157,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-08-954

RETURN

FILED
19 AUG 26 PM 3:07
CLERK OF COURT
BERKELEY COUNTY, SC

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on April 12, 2019, would respectfully show this Court:

I. Procedural History

Darius Hamilton (Applicant) is presently confined pursuant to orders of the Berkeley County Clerk of Court. In April 2017, the Berkeley County Grand Jury indicted Armed Robbery (2017-GS-08-00807), Kidnapping (2017-GS-08-00808), Armed Robbery (2017-GS-08-00809), Kidnapping (2017-GS-08-00810), and Burglary First Degree (2017-GS-08-00812).

Steve Davis, Esquire, represented Applicant. Assistant Solicitor Wilton McNeely, Esquire prosecuted the case. On November 1, 2018, Applicant pleaded guilty as indicted to all charges before the Honorable Deadra Jefferson. Judge Jefferson sentenced Applicant to fifteen years concurrent on all indictments. Applicant filed a timely notice of appeal on November 15, 2018. Applicant withdrew his appeal on December 17, 2018 and the Remittitur was issued on January 3, 2019.

II. Current Application

In his application for post-conviction relief, Applicant alleges that he is being held in

custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

In relief sought, Applicant is seeking: "New trial."

Attached to this Return and incorporated by reference are the records of the Berkeley County Clerk of Court regarding the subject convictions, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials. Applicant alleges he received ineffective assistance of counsel. Nevertheless, Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

III. Ineffective Assistance of Counsel

In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in his or her application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). 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 plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). Because Applicant's claims of ineffective assistance of counsel are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV. Involuntary Guilty Plea

Applicant alleges that he did not plead guilty freely and voluntarily. Respondent submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Respondent submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. *Boykin, supra*; *Dover, supra*. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Blackledge v. Allison*, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976). The Respondent submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. *Roscoe v. State*, 345 S.C.16, 546 S.E.2d 417 (2001); *Richardson v. State*, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such. Accordingly, this allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Respondent requests an evidentiary hearing to fully resolve this issue. See *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. State's Assertion and Reservation of Rights

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

VI. Request for Evidentiary Hearing

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Conclusion

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN HUNTER LIMBAUGH
Assistant Attorney General

By: *Benjamin Limbaugh*
ATTORNEYS FOR RESPONDENT

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

August 23, 2019

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Darius Hamilton, #378157

Applicant,

vs

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS

2019-CP-08-954

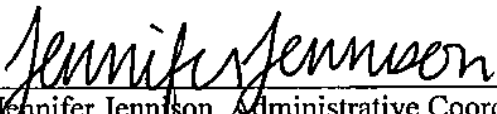
AFFIDAVIT OF SERVICE BY MAIL

FILED
AUG 26 PM 3:07
CLERK OF COURT
BERKELEY COUNTY, SC

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 Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, SC 29063

DATED this the 23rd day of August, 2019.


Jennifer Jennison, Administrative Coordinator
For Respondent

STATE OF SOUTH CAROLINA)
COUNT OF BERKELEY)
Darius D. Hamilton #378157)
Applicant,)
Vs.)
State of South Carolina,)
Respondent.)

THE COURT OF COMMON PLEAS
CASE NO.: 2019-CP-08-00954

AMENDMENT TO POST-
CONVICTION RELIEF APPLICATION

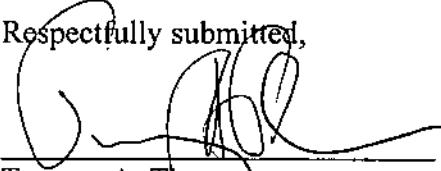
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21 MAR 31 PM 29
LEAH GUERRY JUDGE
CLERK OF COURT
BERKELEY COUNTY, SC

The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully moves to amend his Post-Conviction Relief Application. The Applicant re-alleges those grounds contained in the original Application for Post-Conviction Relief as well as the previous amendments, as if fully repeated herein.

That the Applicant would amend his Application as follows:

1. The Applicant is informed and believes that his attorney was ineffective creating an involuntary plea. The Applicant did not understand the plea, nor the plea offers. The Applicant is informed and believes that counsel's advice caused him to lose the proffer agreement.

Respectfully submitted,


Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063

March 18, 2021

cc:
T.A. Thomas
3/31/2021
(initials)

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF GENERAL SESSIONS
FOR THE 9th JUDICIAL
CIRCUIT
Case no. 2019CP08954

DARIUS D. HAMILTON,

Applicant

-against-

STATE OF SOUTH CAROLINA,

Respondents.

PCR HEARING

DATE: March 25, 2021

TIME: 10:35 a.m.

HON.: CLIFTON NEWMAN

Natalie A. Williams
Court Reporter II-Circuit Court
South Carolina Judicial Branch
(914) 610-8863
nwilliams@sccourts.org

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

S.C. ATTORNEY GENERAL POST CONVICTION RELIEF DIVISION
NINTH CIRCUIT

Attorneys for the Respondent

BY: MR. BENJAMIN H. LIMBAUGH

(803) 734-3737

TOMMY A. THOMAS

ATTORNEY AND COUNSELOR AT LAW

Attorney for the Applicant

(803) 732-5507

1 MR. LIMBAUGH: Mr. Hamilton, Your
2 Honor.

3 THE COURT: All right.

4 MR. THOMAS: Your Honor, may it
5 please the Court. We've got one witness,
6 his mom is going to testify. So, I assume
7 when it's her time I'll just go out and get
8 her.

9 THE COURT: You can get her then or
10 you can get her now.

11 MR. THOMAS: Okay, I'll bring her
12 into the courtroom. One other thing. I
13 don't know if this is something you can
14 take care of after kind of hearing the
15 facts of this case, we had asked the
16 solicitor, he has an unclassified
17 kidnapping, which would mean that he would
18 have to sign the registry. I've read the
19 transcript, there doesn't appear to be any
20 kind of sexual context to this at all. We
21 had sent that to the Solicitor's Office, I
22 think it's just gotten lost somewhere. Is
23 that something the Court would consider
24 dealing with at the end of this?

25 THE COURT: No. Well, Mr. Limbaugh

1 doesn't represent the Solicitor's Office.

2 MR. THOMAS: No, sir.

3 THE COURT: So, that's -- it
4 shouldn't be difficult if everyone agrees
5 that it--

6 MR. THOMAS: I know, I know.

7 THE COURT: -- didn't require
8 registration. But it needs to be dealt
9 with through the proper channel, which
10 would not be me.

11 MR. THOMAS: Yes, we'll be glad to
12 do that, I just thought I'd ask. Let me go
13 out and get his mom and I'll just seat her
14 in the back. If that's okay with the
15 Court.

16 THE COURT: Okay. Mr. Hamilton,
17 how are you doing?

18 THE APPLICANT: Good, sir, you.

19 THE COURT: Pretty good.

20 MR. LIMBAUGH: May it please the
21 Court, Your Honor.

22 THE COURT: Yes, sir.

23 MR. LIMBAUGH: This is the case of
24 Mr. Darius Hamilton, case number
25 2019CP08954. Mr. Hamilton is presently

1 confined pursuant to the orders of Berkeley
2 County Clerk of Court.

3 In April 2017, the Berkeley County
4 Grand Jury indicted applicant for armed
5 robbery, kidnapping and burglary first
6 degree. Mr. Steve Davis represented the
7 applicant. Assistant Solicitor Wilton
8 McNeely prosecuted the case.

9 On November 1, 2018, applicant pled
10 guilty as indicted to all charges before
11 the Honorable Deadra Jefferson. Judge
12 Jefferson sentenced the applicant to 15
13 years concurrent on all indictments.

14 Applicant filed a timely notice of
15 appeal on November 15, 2018. Applicant
16 withdrew his appeal on December 17, 2018
17 and a remitter was issued on January 3,
18 2019.

19 Applicant filed this initial
20 application for post conviction relief on
21 April 12, 2019, alleging ineffective
22 assistance of counsel and involuntary
23 guilty plea. A subsequent amendment was
24 filed through counsel Mr. Tommy Thomas.
25 That amendment alleges the applicant is

1 informed and believes his attorney was in
2 fact creating an involuntary plea. The
3 applicant did not understand the plea nor
4 the plea offers. The applicant is informed
5 and believes that counsel's advice caused
6 him to lose the proffer agreement. And I
7 would hand it over to Mr. Thomas at this
8 point.

9 THE COURT: To what?

10 MR. LIMBAUGH: The proffer
11 agreement.

12 THE COURT: Proffer?

13 MR. LIMBAUGH: Agreement. Yes,
14 Your Honor.

15 THE COURT: Okay, Mr. Thomas?

16 MR. THOMAS: Yes, Your Honor, may
17 it please the Court. This should be a
18 pretty straight forward presentation. It
19 really will be an issue of involuntary
20 guilty plea. And the other one would be in
21 effective assistance of counsel in regards
22 to the proffer agreement that was entered
23 into.

24 Your Honor, if it pleases the
25 Court, we would call Mr. Hamilton to the

1 stand.

2 THE COURT: Okay. Mr. Hamilton, if
3 you would come forward.

4 D A R I U S D. H A M I L T O N, the applicant,
5 having been first duly sworn by the Clerk, was
6 examined and testified as follows:

7 THE CLERK: State your full name
8 for the record and spell your last name.

9 THE APPLICANT: Darius Hamilton,
10 H-A-M-I-L-T-O-N.

11 MR. THOMAS: Your Honor, if it
12 pleases the Court.

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION BY MR. THOMAS:

15 Q Mr. Hamilton, you're here for a
16 post conviction relief?

17 A Yes, sir.

18 Q And you understand -- you and I had
19 talked at length about post conviction?

20 A Yes, sir.

21 Q You understand that you're asking
22 for a new trial, new plea, for your sentence to be
23 satisfied. Do you understand that?

24 A Yes, sir.

25 Q Do you understand that with that

1 there are certain, there can be certain liability. In
2 other words, you could go back to where you were in
3 the beginning, you could end up having a jury trial
4 and you can get more time than what you have today, do
5 you understand?

6 A Yes, sir.

7 Q You're willing to accept that risk?

8 A I do.

9 Q And you wish to go forward today?

10 A Yes, sir.

11 Q Okay. Mr. Hamilton, you were
12 arrested and charged with what?

13 A First degree burglary, two counts
14 of kidnapping and two counts of armed robbery.

15 Q Just roughly, you don't have to
16 have the exact date, when were you arrested?

17 A When I go to prison or?

18 Q You were in the county jail?

19 A Yes.

20 Q Okay. When did you go to the
21 county jail?

22 A I want to say August 3, 2016.

23 Q 2016, okay. And this allegedly
24 happened in '16 or '15?

25 A '16.

1 Q Okay. How old were you at the
2 time.

3 A 18.

4 Q 18. How old are you today?

5 A 23.

6 Q You received -- you plead guilty to
7 these charges?

8 A Yes, sir.

9 Q And you received what kind of
10 sentence?

11 A 15 years.

12 Q That's concurrent, you got 15
13 total?

14 A Yes, sir.

15 Q Okay. So, when you were in the
16 county detention center, you either retained
17 representation or were you appointed an attorney? You
18 hired a lawyer?

