

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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May 12 2023

S.C. SUPREME COURT

Certiorari to Union County

Honorable R. Scott Sprouse, Circuit Court Judge

WILLIAM S VANDERFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000998

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against- 2018-GS-44-1127-1131

7 WILLIAM SHANE VANDERFORD,

8 Defendant.

9 -----x

10 February 1, 2019

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE WILLIAM MCKINNON

15

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

17 MEGHAN GILMER,

18 Attorney for the State

19

20 ERIK DELANEY,

21 Attorney for the Defendant

22

23

24 Aileen Butler

25 Official Court Reporter

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1 MS. GILMER: May it please the Court. Your
2 Honor, before the Court is the defendant, William
3 Shane Vanderford. He is here with his attorney, Eric
4 Delaney.

5 Your Honor, he is before the Court on five
6 Indictments, which are Union County offenses. It is
7 my understanding at this time he is waiving venue on
8 these charges and wishes to plead guilty.

9 Your Honor, we are asking the Court to accept the
10 defendant's plea today on these cases and defer
11 sentencing until February the 11th of 2019 before the
12 Honorable Judge Culburtson.

13 Your Honor, these are Indictments 2018-GS-44-1127
14 for the offense of kidnapping. The defendant is
15 pleading under North Carolina V Alford as charged to
16 to that offense and it is a True Bill Indictment. In
17 2018-GS-44 the defendant is pleading guilty as charged
18 to the domestic violence, first degree also being a
19 True Bill Indictment and 2018-GS-44-1129, the
20 defendant is pleading guilty to the True Bill
21 Indictment, possession methamphetamine, third or
22 subsequent offense and 2018-GS-44-1130 and 1131, he is
23 pleading guilty to both of those True Bill Indictments
24 being possession of a controlled substance, second
25 offense.

1 Your Honor, we have worked out a negotiated plea
2 of this case of ten years active prison along with a
3 permanent restraining order. We would ask that the
4 permanent restraining order be in effect with no
5 expiration, Your Honor. The defendant has signed that
6 proposed order indicating his acknowledgement of it
7 and I also passed up an order prohibiting fire arms
8 ammunition for a period of ten years from date of
9 release because of the domestic violence first degree
10 charge.

11 THE COURT: Give me a second.

12 How much time served credit does he have?

13 MR. DELANEY: Judge, we don't have that
14 calculated. We will have that at the sentencing.

15 THE COURT: No expiration?

16 MS. GILMER: That's correct, Your Honor.

17 THE COURT: All right. Mr. Vanderford, what's you
18 full legal name?

19 THE DEFENDANT: William Shane Vanderford.

20 THE COURT: How old are you sir?

21 THE DEFENDANT: Forty-two.

22 THE COURT: How far did you go in school?

23 THE DEFENDANT: 12th grade.

24 THE COURT: Have you ever been treated for drug
25 abuse, alcohol abuse or any mental health treatment?

1 THE DEFENDANT: Yes.

2 THE COURT: Which one?

3 THE DEFENDANT: All three.

4 THE COURT: Do you have a mental health diagnosis
5 like depression or PTSD?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you taking any medication for any
8 of those conditions.

9 THE DEFENDANT: No, sir, Your Honor.

10 THE COURT: Are you currently on any doctor
11 prescribed medicine or any illegal drugs or alcohol?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you have any other mental or
14 physical condition that prevents you from
15 understanding what is happening in court today?

16 THE DEFENDANT: No, sir.

17 THE COURT: Mr. Vanderford, do you understand this
18 is a Union County charges and you have a right to have
19 your plea heard in Union County, South Carolina. My
20 understanding is you and your attorney want to give up
21 that right and have this plea heard today in York
22 County?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you discussed that with your
25 lawyer and is that what you want to do?