19 A Yes.

20 Q Okay, okay. Who did you hire?

21 A Steve Davis.

22 Q Okay. Did you make bond?

23 A Yes, sir.

24 Q So, how long were you out on bond
25 before you entered into your plea?

1 A Roughly two years.

2 Q Two years?

3 A Yes, sir.

4 Q So, during that period of time did
5 you have an adequate opportunity to speak with your
6 attorney Mr. Davis?

7 A We probably met about three to five
8 times.

9 Q When you met with him did you go
10 through, you know, what we call the discovery, which
11 is the evidence that the State had against you? Did
12 you go through that with him?

13 A A couple of times.

14 Q Couple of times?

15 A Yes, sir.

16 Q Did you understand it?

17 A No, sir.

18 Q Why didn't you understand it?

19 A He really didn't break it down to
20 me to where I could understand it.

21 Q To where you could understand?

22 A Yes, sir.

23 Q Did he discuss with you what I
24 would call theory of defense? Did he tell you how he
25 was going to defend you?

1 A No, sir.

2 Q What did you think was going to
3 happen?

4 A At the time I wasn't really sure.

5 Q Okay. So, did he tell you if you
6 went to trial how this trial was going to go or any of
7 that?

8 A Well, he said if I would have took
9 my case to trial, I'd probably get about 30 years or
10 more.

11 Q So, he didn't want you to go to
12 trial?

13 A Yes, sir.

14 Q And you had codefendants?

15 A Yes, sir.

16 Q How many codefendants did you have?

17 A Four.

18 Q Four. Do you know what happened to
19 them?

20 A Three of them is incarcerated, one
21 of them is on the streets.

22 Q Did they go to trial?

23 A Yes, sir.

24 Q The ones that are incarcerated, did
25 they get more or less time than you?

1 A More.

2 Q More time?

3 A Yes, sir.

4 Q Now, you were -- as far as a plea
5 offer, were you ever offered a plea?

6 A During the proffer agreement he was
7 talking about like 36 months.

8 Q How about prior to this -- we'll
9 cover this issue about the proffer. Prior to the
10 proffer agreement, were there any kind of pleas on the
11 table?

12 A No, sir.

13 Q And then tell us about the proffer,
14 what happened there?

15 A The proffer is basically, they was
16 saying that basically tell them everything I know and
17 it wouldn't be held against me in court.

18 Q All right. Why don't you tell us,
19 because you were, you know, you lived this, just tell
20 us a little bit about, kind of a summary of what
21 happened in this case.

22 A The night it happened?

23 Q Yes. I mean, there was a -- so you
24 had the charges of burglary first, kidnapping and
25 armed robbery. How did those come about?

1 A The night of 2016 it was me and a
2 couple of friends, and we ended up doing a robbery.

3 Q Okay.

4 A Yes, sir.

5 Q And this was a robbery that went
6 bad?

7 A Yes, sir.

8 Q The other codefendants, did they
9 know the gentleman that got robbed?

10 A Yes, sir.

11 Q And this gentleman ended up being
12 killed?

13 A Yes, sir.

14 Q And that was by one of your
15 codefendants?

16 A Yes.

17 THE COURT: One of what?

18 MR. THOMAS: By one of his
19 codefendants. Yes, sir, he was not the
20 triggerman, for a lack of a better word.

21 THE COURT: Okay.

22 MR. THOMAS: Your Honor, may I
23 approach?

24 THE COURT: Yes, sir.

25 Q Let me show you this document and

1 let you look at it and see if you can identify that.

2 A It's the proffer agreement.

3 Q Okay. And does it have your
4 signature on it? On the last page.

5 A Yes, sir.

6 Q Okay. And what's the date of that
7 agreement?

8 A November '16 -- November 2016.

9 Q November 3, 2016?

10 A Yes, sir.

11 MR. THOMAS: All right. Your
12 Honor, at this time we would like to move
13 this as Applicant's 1.

14 MR. LIMBAUGH: No objection.

15 THE COURT: It's admitted.

16 (Whereupon, an exhibit marked as
17 Applicant's 1 was received into evidence.)

18 THE COURT: Is that something you
19 want me to see?

20 MR. THOMAS: Yes, sir, certainly.

21 THE COURT: Okay, all right.

22 MR. THOMAS: I have a copy I could
23 give you.

24 THE COURT: Thank you.

25 MR. THOMAS: Thank you, Your Honor.

1 Q Okay. Mr. Hamilton, tell us about
2 the proffer, how did that come about?

3 A Somehow Mr. Davis got in an
4 agreement with them that if I told them everything I
5 know, like I said, it wouldn't be held against me.

6 Q So, what you were hoping for is
7 that if you cooperated with the police that you would
8 get a better detail?

9 A Yes, sir.

10 Q Although they didn't promise you a
11 better deal, did they?

12 A No, sir.

13 Q But that was your hope?

14 A Yes, sir.

15 Q And during this proffer process,
16 who did you meet with or how did that go?

17 A Are you talking about as far as the
18 solicitor?

19 Q Yeah. You met with law enforcement
20 and the solicitor, or who did you meet with?

21 A I think his name was Mr. Averro.

22 Q He was from the--

23 A Solicitor's Office.

24 Q Okay. And so this was, what they
25 call, a debriefing?

1 A Yes, sir.

2 Q And you cooperated with them and
3 told them what happened?

4 A Yes, sir.

5 Q Were there some problems that came
6 up, after the fact, after you signed the proffer
7 agreement?

8 A Yes, sir.

9 Q What were those? What was the
10 first problem?

11 A During the first meeting with the
12 solicitor, my attorney told me do not tell them about
13 duct taping her hands.

14 Q All right. So, why did he tell you
15 that?

16 A I'm not sure.

17 Q What was he talking about, duct
18 taping, what was the duct tape about?

19 A It was -- they was bound with duct
20 tape during the robbery.

21 Q During the robbery?

22 A Yes, sir.

23 Q So, you did not tell that
24 information?

25 A Yes, sir.

1 Q Did that information come out at a
2 later date?

3 A Yes. I think during the second
4 meeting with the solicitor they had evidence that my
5 DNA was on the tape.

6 Q What did your attorney tell you to
7 do then?

8 A During the meeting with them he
9 asked them to step out, and that's when he was like,
10 well they already got the evidence on us just go ahead
11 and tell them.

12 Q Why would he tell you that, do you
13 know?

14 A No, sir.

15 Q And that was prior to your
16 testimony?

17 A Yes, sir.

18 Q Now, did another problem arise?

19 A Yes, sir.

20 Q And what was that problem?

21 A During the trial, well, before the
22 trial I told him I had taken my codefendant Sherrod
23 Palmer home and I'm not sure if I told the solicitor
24 that, and he was like, well, they don't know I want to
25 make sure they know.

1 Q Explain that to us, because we
2 weren't there. You took who home?

3 A My codefendant, Sherrod Palmer,
4 home.

5 Q And he is one of the ones that went
6 to trial?

7 A Yes.

8 Q Prior to that, had you ever said
9 anything about going home, taking anybody home or what
10 was that story?

11 A How do you mean?

12 Q Okay. Was that different, was that
13 information different than what you had told the
14 police before?

15 A Yes, sir.

16 Q And when you realized it was a
17 difference what did you? Did you talk to your
18 attorney about it?

19 A Yes, sir.

20 Q Was this prior to trial?

21 A Yes, sir.

22 Q What did your attorney tell you to
23 do?

24 A He said he was going to take care
25 of it.

1 Q Okay. And to the best of your
2 knowledge, did he take care of it?

3 A No.

4 Q So, it was your concern about that
5 and you approached counsel prior to this, prior to you
6 being a witness?

7 A Yes.

8 Q Because at that point in time you
9 wanted to make sure that everything was clear?

10 A Yes, sir.

11 Q Based upon that, those problems,
12 what happened to you in regards to the proffer
13 agreement?

14 A I lost it.

15 Q You lost it?

16 A Yes, sir.

17 Q Did you in fact testify?

18 A Yes, sir.

19 Q And when you testified in the trial
20 of the codefendants did you tell the truth?

21 A Yes, sir.

22 Q You told the truth about the duct
23 tape and about taking somebody home?

24 A Yes, sir.

25 Q When was the proffer agreement

1 withdrawn?

2 A At my codefendant's trial and the
3 codefendant Sherrod Palmer got off.

4 Q So, one of them -- you said three
5 went to jail and one got out?

6 A Yes, sir.

7 Q So, the proffer agreement was
8 withdrawn after the fourth one got off?

9 A Yes, sir.

10 Q Do you believe that your attorney
11 handled that situation in your best interest?

12 A No, sir.

13 Q Do you believe, based upon his
14 representation, that that lead up to the proffer
15 agreement being withdrawn?

16 A Yes, sir.

17 Q And you believe that it could have
18 been handled in a different way?

19 A Yes, sir.

20 Q Now, let's talk about these -- what
21 your understanding was in regards to how much time
22 that you were going to get when you entered into your
23 plea. You said something earlier about 30 something
24 months, what was that?

25 A I remember meeting him one time

1 with my parents and he was talking about, what are you
2 expecting to get out of this? And at first I was
3 like, well, you know, probation, and he was like,
4 well, that's not going to happen. And he was like, if
5 everything goes good I can try and argue and get you
6 36 months.

7 After that, once the proffer got
8 taken he was talking about 10 years. And the night
9 before I went to took my plea he called me and was
10 like I'm going to argue for you and try to get 15
11 years for you.

12 Q All right. So, your expectation
13 was 36 months with the proffer agreement?

14 A Yes, sir.

15 Q So, obviously your involvement in
16 this crime was more minimal than the other
17 codefendants?

18 A How do you mean?

19 Q Your involvement in the crime was
20 less than everybody else?

21 A I'm not going to point fingers at
22 nobody.

23 Q Everybody is responsible?

24 A Yes, sir.

25 Q Okay. So, we had a spread of 36

1 months, 10 years, tell us about what happened with the
2 15.

3 A When I got -- like I said, he
4 called me the night of October 31, 2018, and he was
5 like, you know, you're going to court tomorrow and
6 we're going to try and argue and get you 15 years.

7 Q Was this a surprise to you?

8 A Yes.

9 Q So, did you ask him about what the
10 problem was, where the 10 was or those other offers?

11 A No, sir.

12 Q Were you confused about this whole
13 situation?

14 A Yes.

15 Q You and I talked about this. Do
16 you feel like you were prepared when you went up and
17 entered into this plea? Did -- well, let me ask you
18 this, did you feel like you were prepared?