1 THE DEFENDANT: Yes sir, Your Honor.

2 THE COURT: Mr. Vanderford, my understanding is
3 you are pleading to five different charges today.
4 Four guilty pleas. One is possession of a controlled
5 substance schedule four that carries up to one year in
6 prison, is that correct?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And that one your attorney has
9 negotiated a time served plea, is that your
10 understanding?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: The next one is possession of a
13 schedule two controlled substance which also carries
14 up to one year and on that one your attorney has also
15 negotiated a time served plea. Is that your
16 understanding?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: The third one is possession of
19 methamphetamine third or subsequent which carries up
20 to ten years in prison and a fine of \$12,500 and that
21 one I understand your attorney has negotiated a
22 ten-year active prison sentence, is that correct?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: The forth one is domestic violence in
25 the first degree which also carries up to ten years

1 and on that your attorney has also negotiated a
2 ten-year active prison sentence. Is that your
3 understanding?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And finally on the fifth charge
6 kidnapping which carries up to 30 years. Your
7 attorney has negotiated a plea under North Carolina
8 versus Alford and your attorney has negotiated a
9 ten-year active sentence. Is that your understanding?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And these sentences it's negotiated
12 that they will be concurrent sentences.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Is that correctly stated the
15 negotiations?

16 MS. GILMER: That is correct, Your Honor.

17 THE COURT: Is that what you want me to do, what
18 we just talked about?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: I talked to you about a few of these
21 charges. Mr. Vanderford, kidnapping and domestic
22 violence, first degree, are both violent offenses.
23 Have you discussed that term with your lawyer?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you understand that means that

1 pertaining to your sentence you will have to serve at
2 SCDC will increase by these violent offenses.

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Further, South Carolina has a system
5 of strikes made up of serious and most serious
6 offenses and if you get three serious convictions or
7 two combination most serious and serious offenses, you
8 are eligible for a life without parole sentence. Do
9 you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And the kidnapping is a most serious
12 offense under South Carolina law and domestic
13 violence, first degree, is a serious offense. Do you
14 understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you understand that is two strikes
17 under that system, those two convictions.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Further South Carolina has a graduated
20 system of drug offences, which means the more drug
21 convictions you have the worse the punishment gets.
22 So I certainly hope you are never in front of a judge
23 again. But understand if you are the drug convictions
24 today may increase the punishment on future drug
25 offenses?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Understanding all that do you still
3 want to go ahead and plead guilty today?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And you plead guilty, but you are
6 pleading guilty to four of charges and then under
7 North Carolina v Alford for one charge. Is that what
8 you want to do?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And I understand from your attorney
11 that you want to enter a plea today to this negotiated
12 sentence and then have the sentence imposed on
13 February 11th, is that correct.

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And finally, Mr. Vanderford, I need to
16 talk to you about what North Carolina versus Alford
17 sentence means. This is for kidnapping charge and
18 normally I will ask if you agree that you did these
19 things, but for this plea I am not going to ask you
20 that. But there two things that have to be true for
21 me to accept this plea.

22 The first is, even though you say you didn't do it
23 you have to believe if you take it to trial that there
24 is a substantial risk the jury would find you guilty.
25 Do you believe that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And the second is thing that you have
3 to receive a benefit for the plea and that to me is
4 clear. For the kidnapping charge that carries 30
5 years in prison and your negotiated plea if for ten
6 years active time. So it is a clear benefit would you
7 agree?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And I also have to make sure you
10 understand that other than the fact that you don't
11 have to say you did it, in every other way an Alford
12 plea is the same as a guilty plea. Meaning it will go
13 on your criminal record, sentenced the same way. Do
14 you understand all that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Have you discussed that with your
17 lawyer?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Have all of these been True Billed
20 Miss Gilmer?

21 MS. GILMER: Yes, Your Honor.

22 THE COURT: Mr. Vanderford, the biggest right is
23 the right to a jury trial. You are presumed innocent
24 on these charge and you can't be convicted until a
25 jury of 12 Union County citizens hear all the evidence

1 and votes to find you guilty. Their vote has to be
2 unanimous and beyond a reasonable doubt. Do you
3 understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: At the trial you have the right to
6 have a lawyer represent you. That lawyer can speak to
7 you, give you legal advice and maybe get evidence
8 suppressed. Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: You have the right to participate in
11 your own defense. You could speak if you choose to or
12 remain silent if you want to remain silent. If you
13 choose to remain silent it can't be used against you
14 in any way. Do you understand that that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You have the right at trial to call
17 your own witnesses into court and subpoena them which
18 means force them to come to court if you need to and
19 you have right to cross examine or confront all the
20 witnesses the government has. Do you understand that
21 right?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you understand all the rights I
24 talked about today?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Do you want to give them all up and
2 plead guilty today.