19 A No, sir.

20 Q Do you feel like your attorney was
21 prepared?

22 A No, sir.

23 Q Okay. Do you feel like you
24 completely understood what you were doing?

25 A No, sir.

1 Q And did you understand what the
2 consequences of this was going to be for you?

3 A I did after it happened.

4 Q I'm sorry?

5 A After it happened I did.

6 Q But not before?

7 A No, sir.

8 Q Okay.

9 MR. THOMAS: Your Honor, beg the
10 Court's indulgence just for a second.

11 Q We discussed guilty pleas in
12 general and, you know, they have to be freely and
13 voluntarily given.

14 A Yes, sir.

15 Q And knowingly and intelligently
16 given.

17 A Yes, sir.

18 Q And we discussed those terms?

19 A Yes, sir.

20 Q Do you feel like your plea was
21 freely and voluntarily entered into?

22 A No, sir.

23 Q Do you feel like your plea was
24 knowingly and intentionally entered into?

25 A No, sir.

1 Q And you're asking the Court to
2 grant you a post conviction today?

3 A Yes, sir.

4 Q We talked about this too. You've
5 been waiting a long time for this case to come before
6 the Court on post conviction?

7 A Yes, sir.

8 Q Is there anything else that I may
9 have forgotten and or failed to raise to the Court's
10 attention, that you feel is important to bring to the
11 Court's attention today?

12 A No, sir.

13 Q Okay. You feel like we've covered
14 everything?

15 A Yes, sir.

16 MR. THOMAS: Your Honor, I have no
17 further questions.

18 MR. LIMBAUGH: May it please the
19 Court, Your Honor.

20 CROSS-EXAMINATION BY MR. LIMBAUGH:

21 Q Good morning, Mr. Hamilton.

22 A Good morning.

23 Q First, start with the proffer
24 agreement that's in front of you. Can you turn to the
25 second page of that and then the second paragraph that

1 starts with, "by signing this." Do you see that?
2 Now, you can kind of briefly look over that, if you
3 don't mind.

4 A Okay.

5 Q Now, do you see that paragraph
6 basically talks about being fully truthful and no
7 misstatements or material admissions, that kind of
8 thing. Do you see that in there?

9 A Yes.

10 Q And you saw that when you signed
11 it, right?

12 A Yes.

13 Q I just want to make sure. Now, do
14 you remember the day of your guilty plea in front of
15 Judge Jefferson?

16 A Yes, sir.

17 Q Do you remember Judge Jefferson
18 going over with you all the various sentences you
19 could get for the charges, including the potential of
20 life?

21 A Yes.

22 Q Do you remember her asking you if
23 you were satisfied with Mr. Davis's performance?

24 A Yes.

25 Q And you saying yes to that?

1 A Yes.

2 Q And asking you if he had answered
3 all of your questions and done everything you asked
4 him to do, right?

5 A Yes.

6 Q Actually, multiple times, finally
7 concluding with any complaints about his service and
8 you said no. Is that correct?

9 A Yes.

10 Q This whole situation with the
11 proffer agreement happened prior to your guilty plea,
12 right? Before your guilty plea?

13 A Yes.

14 Q So, you already knew that any
15 issued that you had with this had already happened
16 when you're answering these questions, right?

17 A I do.

18 Q Okay. And do you remember her
19 asking if any nobody promised you anything or
20 threatened you to take the guilty plea?

21 A Yes.

22 Q And you said no, is that accurate?

23 A Excuse me?

24 Q And you said no to that question?

25 A Can you repeat the question?

1 Q No one threatened or promised you
2 anything for the guilty plea?

3 A Yes.

4 Q And of course she asked if you were
5 pleading freely and voluntarily of your own will and
6 you said yes to that, is that correct?

7 A Yes. Could I ask you a question
8 though?

9 Q Potentially.

10 A I mean, I'm 20 years old facing 15
11 to 30 years. My mind wasn't right, so at the time I
12 was just answering questions. Do you understand?

13 Q But again, you were answering
14 questions truthfully in front of a judge, were you
15 not?

16 A Yes. But do you understand a
17 person's state of mind in a situation like that? And
18 being away from his family for 15 years?

19 Q I could appreciate that. But are
20 you answering honestly now?

21 A Yes.

22 Q Okay. If you're answering honestly
23 now and you want this Court to believe that, you would
24 want the Court to believe you're answering honestly
25 then, wouldn't you?

1 A Yes.

2 Q Again, do you remember the
3 solicitor reading over the facts and what happened,
4 including what happened with the proffer agreement
5 with the guilty plea?

6 A What do you mean?

7 Q Do you recall the solicitor talking
8 to you about how there was a proffer agreement with
9 you and the State, but that your story kept changing
10 and then the proffer agreement no longer existed
11 because of those changes?

12 A They kept changing because of my
13 misrepresentation by my lawyer.

14 Q Do you remember agreeing with the
15 solicitor that that's what happened in the case?

16 A What do you mean?

17 Q The solicitor read off the facts,
18 including what happened with the proffer agreement,
19 including your testimony changing, and the judge asked
20 if you agreed that those were the facts. Do you
21 remember agreeing with that?

22 A Yes.

23 Q And Judge Jefferson even asked you
24 if there was anything that needed to be added or
25 changed and you said no. Do you remember doing that?

1 A During the testimony or the plea?

2 Q During the guilty plea.

3 A I don't recall.

4 MR. LIMBAUGH: That's all I have of
5 this witness.

6 MR. THOMAS: Your Honor, if I may--

7 THE COURT: Yes, sir.

8 MR. THOMAS: Just one or two
9 redirect.

10 REDIRECT EXAMINATION BY MR. THOMAS:

11 Q Mr. Hamilton, how old were you when
12 all this happened?

13 A 18.

14 Q 18, okay. So, there was a lot
15 going on, wasn't it?

16 A Yes, sir.

17 Q With the proffer agreement, you
18 relied on what your attorney said? You brought to his
19 attention these two problems or two inconsistencies?

20 A Yes, sir.

21 Q And as an 18-year-old you relied
22 upon him to advise you regarding this?

23 A Yes, sir. He was telling me, I'm
24 one you can trust.

25 Q Okay. And you trusted him?

1 A Yes, sir.

2 Q This is a fair question, so, you
3 weren't really trying to hide anything, I mean you did
4 bring this to the attention of someone?

5 A Yes, sir.

6 Q That being your attorney?

7 A Yes.

8 Q And that's what you're saying, is
9 that you believe it could have been handled
10 differently in order for you not to have lost the
11 proffer agreement?

12 A Yes, sir.

13 MR. THOMAS: Your Honor, I think
14 that's all the questions I have.

15 THE COURT: Mr. Limbaugh?

16 MR. LIMBAUGH: Nothing further,
17 Your Honor.

18 EXAMINATION BY THE COURT:

19 Q So, Mr. Hamilton, you admitted to
20 being guilty of the crime?

21 A Yes, sir.

22 Q And the crime is that you and four
23 other guys went to someone's house with intent to rob
24 him?

25 A Yes, sir.

1 Q And went in and bound them with
2 duct tape?

3 A Yes, sir.

4 Q One person was shot in the head and
5 was sniped?

6 A Yes, sir.

7 Q And there was another person shot
8 as well?

9 A Yes, her boyfriend.

10 Q And her boyfriend shot all of
11 them -- broke in their house, home invasion, shot two
12 of them?

13 A I didn't.

14 Q No, I mean how many people died?

15 A One.

16 Q One person died. Then they came
17 out and I guess what did y'all steal?

18 A Money.

19 Q Drugs, money?

20 A Money.

21 Q How much money?

22 A I'm not sure the balance.

23 Q How much did you get out of it?

24 A Nothing.

25 Q So, you robbed the people and then

1 you were the driver?

2 A Yes, sir.

3 Q And drove them back to wherever
4 y'all went to. Somebody was charged with murder,
5 obviously?

6 A Yes, sir.

7 Q Was that person convicted of
8 murder?

9 A Yes, sir.

10 Q And then were you charged with
11 murder?

12 A No, sir.

13 Q Do you think you were lucky that
14 you didn't get charged with murder?

15 A Yes, sir.

16 Q And, you know, if somebody commits
17 a robbery and during the robbery they kidnap and kill
18 someone, a murder, well under aggravated circumstances
19 such as during the commission of a kidnapping and
20 robbery and burglary, you know you can get the death
21 penalty for that?

22 A No, sir.

23 Q Those are aggravating factors of
24 which someone can get the electric chair or whatever
25 death penalty punishment you can get. But you weren't

1 charged with the killing even though you were a part
2 of the crime?

3 A Yes, sir.

4 Q So, you ended up getting charged
5 with burglary, which carries a minimum of 15 years and
6 maximum of life in prison, robbery carries 10 to 30,
7 kidnapping carrying up to 30. And what else?

8 A Two counts of armed robbery.

9 Q Two counts of armed robbery, so up
10 to 60 years, and the minimum sentence on burglary that
11 you plead guilty to is 15 years. You understood that
12 didn't you?

13 A Yes, sir.

14 Q Because the judge told you that.

15 THE COURT: All right. Further
16 questions?

17 MR. THOMAS: Nothing further, Your
18 Honor.

19 THE COURT: Thank you, sir, you may
20 step down.

21 MR. THOMAS: Your Honor, if it
22 pleases the Court, we could call
23 Ms. Melissa Hamilton to the stand.

24 THE COURT: Okay.

25 M E L I S S A H A M I L T O N, a Witness called on

1 behalf of the Applicant, having been first duly sworn
2 by the Clerk, was examined and testified as follows:

3 THE CLERK: You may be seated.

4 State your full name for the record,
5 spelling your last name.

6 THE WITNESS: Melissa Hamilton
7 H-A-M-I-L-T-O-N.

8 MR. THOMAS: Your Honor, may it
9 please the Court.

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION BY MR. THOMAS:

12 Q Ms. Hamilton, are you related to
13 Darius Hamilton?

14 A Yes, sir, I am.

15 Q By how are you related?

16 A I'm his mother.

17 Q Okay. And you understanding that
18 you're here to tell the truth today?

19 A Yes, sir.

20 Q And you sworn -- you've been sworn
21 in to tell the truth?

22 A Yes, sir.

23 Q And you intend to do that?

24 A Yes, sir.

25 Q Ms. Hamilton, you were somewhat

1 involved with your son's arrest and prosecution?

2 A Yes, sir.

3 Q And you knew that he was being
4 represented by Mr. Davis?

5 A Yes, sir.

6 Q He was retained?

7 A Yes, sir.

8 Q In regards to the proffer
9 agreement, did you have any knowledge about that
10 agreement?

11 A Yes, sir.

12 Q What did you know in regards to --
13 you heard your son's testimony in regards to the two
14 inconsistencies, were they brought to Mr. Davis's
15 attention?

16 A I wasn't there when all of that
17 happened, so I have no knowledge of that.

18 Q Okay, we'll move on from there
19 then. In regards to him entering into the plea, and
20 we talked about entering into the plea freely and
21 voluntarily. Do you know of your -- do you know, of
22 your own knowledge, whether or not he understood what
23 was going on, your son understood what was going on?

24 MR. LIMBAUGH: Objection, Your
25 Honor. Speculation as to the mental state

1 of the applicant.