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: The State has presented me with a
5 permanent restraining order for the victim in this
6 case, an A.S. . Have you gone over that with
7 your lawyer?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And you understand this is truly a
10 permanent restraining order with no expiration date?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you have any objection to me
13 signing that order?

14 THE DEFENDANT: No, sir.

15 THE COURT: Mr. Vanderford, is that your attorney
16 there with you.

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Have you had enough time to discuss
19 your case Mr. Delaney?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Has he done everything you asked him
22 to do?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you completely satisfied with Mr.
25 Delaney's services?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you have any complaints about Mr.
3 Delaney or anyone else in the legal system?

4 THE DEFENDANT: No, sir.

5 THE COURT: Is it your choice to plead guilty
6 today your own decision, made freely and voluntarily?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Other than the negotiation that we've
9 already talked about which is for ten years active
10 time on the domestic violence, kidnapping, meth
11 amphetamine charge and time served sentence on the
12 other two. Has anyone promised you anything or
13 threatened you in any way to get you to plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Mr. Delaney, do you concur with your
16 clients decision?

17 MR. DELANEY: I do, judge.

18 THE COURT: Have you discussed his constitutional
19 rights, the evidence against him and any possible
20 defenses he might have?

21 MR. DELANEY: I have, Your Honor.

22 THE COURT: And do you believe he is pleading
23 voluntarily?

24 MR. DELANEY: I do.

25 THE COURT: Yes, ma'am. Tell me what happened.

1 MS. GILMER: Your Honor, these offenses occurred
2 on August 21st of 2017. On that date a family member
3 of the victim called 911 and reported to law
4 enforcement that the victim came to his residence with
5 multiple injuries telling him that her boyfriend, the
6 defendant, had physically abused her and locked her
7 inside their residence where they lived together at
8 [REDACTED] Joe Eubanks Road in Buffalo, Union County.

9 The responding officer made contact with the
10 victim who was crying and appeared fearful with
11 visible injuries. The victim was transported to the
12 Spartanburg Regional Medical center where she received
13 medical treatment. The victim reported to law
14 enforcement that she was in bed at approximately 3:30
15 that morning when the defendant began accusing her of
16 infidelity and began striking her head. She reported
17 the defendant slammed her head into the wall and
18 repeatedly pushed her around the residence after
19 pulling her from the bed. The victim reported the
20 defendant continued to repeatedly strike her with his
21 hands and dragged her by her hair. She reported that
22 the defendant also struck her legs and head with a red
23 water pipe and repeatedly threatened to kill her. The
24 victim reported she was able to run out of the
25 residence but the defendant dragged her back inside by

1 her hair and dead bolted her inside the residence and
2 also took her phone. She reported she was able to
3 push out the air conditioning unit to escape after the
4 defendant left.

5 Your Honor, the victim did have several injuries.
6 She reported loss of consciousness during the offence.
7 She had multiple bruising on her legs, arm and other
8 areas of body. She had cuts to her feet, abrasions to
9 her stomach and to her mouth, and she did undergo CT
10 scans that showed a scalp hematoma and a deviation of
11 of her nasal septum and she also had a large area on
12 her head with a bald spot where the defendant had
13 grabbed and pulled her hair.

14 Your Honor, the defendant was arrested later that
15 same day in Union County Courthouse. We actually had
16 roll call on that day and he was there for that.
17 Inside the defendant's truck in the parking lot law
18 enforcement recovered the victim's cell phone, along
19 with methamphetamine, buprenorphine, clonazepam and
20 drug paraphernalia. Law enforcement actually observed
21 the defendant in this vehicle as well.

22 Your Honor, later on that same day law enforcement
23 searched the residence where this kidnapping occurred.
24 This is actually an outbuilding that had been
25 converted to living quarters. The officer observed an

1 air conditioning unit removed from the window, bloody
2 socks and rags and blood droplets inside the building.
3 He also observed an external lock on the outside door
4 to the out building.

5 Your Honor, at trial the State would have
6 anticipated calling two witnesses who are courthouse
7 personnel who state on that day they overheard the
8 defendant saying that he needed to call his father to
9 let out his girlfriend out.

10 Your Honor, the defendant has convictions in 2010
11 for possession of meth or crack and distribution of
12 methamphetamine, from two separate incident dates in
13 South Carolina and also 2016 possession of controlled
14 substance in Columbia. These were served as basis for
15 the enhanced drug offenses in this case.

16 Your Honor, I have had multiple conversations with
17 the victim in this matter. She is in agreement with
18 this negotiated plea. She did not wish to be present
19 for this plea hearing today but has indicated she will
20 definitely will be present for the sentencing hearing
21 on February the 11th.

22 THE COURT: Thank you, Miss Gilmer.

23 Mr. Vanderford, putting aside for a second the
24 allegations that you locked your former girlfriend in
25 the outbuilding, do you agree that everything else the

1 solicitor said is correct?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: You heard what she said?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you still want to plead guilty to
6 one count of domestic violence in the first degree,
7 one count of possession of methamphetamine third or
8 subsequent, one count of possession of a scheduled
9 three controlled substance, and one count of
10 possession of a scheduled four control substance?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Are you guilty of those four charges?

13 THE DEFENDANT: Yes.

14 THE COURT: I turn now to the kidnapping charge.
15 Have you heard what the solicitor says the evidence
16 the State has available? Do you believe if that
17 evidence is presented to jury there is a substantial
18 risk you would be convicted on that charge?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you still want to plead under North
21 Carolina versus Alford to one count of kidnapping?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you understand that if you don't
24 like the sentence I impose you have ten days to appeal
25 it?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And finally, has everything you told
3 me in court today been the truth?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. I find there is a
6 substantial factual basis for the plea. I find it's
7 been made freely, voluntarily, knowingly and
8 intelligently.

9 Mr. Vanderford, is there anything you like to say
10 because what I am about to do is accept the plea and
11 I'm not going to sentence you so there won't be
12 anymore proceedings today.

13 Is there anything you would like to say or your
14 attorney would like to say I'd be happy to hear from
15 you.

16 THE DEFENDANT: No, sir.

17 THE COURT: I find there is a substantial factual
18 basis for the plea. I find it's been made freely,
19 voluntarily, knowingly and intelligently. I find Mr.
20 Vanderford has had the advice of counsel a very
21 competent lawyer with whom he says he is totally
22 satisfied so I accept the guilty plea to four charges;
23 domestic violence, possession of methamphetamine,
24 possession of a scheduled three and scheduled four
25 controlled substance and I will accept the negotiated

1 Alford plea on the kidnapping charge. On all these
2 cases the sentences are deferred until February the
3 11, 2019.

4 I have signed the permanent Restraining Order and
5 Mr. Vanderford, you've now been convicted of a
6 domestic violence. Now there's something I have to
7 read you. It is now unlawful for to you ship,
8 transport, possess or receive a firearm or ammunition
9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: That just doesn't mean you can't go
12 and buy a gun. That means you can't hold one or
13 borrow one. Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: You will be sentenced on the 11th with
16 Judge Culbertson?

17 MS. GILMER: Yes, Your Honor.

18 (END OF TRANSCRIPT)

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I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 1st day of February, 2019.

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

March 8, 2019

s/AILEEN BUTLER

1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against- 2007-DR-42-2000

7 WILLIAM SHANE VANDERFORD,

8 Defendant.

9 -----x

10 February 11, 2019

11 Union, S.C.

12

13 B E F O R E:

14 HONORABLE BENJAMIN H. CULBERTSON, Judge.

15

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

17 MEGHAN GILMER, Esquire

18 Attorney for the State

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20 Erik Delaney, Esquire

21 Attorney for the Defendant

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23 Aileen Butler

24 Official Court Reporter

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1 MS. GILMER: Your Honor, before the court is the
2 defendant, William Shane Vanderford. He is here
3 represented by attorney Eric Delaney.