2 THE COURT: Mr. Thomas?

3 MR. THOMAS: I think she--

4 THE COURT: You're asking her
5 whether she thinks that her son knew what
6 was going on?

7 MR. THOMAS: Well, and her --

8 THE COURT: Was that the question.

9 MR. THOMAS: Yes, sir.

10 THE COURT: I sustain the
11 objection.

12 MR. THOMAS: Okay, all right.

13 Q Did your son discuss any of the
14 plea offers with you?

15 A He told me some of what was said,
16 he didn't tell me everything.

17 Q How about as far as the change from
18 the 10 years to the 15 years, were you aware of that?

19 A Yes, sir.

20 Q How did that happen? I mean how
21 did you become aware of that?

22 A We visited Mr. Davis's office.

23 Q Okay. When you were at Mr. Davis's
24 office, did you have -- did Mr. Davis tell you as far
25 as how much time he thought he was going to get?

1 A With the proffer agreement, he said
2 36 months. After, it was, I guess, taken away he said
3 that he could get 15 to 30 but he was going to try and
4 get him 10.

5 Q 10, okay. And then that 10 changed
6 as well?

7 A Yes, sir.

8 Q And it changed to what?

9 A The 15.

10 Q And when did that change, that you
11 were aware of?

12 A I think it was like maybe a month
13 before we went to court.

14 Q Okay. Did he -- did Darius ever
15 come to you crying about a situation?

16 A He did.

17 Q What was that situation?

18 A That was the day we went to court.
19 And he, Mr. Davis, called him to decide -- away from
20 his dad and I, and had him sign a plea agreement for
21 15 years that we didn't know anything about.

22 Q So is that the first time that you
23 became aware of the 15 years?

24 A Yes, sir.

25 MR. THOMAS: Your Honor, I have no

further questions.

THE COURT: Yes, sir?

MR. LIMBAUGH: Nothing from the
State, Your Honor.

EXAMINATION BY THE COURT:

Q Ma'am, did you want him to have a
trial?

A Well, the lawyer told him there
wasn't no need for a trial.

Q I didn't ask you that question.
The question is, did you want him to have a trial?

A No, sir.

Q You wanted him to plead guilty?

A Well, I mean he was guilty, but I
mean that's what the choices that we were given.

Q You seemed to make a big deal out
of the fact that your son signed the necessary papers
to plead guilty away from you and your husband or you
and his father. You were making a big deal about
that?

A I was saying that we were there
through the whole process and just when he was talking
to him he pulled him away, he didn't say anything to
us.

Q What do you mean pulled him away?

1 A He called him over to the side.

2 Q And you didn't want him to do that?
3 You wanted him -- to have him sign the papers with you
4 standing there?

5 A Well, I mean, we were involved with
6 him through the whole process and I was just--

7 Q But really does that really matter?
8 I mean, you said you wanted him to plead guilty and he
9 pled guilty, is that right?

10 A Yes, sir.

11 THE COURT: Any further questions?

12 MR. THOMAS: No further questions,
13 Your Honor.

14 MR. LIMBAUGH: Nothing, Your Honor.

15 THE COURT: Anything else you'd
16 like to say ma'am, about anything?

17 THE WITNESS: No, sir.

18 THE COURT: Okay, thank you.

19 MR. THOMAS: If it pleases the
20 Court, that's the applicant's case.

21 THE COURT: Mr. Limbaugh?

22 MR. LIMBAUGH: State would call
23 Mr. Davis, Your Honor.

24 S T E V E D A V I S, a Witness called on behalf of
25 the State, having been first duly sworn by the Clerk,

1 was examined and testified as follows:

2 MR. LIMBAUGH: May it please the
3 Court, Your Honor.

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION BY MR. LIMBAUGH:

6 Q Good morning, Mr. Davis.

7 A Good morning.

8 Q More out of curiosity than
9 anything, but do you know why Mr. Hamilton wasn't
10 charged with murder in this case?

11 A You know, I think it was the
12 overall process of once I was getting involved -- he
13 had, initially he made the first statements to law
14 enforcement and when he made the first statement to
15 law enforcement he was like a participant, as if those
16 guys did it and he was in no way connected. So he was
17 cooperative in that instance and I think in that
18 process he was given the benefit of the doubt of not
19 being charged with murder. He and I had discussions
20 about hand of one is hand of all.

21 In the process of me becoming
22 involved and making a stance in reference to being
23 cooperative with the State, to continue on the process
24 that he had already started without my participation.
25 He had already given numerous statements, which were

1 not true, but part true, before I became involved.

2 So, I think the solicitor, once I
3 got involved and wanted to make sure they had
4 convictions in the case and he was represented by me
5 in a manner that for a proffer agreement potentially,
6 I think that's why he wasn't charged with the murder.

7 Q Continuing on that same line, did
8 you advise him after he signed this proffer agreement,
9 to withhold information from the solicitor?

10 A Never. What the circumstances
11 were, he had already made multiple statements before I
12 got involved, okay? And to be fully honest with you,
13 what that colloquy is all about about rapping of the
14 arm, it was like voluntarily information that is
15 unnecessary, okay? We was early on in the process.
16 Just like he said, the DNA on certain forensic
17 evidence had not been performed yet, okay?

18 Just think how horrific this
19 sounds. Lady was shot, she was pregnant and actually
20 the individual I'm representing is the one who
21 actually duct tape the hands, takes the gold bracelets
22 off her hands. To suggest all the facts at that point
23 without confirmation or corroboration from the State
24 or the forensic, would have been stupid on his part.

25 Q Okay. There was no promises from

1 you or the State on what he was going to get, with or
2 without the proffer agreement, was there?

3 A Never, never.

4 Q And it's not your general practice
5 to guarantee clients a sentence that you can't
6 control, is it?

7 A It's very rare. I promise clients
8 certain things. In the hundreds of cases I've done,
9 if I review the evidence and elements of the crime
10 I'll tell a client, and I've done it maybe a few
11 times, I will never plead you to murder in certain
12 instances. Because my competence level tells me that
13 the elements are not present. But that is about the
14 only promise I'll make and those are very rare
15 clients.

16 Q With the facts that you were just
17 describing, do you think he was pretty fortunate that
18 he wasn't charged with murder in this case?

19 A Yes, he was. I looked back through
20 my notes as you were talking and I saw hand of one is
21 the hand of all, and I was a little amazed too, you
22 know, but sometimes, you know, I think God smiles on
23 me and my clients sometimes, even though they don't
24 understand it or appreciate it.

25 Q We just heard testimony of Mr.

1 Hamilton's mother, but was this case ever--

2 A Never was. Ms. Hamilton would
3 never accept her son receiving any punishment if it
4 was up to her.

5 Q As mothers would do.

6 A Yeah, well. For me to suggest 36
7 months on two kidnappings, two armed robbery, he's
8 already given incriminating confessions in those
9 regards, my God.

10 Q Just by some quick math, if he had
11 gone to trial and was convicted, the sentence to
12 maximum it looks like it would be life plus 120 years,
13 does that sound about right?

14 A Yes. And I just want to clear the
15 record up in reference to something he said about --
16 he only shared the truth of the element of the case in
17 taking one of the codefendants home during the midst
18 of the trial, it wasn't before the trial. It was in
19 the midst of the trial, the night before he's about to
20 testify he called me and said Mr. Davis, by the way,
21 you know, I did take the codefendant home who is on
22 trial for these offenses. And he was asking me what
23 to do and I told him, son, let me tell you, I'm not
24 going to perpetrate a fraud on the Court, you want me
25 to be part of the crime, I'm not going to be part of

1 this. You never shared this with me before. And what
2 happened is that's what changed the whole version of
3 the proffer agreement, because the solicitor had the
4 version of his theory of this case and since suggested
5 that my client, good samaritan, involved half truth,
6 didn't participate but in fact did participate, a
7 different version. And so, that really caused
8 tremendous problems in solicitor's case and that guy
9 was acquitted. And it was acquitted because basically
10 his change in testimony in reference to what the
11 proffer agreement was all about.

12 Q So again, you didn't tell him to
13 withhold information from the Solicitor's Office?

14 A Did not. And this is another
15 thing, if you look at the sentencing and the plea
16 guilty, the solicitor asked for significant more time
17 than the 15 years. He was fortunate to get the 15
18 years to be honest. And in reference to the 12 years
19 Mrs. -- the mother discussed, the 12 year was in
20 reference that he had already served or been about two
21 years in jail, so he would get credit. So, that's
22 where 12 comes into play instead of 15. But it still
23 was 15 years.

24 Q Which of course is a significant
25 amount of time, but when you compare that to

1 potentially life plus 120 or even the death penalty if
2 he were to be charged with murder, it's a pretty solid
3 deal on your part, is it not?

4 A I told him I had three sons and if
5 any one of my sons participated in a crime of this
6 magnitude and walked away with 15 years, I would have
7 said thanks be to God.

8 Q And again for clarification, did
9 Mr. Hamilton ever tell you that he wanted to go to
10 trial?

11 A Trial was never an issue. Matter
12 fact, he had already given two statements before I was
13 involved and have truthful enough for him to be
14 culpable in the matter. Trial was never an issue.
15 I'm a trial lawyer, you know. I don't do appeals, I
16 don't do post conviction relief. I try cases and I
17 try them when they're necessary to be tried.

18 Q Do you believe that with all the
19 circumstances we discussed and you've heard today that
20 15 years was the best that he could get, Mr. Hamilton,
21 in this case?

22 A I'll repeat this, if that was my
23 own son and he's sitting there and received 15 years
24 for the culpability that he performed, I would
25 consider that a blessing.

1 MR. LIMBAUGH: Thank you, nothing
2 else.

3 MR. THOMAS: Your Honor, may it
4 please the Court?

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION BY MR. THOMAS:

7 Q Mr. Davis, good morning and thank
8 you for being here.

9 A I got no choice.

10 Q With Mr. Hamilton, you said that he
11 made statements, voluntary statements to the police
12 prior to your representation?

13 A That's correct.

14 Q So, those were statements that you
15 had to deal with as well?

16 A Yes, sir.

17 Q In regards to negotiating the
18 proffer agreement?

19 A Yes, sir.

20 Q Why did they want a proffer
21 agreement with him?

22 A I used to be a prosecutor. And
23 sometime it's to make sure you got certainty of
24 conviction, you need an inside actor. You need an
25 inside actor, hopefully one that is less culpable than

1 other actors. Nothing better than having a cohort to
2 tell and describe what happened. The only problem
3 with that is you need a truthful cohorts, because
4 everyone wants to deflect, deflect responsibility.
5 That's why we're here today, deflect responsibility.

6 At the end of the day, if I was a
7 prosecutor I would have offered him a proffer
8 agreement. It's very rarely done in state
9 prosecution, but astute lawyers, trial lawyers can
10 secure it under certain circumstances, and I think I
11 secured it in this instance. And one of the
12 primary -- truthfulness throughout that whole process.

13 Q I'm just kind of curious about the
14 process, I mean, so you know that he had statements
15 prior to representation that were inconsistent, so
16 obviously that was somewhat of a concern of yours with
17 the proffer agreement to get all that sorted out?