4 Your Honor, on February 1st of 2019, he did enter
5 guilty pleas with one Alford plea on the following
6 Indictments. Your Honor, we are here before the Court
7 for sentencing today. I will read the Indictments
8 first.

9 First, 2018-GS-44-1127 for the offense of
10 kidnapping. He did plead under North Carolina v
11 Alford. 2018-GS-44-1128, domestic violence first
12 degree. 2018-GS-44-1129, possession of
13 methamphetamine, third or subsequent offense.
14 2018-GS-44-1130, possession of a scheduled three
15 controlled substance, second offense.
16 2018-GS-44-1131, possession of a scheduled four
17 controlled substance, second offense.

18 Your Honor, he did plead guilty to those remaining
19 charges, other than the kidnapping to which he plead
20 under North Carolina v Alford.

21 Your Honor, we did work out a negotiated plea in
22 the case of ten years active prison to run
23 concurrently between the charges.

24 Your Honor, as to the possession of a scheduled
25 controlled substance those would be a negotiated time

1 served sentence. Your Honor, the defendant did agree
2 to a permanent restraining order which was part of the
3 negotiated plea. That would be in effect with no
4 expiration date Your Honor and then he also did sign
5 an order that would prohibit him from possessing
6 firearms or ammunition under state law for a period of
7 ten years from the date of release.

8 Your Honor, we are before the Court just for
9 purposes of sentencing today. This case was first up
10 for trial this week but the plea was heard by the
11 Honorable Judge McKinnon in York County to seal this
12 agreement by the State and the defendant. We did
13 defer sentencing at the defendant's request so that
14 his parents could be present. And Your Honor, I would
15 have a few other things to place on the record at the
16 appropriate time.

17 THE COURT: So the negotiated sentence is time
18 served for -- well, let's see. It's ten years for the
19 kidnapping?

20 MS. GILMER: Yes, sir.

21 THE COURT: Ten years for domestic violence, first
22 degree, criminal possession of methamphetamine, third
23 or subsequent. Okay. Ten years for that. And then
24 time served for the possession of a scheduled three
25 controlled substance, and time served for possession

1 of a scheduled four controlled substance.

2 MS. GILMER: That is correct, Your Honor.

3 THE COURT: All right, and what is the time
4 served?

5 MR. DELANEY: He has been incarcerated on these
6 charges since August. Well, let me --

7 MS. GILMER: I have 540 days.

8 MR. DELANEY: August 21, 2017, 540 days, Your
9 Honor.

10 THE COURT: So both of these carries a maximum of
11 a year, so it's negotiated one year sentence on those,
12 correct, for time served?

13 MS. GILMER: Yes, Your Honor

14 MR. DELANEY: Yes, judge.

15 THE COURT: You said 540 days?

16 MR. DELANEY: Yes, Your Honor.

17 THE COURT: All right. Mr. Delaney, you represent
18 William Shane Vanderford on the charge of kidnapping;
19 domestic violation, first degree; possession of
20 methamphetamine third or subsequent offense;
21 possession of a scheduled three controlled substance
22 and possession of a scheduled four controlled
23 substance?

24 MR. DELANEY: Yes, sir, I do.

25 THE COURT: And you agree that the guilty pleas

1 has already been entered on these charges?

2 MR. DELANEY: That's correct, judge.

3 THE COURT: All right. And do you agree with the
4 negotiated sentence as related to the Court by the
5 solicitor?

6 MR. DELANEY: Yes, Your Honor.

7 THE COURT: All right. Anything in mitigation?

8 MR. DELANEY: Judge, just briefly. I know I
9 already said 540 days credit. Shane's parents are
10 here today. They wanted to be here. Shane wanted
11 them here so they are here today for support.

12 Getting to this point, judge, as you heard this
13 case was in trial mode. Possibly either going as
14 early this week. If it didn't go this week it would
15 be some time in the near future.

16 The kidnapping charge was the charge that was I
17 guess in debate here. As you heard, Mr. Vanderford
18 entered an Alford plea to that charge for ten years.
19 Reviewing this case with Mr. Vanderford if he went to
20 trial there would have been a risk if he was convicted
21 to get something in my opinion much more. I think he
22 made the right decision in this case. We are just
23 asking Your Honor to go along and impose the sentence
24 here today.

25 THE COURT: All right.

1 THE COURT: Mr. Vanderford, anything you want to
2 say?

3 THE DEFENDANT: Oh, yes, Your Honor. I would like
4 to say, you know, my parents always taught me if I did
5 something wrong be a man and stand up and say you done
6 it. I did assault Miss A.S. I did not kidnap
7 her. I felt like, you know, my rights during this
8 whole trial was violated. My due process rights. I
9 never received initial appearance. I never received a
10 preliminary hearing.

11 THE COURT: So do you want to withdraw your guilty
12 plea and go to trial on these charges? Is that what
13 you're saying?

14 THE DEFENDANT: No, sir, Your Honor. I really
15 want to have it on record, you know, that I feel this
16 way.

17 THE COURT: Okay.

18 THE DEFENDANT: I really do.

19 THE COURT: Well, you understand that another
20 judge accepted your guilty plea so your guilt or
21 innocence is not an issue before this Court. The only
22 issue before this Court is the sentence to be imposed.

23 THE DEFENDANT: Yeah, I understand that, Your
24 Honor. I just wanted it on Court record that I felt
25 that way.

1 THE COURT: All right. Anything else?

2 THE DEFENDANT: I would like to apologize to my
3 mom and dad for leaving them here to raise my kids
4 alone, to Miss A.S. for assaulting her. And
5 that's all Your Honor.

6 THE COURT: All right. Anybody else want to speak
7 on your behalf?

8 All right. You said the victim is not present.

9 MS. GILMER: She is not, Your Honor. I have been
10 in consistent contact with her during the pendency of
11 this case, Your Honor. She did have a medical
12 procedure last week. Our law enforcement victim
13 advocate spoke with her today. She was planning to be
14 present however she was not feeling well due to that
15 procedure and is not present in court. She was okay
16 with us going ahead for sentencing.

17 Your Honor, she and I did discuss this negotiated
18 plea. She is in agreement with it. She is asking the
19 Court to issue the permanent restraining order with no
20 expiration date, Your Honor.

21 THE COURT: Okay. And the paperwork that has been
22 handed up to me it looks like Judge McKinnon has
23 already issued a permanent restraining order. That's
24 his signature, February 1, 2019. I think that's
25 already been done.

1 MS. GILMER: Okay.

2 THE COURT: All right. What are the facts of this
3 case? What did he plead guilty to?

4 MS. GILMER: Your Honor, I was going to somewhat
5 condense them but if I could just read the same thing
6 at the plea hearing due to the statements made by the
7 defendant today.

8 Your Honor, this offenses did occur on August 21st
9 of 2017 here in Union County. There was an out
10 building on property where the victim and defendant
11 were living. It had been converted to a residential
12 area.

13 A family member of the victim called 911 and
14 reported to law enforcement that the victim came to
15 his residence with multiple injuries, telling him her
16 boyfriend, the defendant, had physically abused her
17 and had locked her inside their residence. Responding
18 officer made contact with the victim who was crying
19 and appeared fearful with visible injuries. The
20 victim was transported to Spartanburg Regional Medical
21 Center for medical treatment.

22 Your Honor, she reported that she was in bed
23 asleep at approximately 3:30 that morning when the
24 defendant began accusing her of infidelity and
25 striking her head. She reported the defendant slammed

1 her head into the wall and repeatedly pushed her
2 around the residence after pulling her from the bed.
3 The victim reported the defendant continued to
4 repeatedly strike her with his hands and dragged her
5 by her hair. The victim reported that the defendant
6 also struck her legs and head with a lead water pipe
7 and repeatedly threatened to kill her. The victim
8 reported she was able to run out of the residence but
9 the defendant dragged her back inside by her hair and
10 dead bolted her inside the residence and also took her
11 phone. She reported she was able to push out the air
12 conditioning unit to escape after the defendant left.