18 A It's not about sorting out, it's
19 not uncommon for someone to make multiple statements,
20 I mean. You know, matter of fact, in reference to the
21 proffer agreement I told that young man, that is how I
22 do proffer agreement, I travel to the Solicitor's
23 Office with my client and I said, son, let me tell
24 you, I'm not even going the stay in here with you.
25 I'm walking out, because I don't want you to think I'm

1 influencing or be under the impression of what you
2 needed to do. You need to be truthful.

3 So, in certain instances I leave
4 them with the solicitors and they investigate as they
5 debrief them, because at the end of the day what the
6 solicitor wanted is a version that is truthful and
7 will withstand the riggers of trial.

8 Q Right. Did you have an idea of
9 range of sentencing if this went the proffer
10 agreement? Did you have an idea what you thought he
11 might get?

12 A Well, when you say range, you got
13 to look at what he was indicted for. That really
14 outlines your range.

15 Q Well, I guess in discussing that
16 plea with your client, you have to have some analysis
17 in regards to, you know, what benefit the plea is
18 going to generate and what kind of ultimate time this
19 individual is facing. Were you able to do that with
20 Mr. Hamilton?

21 A Yes. Let me tell you the benefit,
22 he could have been charged with murder on the hand of
23 one is the hand of all. I think he testified that he
24 was equally responsible, so I don't understand your
25 question.

1 Q Well, I guess what I'm thinking is
2 that, you know, in criminal practice if you've got a
3 client whose going to enter into a plea you certainly
4 have to sit down with them and discuss the benefits of
5 that plea with them, versus going to trial.

6 A Well, I don't know how you practice
7 but sometimes you're between a rock and hard place,
8 you don't have nothing to discuss. Sometimes all you
9 have is a prayer. Now, the harder thing about
10 instances is sometimes the client who don't want to
11 accept any amount of time, okay? Even though it's
12 being clearly discussed in front of them and the
13 reality of the circumstances.

14 Q So, the proffer agreements in this
15 case was extremely important?

16 A I would think so. That's how he
17 got out of jail. All the other clients accept for, I
18 think Mr. Palmer, remained in jail the whole process.
19 He got out of jail because of the proffer agreement.
20 That's how he got out of jail.

21 Q So, how did -- so the duct tape
22 issue didn't arise until after the Solicitor's Office
23 came back with the DNA analysis?

24 A Well, you know, that's attorney
25 client involvement, if you know what I mean. I was

1 not going to allow him to -- he had already
2 incriminated himself to some degree and it just was so
3 horrendous when you think about the fact that he
4 actually taped a pregnant woman who was shot multiple
5 times.

6 Q Okay. Let me rephrase that
7 question. When the duct tape issue arose that was
8 something in regards to the proffer agreement that
9 that you had to smooth out with the prosecution?

10 A No. This is what I'm trying to
11 tell you the multiple processes. Once the solicitor
12 says, ah ha Steve, we got forensic evidence showing
13 that your client actually did the taping, now your
14 client needs to come truthful, we know he's
15 withholding and he's not being credible. Well, I'll
16 have another debriefing with him. But one thing he
17 held out, and he held out until the midst of the
18 trial, he said, well I took that other codefendant
19 home. He had never shared that with me and never
20 shared it with anyone else in the whole proffer
21 agreement. They gave him a second opportunity with
22 the duct tape and the wrapping of the hand.

23 Q So, that issue was smoothed over?

24 A Yeah, that was early on in the
25 process.

1 Q Okay. And he called you prior to,
2 you said the night before the trial, and confided in
3 you about taking the codefendant home?

4 A That's correct.

5 Q And that statement about him taking
6 the codefendant home was not something that was known
7 by the Solicitor's Office?

8 A No, not known by me neither.

9 Q Okay. How did that change things?

10 A In changed things because the
11 solicitor had created -- he said he dropped the guy
12 off and it changed things because it changed in the
13 sense that the solicitor's version of the case was
14 that Mr. Palmer apparently went a different route from
15 him. And I think in the relationship of some of the
16 money that was involved, the money traveled with them
17 that's the understanding. Along with the gold
18 bracelets. It changed the dynamics of the solicitor's
19 theory in the case. Remember, he was the driver. He
20 drove these folks down there and then drove away.

21 Q Okay, all right. So, you found out
22 about the driving issue the night before the trial?

23 A No, sir. We in the middle of the
24 trial.

25 Q Okay, okay, got it. I apologize,

1 because I thought you said he called you.

2 A Well, it was still in the middle of
3 the trial. When it came time for him to testify, he
4 was getting ready to take the witness stand the next
5 day. The trial already commenced. We in the midst of
6 the trial, we in the midst of the proceedings.

7 Q All right. So, it wasn't the night
8 before then?

9 A It could have been the night
10 before, it's in the midst of the trial. You're
11 talking about the night before. It's the night before
12 he's going to testify in that case that is going on,
13 ongoing right then.

14 Q Okay, all right.

15 MR. THOMAS: Your Honor, I have no
16 further questions.

17 THE COURT: Anything further, Mr.
18 Limbaugh?

19 MR. LIMBAUGH: Nothing, Your Honor.

20 EXAMINATION BY THE COURT:

21 Q While I'm sitting here I had a
22 chance to look through some of what happened to some
23 of the other people, one guy got found not guilty?

24 A That's the case that he testified
25 in.

1 Q Oh, and as a result the guy was
2 found not guilty?

3 A That's correct. That's what really
4 incented [sic] the Solicitor's Office.

5 Q So then another guy gets, how many
6 years?

7 A I think one got life other got 30
8 years.

9 Q One got life, life for kidnapping.
10 Jacob Mouzon got 20 years armed robbery, 15 years for
11 burglary, 40 years for murder. Drake Campbell, 20
12 years for armed robbery, not guilty in burglary, not
13 guilty in murder. Armed robbery 20 years for the
14 second term. Attempted murder, not guilty.
15 Kidnapping, 20 years. Kenneth Campbell not guilty.
16 Sherrod Palmer not guilty.

17 So, reflecting now on the role and
18 culpability of Mr. Hamilton, who is now here with a
19 PCR, what is the PCR? What is his claim?

20 A I don't know. I'm not a good
21 lawyer, I didn't do a good job for him.

22 Q A bad job for him under these
23 circumstances he would have ended up with what?

24 A At least a minimum of 30 years.

25 Q But on the first degree burglary,

1 which he confessed to, he got the minimum sentence?

2 A That's correct.

3 Q You have to beg the judge for that.

4 A Thank you.

5 Q Considering your years of
6 experience and all of that, you know, not that it's
7 germane to my ruling on the PCR, but what do you think
8 of seeing this young man here today complaining?

9 A Well, Judge, I got three sons, and
10 they have a mother and I had this discussion with
11 them. Until he accepts responsibility for what he did
12 and think that he -- and know that he should be
13 punished and understand that there is nothing he can
14 do to make it right, other than deliver exemplary life
15 and to accept really the horrific acts and loss of
16 life that transpired. It's really sad that we're here
17 today.

18 Q I see the names snipe in here. One
19 of the victims, is she a female?

20 A That's correct.

21 Q Where is she from?

22 A Huger Cainhoy community.

23 THE COURT: I have nothing further.
24 Anything further?

25 MR. THOMAS: Nothing further, Your

1 Honor.

2 MR. LIMBAUGH: Nothing further,
3 Your Honor.

4 THE COURT: Thank you, sir.

5 THE WITNESS: Thank you, Judge.
6 Can I be excused?

7 THE COURT: Yes, sir.

8 THE WITNESS: Thank you.

9 THE COURT: Any argument?

10 MR. THOMAS: Your Honor, if it
11 pleases the Court, can we recall Mr.
12 Hamilton for two questions.

13 THE COURT: Okay, sir.

14 MR. THOMAS: If it pleases the
15 Court, Your Honor?

16 THE COURT: Yes, sir.

17 REDIRECT EXAMINATION BY MR. THOMAS:

18 Q Mr. Hamilton, I remind you that
19 you're still under oath.

20 A Yes, sir.

21 Q You heard the testimony of Mr.
22 Davis. In the case that you testified in, were these
23 codefendants tried separately or together?

24 A Together.

25 Q So, they were all tried together?

1 A Yes, sir.

2 Q Mr. Davis had said that he didn't
3 know that you were going to basically have this
4 admission about being in the truck with one of the
5 codefendants. Did you tell him prior to this trial
6 about that?

7 A Yes.

8 Q And when did you tell him?

9 A I told him, like, it was before the
10 trial but the day he called me to testify, I didn't
11 even testify till like two days later.

12 Q The day that you were called to
13 court, did you tell him then?

14 A No.

15 Q When did you tell him?

16 A Before in his office. I never
17 called him.

18 Q Oh, so, you told him in his office?

19 A Yes.

20 Q How many days from when you told
21 him did you testify?

22 A About two or three days before I
23 testified.

24 MR. THOMAS: Your Honor, I have no
25 further questions.

1 THE COURT: All right. Mr.
2 Limbaugh?

3 MR. LIMBAUGH: Nothing from the
4 State, Your Honor.

5 THE COURT: Thank you, sir. Any
6 argument?

7 MR. THOMAS: Your Honor, just
8 briefly. If it pleases the Court, as I
9 have said in the beginning, I think this is
10 a pretty straight forward rather simple
11 issues of ineffective assistance in regards
12 to the proffer agreement and also
13 involuntary plea. Of course, it's his
14 testimony that he didn't completely
15 understand what was going on and that he
16 entered into the plea not knowingly,
17 intelligently and involuntary.

18 In regards to the proffer, Mr.
19 Davis did indicate that it was extremely
20 important. Our argument would be pretty
21 simple, pretty straight forward in that
22 it's Mr. Hamilton's contention that he told
23 him prior and it may have been right at
24 trial, but he told him and that he didn't
25 take the stand and testify until a day or

1 so later. I just would have thought that
2 because of the importance of the proffer,
3 that this is something you had already had
4 to kind of smooth over the duct tape issue,
5 you that this would have been something
6 that he would have discussed with the
7 solicitor prior to putting him on the
8 stand.

9 THE COURT: Well, considering that
10 he's on the stand here saying he was an
11 18-year-old, young man who was overwhelmed
12 by the situation. And he's taken in to get
13 briefed by a prosecutor and his contention
14 is that he didn't know that he was supposed
15 to tell the truth, that he was, I mean Mr.
16 Davis wasn't in the room with him being
17 interrogated, and at that point he's on his
18 own. Even though he has a lawyer, he's on
19 his own being interrogated and under the
20 circumstances, which he has the obligation
21 to tell the truth.

22 MR. THOMAS: Yes, sir.

23 THE COURT: And he lied.

24 MR. THOMAS: I'm not sure exactly
25 in regards to the duct tape, I think it's

1 more of a withholding of information.

2 And--

3 THE COURT: So, he interpreted Mr.
4 Davis -- Mr. Davis told him don't volunteer
5 anything that you're not, you know, don't
6 go in there volunteering, you answer the
7 questions.

8 MR. THOMAS: Right, right.

9 THE COURT: And he interpreted that
10 to mean that he's supposed to kind of
11 withhold any damaging information relating
12 to him?

13 MR. THOMAS: Well, I mean, I don't
14 really know if I had a client and I had a
15 proffer agreement, if they were going to
16 talk with the police, I would personally
17 probably tell them that need to, of course,
18 tell them the truth and tell them
19 everything that they know. There could
20 also be situations where you could say, you
21 could just go in and answer the questions.
22 And I just would assume that's what
23 happened in this--

24 THE COURT: It's a tough situation
25 to be in.

MR. THOMAS: Yes, sir.

THE COURT: You're here having been a part of a burglary, robbery and murder, in which your role is critical to the kidnapping portion of that at least, even though you didn't pull the trigger.

MR. THOMAS: Right.

THE COURT: You're in a group that commits a crime and luckily you don't get charged with murder, when you confessed, pretty much, to murder as a--

MR. THOMAS: Hand of one hand of all.

THE COURT: -- as an accomplice liability. And then the essence of why he's here today, he's complaining that it's not his fault, it's Mr. Davis's fault.

MR. THOMAS: I don't think he's necessarily saying that. I mean, I think he's very truthful and straight forward. I mean, he will sit down on the stand and say, you know, I'm equally responsible as everyone else.

THE COURT: That's what I wanted to try and understand. The point of it all,

1 even with regard to prejudice and then
2 despite it all he gets the minimum
3 sentence.

4 MR. THOMAS: I think what he's
5 saying, Your Honor, is that he trusted Mr.
6 Davis, that he is a -- I mean that he was
7 an eighteen-year-old kid, I don't know how
8 that factors in all of it. But he's saying
9 that he gave this information to Mr. Davis
10 prior, you know, to things happening.

11 THE COURT: Yeah, that's
12 credibility.

13 MR. THOMAS: Yes, sir. And that he
14 would have wanted Mr. Davis to have taken
15 some action in regards to the proffer
16 agreement rather than just losing it,
17 because it was important.

18 THE COURT: It's an issue of
19 credibility and whether or not he actually
20 disclosed that after the truth of after he
21 was confronted--

22 MR. THOMAS: Yes.

23 THE COURT: -- with the DNA.

24 MR. THOMAS: Right.

25 THE COURT: And then of course he's

1 not blaming Mr. Davis for not disclosing
2 until being in the trial, but he gave the
3 guy that he was -- he helped facilitate the
4 leaving the scene of the crime.

5 MR. THOMAS: And I think the
6 Court's right. I don't think he's just
7 blaming Mr. Davis, I think he's just
8 staying that I trusted Mr. Davis and I
9 would have hoped that he, if he -- and
10 again it's a credibility issue, if he had
11 told him prior that he would have taken
12 some action on the proffer, Your Honor.

13 THE COURT: Even in hindsight does
14 he not still think he was in good hands,
15 considering the outcome that he got?

16 MR. THOMAS: Yes, sir.

17 THE COURT: You know, as you know
18 as an experienced lawyer you have to deal
19 with the hands you're dealt. You can't
20 recreate the facts, you can't turn back the
21 hands of time. You have to sometimes make
22 the best of a bad situation, to the extent
23 that you can. And sometimes that's beyond
24 your control.

25 MR. THOMAS: And I think the

1 unusual situation in this case, and I did
2 ask Mr. Davis that question, is kind of why
3 did the State want the proffer -- why was
4 it important to the State? So, obviously,
5 you know, it then kind of becomes into the
6 mix and kind of builds on each other in
7 that it was important to the State, it was
8 important to, you know, him, as well as my
9 client and therefor that's what he's
10 saying.

11 THE COURT: It's Charleston, it's
12 the 9th Circuit, Solicitor Scarlet was a
13 former federal prosecutor, whereas
14 throughout the State most solicitors, as
15 Mr. Davis said, do not deal with it,
16 because they're not experienced in dealing
17 with it as they are in federal court.

18 MR. THOMAS: That' right, because I
19 very seldom see them.

20 THE COURT: -- proffer agreements,
21 you have defendant's who often testify
22 without any agreement. And then on
23 cross-examination the question is, what did
24 they promise you?

25 MR. THOMAS: Yes.

1 THE COURT: And the solicitors
2 definitely don't promise you anything, you
3 just get up there and tell the truth, then
4 we'll talk.

5 MR. THOMAS: Yes.

6 THE COURT: You know, this is -- a
7 proffer is just a different form of the
8 same situation. But where he tells --
9 withholds critical information and he's not
10 truthful and violates the proffer
11 agreement, you know, for the State to not
12 then throw the book at him, because, you
13 know, people can be reindicted at any point
14 in time. And to -- if this case goes back
15 it's not to say he cannot be indicted for
16 murder, and tried for murder and get the
17 same results that these other people got.
18 He can't go back and present and throw a
19 monkey wrench in the State's case, which
20 results in one person being found not
21 guilty. That was result, at least Mr.
22 Davis said, that was a result of his
23 creating the problem in the State's case,
24 and their misplaced trust in him and him
25 telling the truth. And so, then the guy

1 gets found not guilty, even though that
2 person was admittedly guilty as well. I
3 think that's what he's telling me here
4 today.

5 So, we have a guilty guy walking
6 free through his help, but what can he
7 expect out of this situation.

8 MR. THOMAS: I think in his mind,
9 Your Honor, is that--

10 THE COURT: Other than a ride home
11 and an opportunity to see his mother?

12 MR. THOMAS: Right. And I think in
13 his mind and in our discussions with Mr.
14 Hamilton -- my discussions with Mr.
15 Hamilton, is that he just had felt like
16 that, you know, he did -- he was worried
17 about it. And that he did disclose it to
18 counsel and he had just hoped that, you
19 know, he would take some action on it,
20 prior to it just coming out at court.

21 THE COURT: Well, you know, the
22 number of, I call them kids even though
23 they're -- it's not politically correct and
24 they get mad about it, but in fact that's
25 what they are.

MR. THOMAS: It is.

THE COURT: And they get involved in these situations and they do some very stupid things. You know, Interstate 20 was closed that's other day, that's the road I take. And the interstate is shut down because this guy is shot and thrown out on the interstate.

MR. THOMAS: Oh, I saw that.

THE COURT: There was a body found, so in the news this morning or article I read, two 17 year olds are now charged with murder. They got into a dispute with the guy in the car and I guess they all had guns, including the one that got killed. They killed the one guy, the other guy went and shot the one in the back seat, the back seat guy killed the passenger in the front seat, they throw him out on the interstate.

So, today they arrest the driver and the back seat passenger, one of whom killed the guy. Over what? Now, for the next 40, 50, remainder of their lives they have to--

MR. THOMAS: They will be

1 incarcerated.

2 THE COURT: Yes. And sit and
3 reflect. It's just maturation, the mind,
4 they're kids, their mental faculties. And
5 that's why they come up for bond hearings I
6 say, you don't know what you'll do if you
7 got out on bond. You're in here for
8 robbing people, if I give you a bond you
9 can tell me today that I wont doing
10 anything else, I'll be good. The next
11 thing you know you're robbing someone else.
12 So, even you don't know what you're going
13 to do. So, being in jail is in your best
14 interest, at least you're not putting your
15 own life, you know, you're living, you're
16 in jail, I mean.

17 MR. THOMAS: And I see those guys,
18 Your Honor, because I do a lot of parole
19 and I see them when they're 50 and they
20 committed a crime when they were 18 or 19
21 and, you know, unfortunately a lot of these
22 well, these parole eligible murders are
23 getting smaller and smaller, and they're
24 different people. You know, the guy that
25 I've seen is 50 years old, has

1 disciplinaries in the department of
2 corrections, he's just as nice a guy and
3 he'll say I just can't believe that I was
4 that person. And they were 17, 18.

5 THE COURT: Yes. That's Morgan
6 Freeman in Shawshank Redemption. I wish
7 that I could tell that 19 year old boy
8 something, this is 40 years later.

9 MR. THOMAS: Exactly.

10 THE COURT: And just unfortunately
11 they don't, many don't get beyond being 18
12 like the boy on I-20. He's dead, he's
13 gone.

14 MR. THOMAS: I know.

15 THE COURT: Fortunately Mr.
16 Hamilton is here. But then what about
17 those victims, pregnant, pregnant lady is
18 killed?

19 MR. THOMAS: The man was killed.

20 THE COURT: But she was shot.

21 MR. THOMAS: Yes, sir.

22 THE COURT: What happened with the
23 baby?

24 MR. THOMAS: That I don't know,
25 Your Honor.

THE COURT: Just the big picture.

I was telling someone yesterday, I used to hate hearing PCR cases because what one judge has already dealt with in here, my hands are full everyday but now I'm sitting back looking at a case that happened years ago, it's kind of hard to put yourself in a mindset of that. And even especially these claims are voluntary guilty pleas and I take guilty pleas everyday. But one thing I do, I make them confess on the record. You know, tell me what you did, why would you do such a thing? Even though the lawyer is visibly trying to make them be quite sometimes.

You know, I have yet to have a PCR granted in 21 years on cases I've heard. I narrowed it down while we were here. Same thing on this credit for time served. You know, Judge Jefferson says that department of corrections calculated and they will get together and all of that, and they do and sometimes it's never an issue. But whenever it's an issue, the folks at the department of corrections tell them, you

1 know, you're going to write the judge and
2 tell them how much time they will give you
3 credit for time served. I've moved on.
4 So, I settle that right when we're in
5 court. Get everybody on the same page and
6 write it on there. But, you know.

7 MR. THOMAS: Because those can be a
8 nightmare. I mean, we get some of those
9 and we don't go to the judge, what we'll do
10 is go to the detention center and pull the
11 records there and see if some sort of
12 mathematical error.

13 THE COURT: Yes. So, if you can
14 settle it and then the department of
15 corrections settle it many times, in some
16 of these detention centers were for them
17 finding their records and knowing when
18 they're out and back in and all those
19 things.

20 MR. THOMAS: We don't see it much
21 anymore, but it used to be fairly common
22 that they did not have many records, which
23 is very frustrating.

24 THE COURT: Yup. But I understand
25 there are no winners. In reading the

transcript and Mr. Davis presenting to the Court and talking about what a good family Mr. Hamilton came from and he had all the heavy hitters there, the Mayor of Saint Stevens, is that right, Ms. Hamilton?

THE WITNESS: Yes, sir.

THE COURT: The Mayor, a lot of very honorable and respectable people there on his behalf, including his mother and father, and he just -- it's a bad situation that he created. Of course in Mr. Davis's view, until he excepts it, we'll have a hard time moving on.

MR. THOMAS: Yes.

THE COURT: All right.

MR. THOMAS: Thank you, Your Honor.

THE COURT: Mr. Limbaugh, I didn't try to give your closing argument for you.

MR. LIMBAUGH: Well, with what's been said I'll just make one brief clarification and that's just the standard for prejudice for guilty pleas, that there's a reasonable likelihood that despite the alleged deficiencies of counsel he would have proceeded to trial and not

1 pled guilty and there's been no testimony
2 to that. In fact--

3 THE COURT: Well, the testimony is
4 to the contrary.

5 MR. LIMBAUGH: Correct, Your Honor.

6 THE COURT: They didn't want a
7 trial. What else could he have done.

8 MR. LIMBAUGH: It's directly to the
9 contrary, Your Honor. From the applicant,
10 his mother and Mr. Davis. So, I believe
11 that he fails to meet his burden. Thank
12 you, Your Honor.

13 THE COURT: Well, first must prove
14 that counsel's performance was deficient.
15 Mr. Davis's performance wasn't deficient,
16 his performance was exemplary, under the
17 circumstances. On the issue of credibility
18 of what was said when and what caused him
19 to lie to the or withhold information that
20 violated the agreement, you know, the
21 creditability favors Mr. Davis and not
22 Mr. Hamilton.

23 And regarding the plea not being
24 knowing and voluntary with the full
25 understanding of consequences, he was made

1 fully aware, if not by Mr. Davis, by the
2 judge. And I'm sure by Mr. Davis as well.
3 So, he doesn't prevail on either of these,
4 counsel, this PCR.

5 If you'll prepare an order and
6 share it with Mr. Thomas.

7 MR. LIMBAUGH: Yes, Your Honor.

8 THE COURT: Wish you the best,
9 Mr. Hamilton, you're still a young man.
10 How old are you now?

11 THE DEFENDANT: 23.

12 THE COURT: 23, goodness gracious.
13 When I was 23 that was my first year I
14 passed the bar, when I was 23. That was 46
15 years ago.

16 Well, good luck to you, Mr.
17 Hamilton. You seem like a fine young man.
18 You were just in a bad situation. But, you
19 know, you'll get through it. Just hang in
20 there, good luck to you.

21 (Time noted: 11:58 a.m.)
22
23
24
25

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

Certified to be a true and accurate
transcript of the aforesaid proceeding.

Natalie A. Williams

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-08-00954

ORDER OF DISMISSAL

V.

Respondent.

This Court had before it a copy of the Berkeley County Clerk of Court's records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the post-conviction relief application, Respondent's return, the trial transcript, and appellate records. After a review of the record and all evidence presented, for the reasons set forth below, this Court finds Applicant has failed to meet his requisite burden of proof. Therefore, Applicant's application for relief is denied and dismissed with prejudice.

LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

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cc: TM
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I. PROCEDURAL HISTORY

Darius Hamilton (Applicant) is presently confined pursuant to orders of the Berkeley County Clerk of Court. In April 2017, the Berkeley County Grand Jury indicted Applicant for Armed Robbery (2017-GS-08-00807; 2017-GS-08-00807), Kidnapping (2017-GS-08-00808; 2017-GS-08-00808) and Burglary First Degree (2017-GS-08-00812).

Steve Davis, Esquire, represented Applicant. Assistant Solicitor Wilton McNeely, Esquire, prosecuted the case. On November 1, 2018, Applicant pleaded guilty as indicted to all charges before the Honorable Deadra Jefferson. Judge Jefferson sentenced Applicant to fifteen years concurrent on all indictments. Applicant filed a timely notice of appeal on November 15, 2018. Applicant withdrew his appeal on December 17, 2018, and the Remittitur was issued on January 3, 2019.

Applicant filed this initial application for post-conviction relief on April 12, 2019, alleging ineffective assistance of counsel and involuntary guilty plea. A subsequent amendment was filed through Counsel Mr. Tommy Thomas. That amendment alleges the “applicant is informed and believes his attorney was in fact creating an involuntary plea. The applicant claims that he did not understand the plea nor the plea offers. The applicant contends that counsel's advice caused him to lose the proffer agreement.” This Order follows.

II. FACTS GIVING RISE TO CHARGES

On November 1, 2018, Applicant pleaded guilty as indicted to all charges. The facts leading to this plea were restated at the plea hearing as follows:

It arises out of an incident on July 21st, 2016 at approximately 3 a.m. Berkeley County deputies responded to 135 Martha Lane in the Huger area of Berkeley County in reference to a shooting. Upon arrival deputies found one victim, Kadeem [phonetic] Johnson in the bedroom who had his hands bound with tape before being killed by a single gunshot wound to the head. The other victim Crystal Snipe

had also had her hands bound with tape before being shot multiple times. After the incident she was able to call 911. She told police that when she and Johnson arrived home five suspects who were masked and armed were waiting outside in the woods at their home. As they got out of their car, all five approached them with guns and all five demanded items from them. While being held at gunpoint in the driveway the Hello Kitty bag containing drugs was taken from Kadeem [phonetic] Johnson and they were ordered into the house at gunpoint. They were escorted into the bedroom where Kadeem [phonetic] Johnson was made to get on his knees and Ms. Snipe was made to sit on the bed. While being watched by co-defendant Jacob Mouzon [phonetic] at gunpoint this defendant Darius Hamilton bound their hands with clear tape. While binding Kadeem [phonetic] Johnson's hands he removed a gold bracelet from his wrist. The male that was standing guard over them, co-defendant Jacob Johnson was not wearing a mask at one point inside the house and was able to be identified by Crystal Snipe who survived the incident. She stated several items were taken from the residence including a T.V. and other property. After this defendant and the other co-defendants exited the trailer co-defendant Jacob Mouzon [phonetic] shot Kadeem [phonetic] Johnson in the head killing him and then opened fire on Ms. Snipe causing injuries to her. All of the co-defendants then collectively took off in two separate Crown Victorias that belonged to the victims at the residence. One, a white one, was observed by deputies responding to the incident on Highway 402 and co-defendants Jacob Mouzon [phonetic], Drake Campbell, and Kenneth Campbell fled into the woods at that point and they were soon apprehended. In the day following at that time this defendant was identified and came to Eccles Church to speak with deputies who were investigating the incident at the command post. During that initial interview Mr. Hamilton told police that he drove the other co-defendants to the victim's residence but did not go into the house. He subsequently entered into a proffer agreement with the State at which time he admitted being at the scene and taping their hands but claims to have never gone into the house. During a pretrial meeting with the State Mr. Hamilton added the additional detail that he was there when the crimes occurred, that he had gone into the trailer to tape their hands and took the bracelet off the victim Kadeem Johnson. He still claimed at a pretrial meeting that he ran after the shooting, left in his truck alone and never saw them after that. In a subsequent meeting he added that he left in one of the victim's Crown Victorias with co-defendant Sharod [phonetic] Palmer but that Palmer dropped him off at his car and had no further contact with him. Then when he testified at trial he changed his version of events again to add that after he left the scene in the Crown Victoria with Sharod [phonetic] Palmer while

travelling up Cain Hoy Road observed Mr. Palmer out of the Crown Victoria, picked him up in his truck and he drove Sharod [phonetic] Palmer to Saint Stephen away from the scene dropping him off at his home. This version of the events had never been told to the State in any pretrial meeting.”
Plea Trans. p. 21-24.

III. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

On March 18, 2021, Counsel further amended Applicant allegations to include:

1. The Applicant is informed and believes his attorney was ineffective in creating an involuntary plea. The Applicant did not understand the plea, nor the plea offer. The Applicant is informed and believes that counsel’s advice caused him to lose the proffer agreement.

IV. SUMMARY OF FACTS ADDUCED AT THE EVIDENTIARY HEARING

Summary of Testimony from Applicant Darius Hamilton

At the start of the hearing, Applicant testified on his behalf. He testified that he retained plea counsel, Steve Davis. PCR Tran. p. 9. Applicant further testified he was out on bond for two years and that he met with plea counsel three to five times. Applicant stated that he went over the State’s evidence against him “a couple of times” but he did not understand it. He further testified that he wasn’t sure of what the outcome of his case would be, but plea counsel told him that if he took his case to trial, he would likely get thirty years or more. PCR Tran. p. 10. Applicant stated that he had four co-defendants, and three of those defendants who were convicted got more time than he did. PCR Tran. p. 12. Applicant further testified he was not offered a plea agreement before he

agreed to proffer information regarding the incident. Further, Applicant testified to his involvement in the incident, stating that in 2016 that a couple of his friends and himself committed a robbery that “went bad” on an individual that his co-defendants knew. PCR Tran. p. 13. Regarding the proffer agreement, Applicant stated that “somehow Mr. Davis got in an agreement with them that if I told them everything I know, like I said, it wouldn’t be held against me.” PCR Tran. p. 15. Applicant further explained that while he hoped for a better deal for cooperating with the State, that he was not promised a better deal. *Id.*

Applicant began the proffer process and admitted there were some issues that came up after the proffer agreement was signed. PCR. Tran. p. 16. Applicant alleged plea counsel asked him to withhold information at the first proffer meeting, but he was not sure why he told him to do so. Specifically, Applicant testified he withheld that he was the person who restrained the victims with duct tape. However, this information came out at a later date, when the State had evidence of Applicant’s DNA on the tape. PCR. Tran. p. 16-17. Applicant alleged further that plea counsel told Applicant to tell the Solicitors about the incident because there was evidence. PCR. Tran. p. 17. Additionally, Applicant testified that before the trial began, he told counsel that he had taken one of his co-defendants home following the incident and he was unsure if he informed the State of that information. He testified that counsel told him, “Well, they don’t know, I want to make sure they know.” *Id.* at ln. 20-25. Applicant admitted that this information was different than what he told the police before the trial of his co-defendants. PCR. Tran. p. 18. Applicant alleged that he told plea counsel about the inconsistency in his story before the trial once he realized, but plea counsel did “not take care of it.” PCR. Tran. p. 18-19. Applicant testified that the proffer agreement was later withdrawn.

Applicant further testified that he was initially expecting to get probation out of his plea, to which, counsel told him that was not going to happen. PCR Tran. p. 21. He alleges that counsel told him he may get thirty-six months. He further testified that after the proffer was withdrawn, plea counsel mentioned ten years and that the day before the plea, he told him he was going to argue for fifteen years on his behalf. *Id.* Applicant, albeit surprised, did not ask his attorney about the ten-year offer. PCR Tran. p. 22. Applicant opined that his plea was not involuntarily, knowingly, intelligently entered into and that his attorney was not prepared. PCR Tran. p. 21-23.

On cross-examination, Applicant was asked to look over the proffer agreement. Applicant admitted that he saw a paragraph within the agreement “about being fully truthful and no misstatements or material admissions” in the agreement and saw that at the time of signing. PCR Tran. p. 25. The State asked did Applicant remember going over each charge and their consequences, including his exposure to a life sentence with Judge Jefferson, to which he replied yes. *Id.* He further testified that he told Judge Jefferson that he was completely satisfied with plea counsel’s representation and admitted that his issues with the proffer agreement was before his guilty plea. PCR Tran. p. 26. When asked whether he remembered the solicitor reading the facts including the changed testimony and issues with the proffer agreement, Applicant testified that he agreed to those facts. PCR. Tran. p. 28.

This court then elicited testimony from Applicant. Applicant testified that he admitted to being guilty of the crime. PCR. Tran. p. 30. He agreed that himself and four others went to someone’s house with intent to rob them, bound them with duct tape, and one person died. PCR. Tran. p. 30-31. This court asked what was stolen, Applicant replied that money was stolen, and he did not receive any the money. PCR Tran. p. 31. He further admitted that he was the driver. PCR Tran. p. 31-32. This court further asked Applicant did he feel lucky that he was not charged with

murder, to which he replied yes. PCR Tran. 32. The court further explained to Applicant that based on the aggravating factors of the underlying crime, he may have been exposed to the death penalty. *Id.* Applicant testified that he understood he was pleading to fifteen years for burglary, kidnapping and two counts of armed robbery.

After the testimony of plea counsel, Applicant was recalled as a witness. He testified that he told counsel a few days before he was called to testify about driving his co-defendant in his office. PCR Tran. p. 56.

Summary of Testimony from Melissa Hamilton, Applicant's Mother

Melissa Hamilton testified that she is the mother of Applicant. PCR Tran. p. 34. She further testified that she was involved in Applicant's arrest and prosecution, and plea counsel, Steve Davis was retained on his behalf. PCR Tran. p. 35. She further testified that she had knowledge of the proffer agreement. *Id.* When asked whether or not the inconsistencies in Applicant's testimony had been brought to the attention of plea counsel, she testified that she was not there "when all of that happened," so she had no knowledge of that. *Id.* She testified that her son only told her "some things" regarding his plea offers, but not everything. PCR Tran. p. 36. When asked did plea counsel inform her of how much time Applicant would get, she testified that with the proffer agreement it was thirty-six months, but after he could be sentenced to fifteen to thirty, but counsel would try to get a ten-year offer. PCR Tran. p. 37. She testified that she was informed that Applicant would be pleading guilty to fifteen years instead of ten about a month before the plea. *Id.*

This court further examined Melissa Hamilton. The Court asked Ms. Hamilton whether or not she wanted Applicant to go to trial, she replied no. PCR Tran. p. 38.

Summary of Testimony from Steve Davis, Esquire, Plea Counsel

Applicant called trial counsel, Steve Davis. Counsel testified that he was retained by Applicant. Mr. Davis further testified that Applicant was likely not charged with murder due to his initial cooperation with law enforcement before Mr. Davis was retained as counsel. PCR Tran. pp. 40-41. Counsel testified that he never told Applicant to withhold information from the Solicitor. PCR Tran. p. 41. He testified further that there were never any promises from himself or the State, with or without the proffer agreement about the amount of time Applicant would receive or plead to. PCR Tran. p. 42. He further testified that it is very rare in his general practice to promise clients a sentence he cannot control. *Id.* He further testified that he did not promise Applicant thirty-six months on the charges if he proffered testimony. PCR Tran. p. 43. Mr. Davis further testified that the Applicant did not tell him about driving one of his co-defendant's home following the robbery until the middle of trial where he was called to testify. *Id.* He said Applicant asked him for advice, he told them he wouldn't perpetuate fraud on the court, and that he had to inform the Solicitor of the information. PCR Tran. pp. 43-44. Mr. Davis further testified that the change in testimony caused a tremendous problem in the State's case, and he opined that it caused the acquittal of his co-defendant. PCR Tran. p. 44. He further testified that Applicant got a deal and that he would be thankful for that deal if one of his sons participated in crime of that magnitude. PCR Tran. p. 45. Additionally, he testified that trial was never an issue once he was retained. *Id.*

On cross-examination, counsel asked Mr. Davis to explain the circumstances around the proffer agreement. Mr. Davis testified that generally, a prosecutor may be interested in a proffer agreement to have an inside actor that may be less culpable, to make sure there is a conviction, but it needs to be a truthful person. *See* PCR Tran. pp 45-46. He further testified that during the "debriefing" portion of the proffer, he went to the Solicitor's Office with Applicant and encouraged

him to tell the truth but did not go into the debriefing with him so he wouldn't feel pressured or coerced. *See* PCR Tran. 48. Mr. Davis further testified that the proffer agreements were extremely important, because Applicant was able to get out of jail because of them. PCR Tran. p. 49. Regarding Applicant withholding information regarding the duct tape, he testified that he initially did not want Applicant to volunteer unnecessary information, but once the Solicitor had DNA evidence, he counseled Applicant to tell the complete truth during the second debriefing, allowing him to "smooth things over" with the Solicitor regarding the proffer agreement. PCR Tran. p. 50. However, he testified that Applicant did not discuss that he brought his co-defendant home until the night before he was going to testify. PCR Tran. p. 51.

V. STANDARD OF REVIEW

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

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCF; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. *Strickland v. Washington*, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010)

(recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

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

VI. FINDING OF FACT AND CONCLUSIONS OF LAW

This Court has heard the testimony and evidence presented at the evidentiary hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After the testimony presented and considering the legal arguments by counsels, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claim raised the evidentiary hearing and find that it is without merit.

Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Ineffective Asssitance of Counsel

Applicant contends that counsel was ineffective for allegedly causing Applicant to lose his proffer agreement. This court finds that Applicant has failed to meet his burden of proof and dismisses this allegation with prejudice.

In order to prove counsel was ineffective, Applicant has to display that 1) counsel's performance fell below an objective standard of reasonableness, and 2) Applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668 at 687 (1984); *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Applicant has failed to prove counsel's performance fell below an objective standard of reasonableness. At the evidentiary hearing, Applicant testified that he was not completely truthful to the Solicitor during any of the proffer meetings. Furthermore, in the plea transcript, the Solicitor explained to Judge Jefferson that Applicant had changed his story three times, including at trial, where his testimony was so inconsistent with his initial statements that it did irreparable harm to the case against the individual that was acquitted and threatened the cases of his three co-defendants. Plea Tr. p. 22. Because of his changing story, the Solicitor expressed that Applicant violated his proffer

agreement several times. *Id.* This Court finds plea counsel's testimony that Applicant's inability to be completely truthful with the Solicitor caused an issue with the State's case and his opinion, caused the acquittal of one of his alleged co-defendants to be credible. The Court further finds credible plea counsel's testimony that he encouraged Applicant to tell the complete truth and that any initial issues where Applicant withheld details, he was able to "smooth over" things with the State to keep the proffer agreement open.

Here, counsel was not deficient for "causing" Applicant to lose his proffer agreement. He acted reasonably as required by *Strickland* in encouraging Applicant to tell the truth to the Solicitor, as well negotiating with the State to ensure the proffer agreement stayed in tact through trial. Furthermore, Applicant was not prejudiced by the actions of plea counsel because it was Applicant's own actions of changing his story multiple times including right before and during trial, causing great prejudice to the State that caused Applicant to lose the proffer agreement, not plea counsel's.

Accordingly, Applicant's allegation is without merit and is **DENIED**.

Involuntary Guilty Plea

Applicant contends his plea was involuntary because he relied on erroneous advice from Counsel. This Court disagrees, and finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of *Boykin* and *Pittman*. The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the court's questions.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685,

511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the

consequences of his guilty plea, the plea judge “usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750-753, or by increasing the risks of punishment on those who do not. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks

omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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

Overcoming *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their

guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.' "). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

After a review of the record and testimony at the evidentiary hearing, this Court finds Applicant entered into a knowing, voluntary and intelligent plea. At the plea hearing, Judge Jefferson explained to Applicant the constitutional rights he waived by pleading guilty, including rights to: remain silent, right to confront and cross-examine State's witnesses, and present any defenses. Plea Tr. p. 28. Applicant informed the court that he understood the charges he was pleading to and the implications with sentencing that came with violent classifications for crimes. Plea. Tr. pp. 13-15. Specifically, Applicant indicated that he understood that armed robberies are a no parole offense, and that he would have to serve at least a minimum of seven years before the Department of Corrections will make any consideration of parole eligibility. Plea. Tr. p. 15. Applicant advised the court he had not been threatened, pressured, intimidated, or promised anything in exchange for his guilty plea. Plea Tr. pp. 32-33. When questioned whether he had been truthful with the court in his answering of the Court's question, Applicant affirmed he had. Plea Tr. 34.

The plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Applicant has failed to

present any valid reason why he should be able to depart from the above statements made during his guilty plea. *See Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975), *overruled on other grounds* by *United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Furthermore, there was no indication from the record or testimony at the evidentiary hearing that Applicant would have insisted going to trial but for the alleged error of counsel as required by *Roscoe v. State*. This Court finds the testimony of plea counsel, Mr. Davis credible that there was never any discussion of going to trial because trial would be futile based on the two statements given to the police before he was retained, as they would have been enough to convict Applicant. Likewise, Applicant's mother, who testified that she did not want Applicant to have trial and wanted him to plead guilty because he was guilty.

Based on the foregoing, the record contradicts Applicant's assertion he was under a misapprehension of what was happening and that his plea was involuntary as a result of ineffective assistance of counsel. Thus, based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant's plea was freely, knowingly, and voluntarily entered into. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**

VII. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was

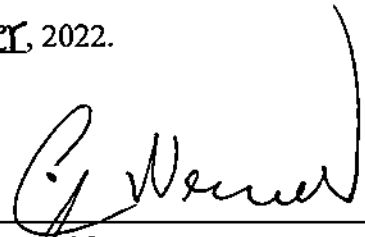
Applicant prejudiced by Counsel's representation. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice

AND IT IS SO ORDERED this 19th day of December, 2022.



CLIFTON NEWMAN
Presiding Judge
Ninth Judicial Circuit

Columbia, South Carolina



State of South Carolina
The Circuit Court of the Third Judicial Circuit

Clifton Newman
Judge

Post Office Box 516
Kingstree, SC 29556-0516

December 19, 2022

Clerk of Court
300-B California Avenue
Moncks Corner, SC 29461

2022 DEC 22 PM 12:44
FILED
LEAH BUEBLY JUDGE
CLERK OF COURT
BERKELEY COUNTY, SC

RE: Order of Dismissal (Case No. 2019-CP-08-00954)

Enclosed is a signed Order of Dismissal for post-conviction relief for Darius Hamilton (#378157) v. State of South Carolina.

Please serve a copy on all parties.

Kindest Regards,

Gabrielle Williams
Law Clerk to Judge Clifton Newman
cnewmanlc@sccourts.org

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEYCOUNTY
Court of Common Pleas
Post Conviction Relief

Clifton Newman, Circuit Court Judge

Lower Court Case No.: 2019-CP-08-00954

2023 JAN 19 PM 2:35
LEAH GUERRY DORR
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

Darius Hamilton #378157,..... Petitioner,

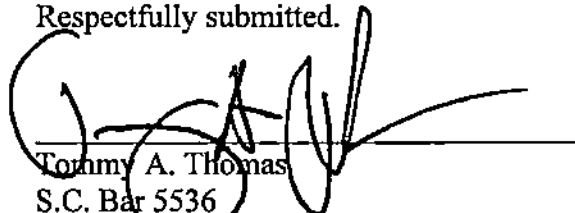
vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

The Applicant, Darius Hamilton #378157, appeals the Order of Dismissal signed by the Honorable Clifton Newman on December 19, 2022 and filed on December 22, 2022. Applicant obtained a copy of this Order of Dismissal on January 12, 2023.

Respectfully submitted.


Tommy A. Thomas
S.C. Bar 5536
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

January 17, 2023

cc:
T.A.T.
L.M.