13 Your Honor, the victim did have multiple injuries.
14 She reported loss of consciousness. She had multiple
15 bruising to her legs, arms, chest, back and face. She
16 also had cuts to her feet, abrasions to her stomach
17 and mouth. CT scans did show a scalp hematoma to and
18 a deviation of her nasal septum. She also had a large
19 bald spot on her head. That corroborated her account
20 that she had been dragged by her hair.

21 Your Honor, the defendant was arrested at the
22 Union County Courthouse later that same day. That's
23 when the drug charges arose, Your Honor. In a vehicle
24 he drove there was Buprenorphine, Clonazepam and
25 Methamphetamine found in the vehicle.

1 Your Honor, law enforcement actually searched the
2 residence where the victim and the defendant lived
3 where she said that this happened. They actually
4 observed the AC unit removed from the window and there
5 was an external lock on the door on the outside of the
6 building.

7 Your Honor, there would have been two witnesses at
8 trial that the State anticipated would have testified.
9 They were courthouse personnel and on that day the
10 defendant was here at the courthouse. They overheard
11 him say that he needed to call his father to let his
12 girlfriend out.

13 THE COURT: All right, prior record.

14 MS. GILMER: Yes, Your Honor. He had -- let's
15 see -- since 2000 a grand larceny, unlawful use of
16 vehicle, a breaking into a motor vehicle in 2001.
17 2002 two counts of petty larceny, one count of
18 shoplifting. 2003 simple possession of marijuana and
19 driving under suspension. 2010 possession of meth or
20 crack, distribution meth. 2014, shoplifting, public
21 disorderly conduct. In 2017 assault and battery,
22 third degree and shoplifting third.

23 THE COURT: All right. Mr. Vanderford, you have
24 already plead guilty in front of Judge McKinnon. So
25 the sole purpose of the hearing hear today is for the

1 sentencing. There is a negotiated sentence which I
2 will I accept.

3 Sentence of the Court for kidnapping, domestic
4 violence in the first degree, and possession of
5 methamphetamine, is that you be confined to the State
6 Department of Corrections for one year.

7 On the charges of possession of a scheduled three,
8 controlled substance and possession of scheduled four
9 controlled substance, sentence of the Court is that
10 you be confined to the State Department of Corrections
11 for one year. You will receive credit for 540 days
12 served thus far. So for the possession of a scheduled
13 three controlled substance and possession of scheduled
14 four controlled substance that will just be a time
15 served sentence. All sentences will run concurrent.

16 MR. DELANEY: Thank you, Your Honor.

17 MS. GILMER: And Your Honor if we could just add
18 --

19 THE COURT: Yes, the kidnapping I put no sex
20 offense.

21 MS. GILMER: Thank you.

22 (END OF TRANSCRIPT)

23

24

25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 11th day of February, 2018.

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

March 14, 2019

s/AILEEN BUTLER

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

Taylor/UCSO

[Signature]

The State of South Carolina
County of Union

Defendant

COURT OF GENERAL SESSIONS

JULY 16 TERM, 2018

I
hereby appear in my own proper person and plead guilty to the within indictment or to

[Signature]

Defendant

Witness:
[Signature] C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

2017A4410100735

THE STATE

vs.

WILLIAM SHANE VANDERFORD

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

[Signature] 7-12-18

VERDICT

Indictment for

KIDNAPPING

SC Code: 16-03-910

CDR Code: 0095

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF UNION)

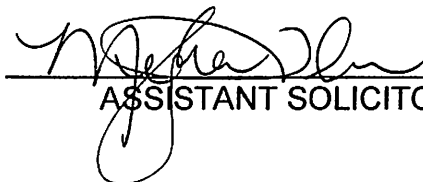
INDICTMENT

At a Court of General Sessions, convened on July 12, 2018, the Grand Jurors of Union County present upon their oath:

KIDNAPPING

That William Shane Vanderford did, in Union County on or about August 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, **A.S.**, without authority of law, in violation of Section 16-03-910, *The Code of Laws of South Carolina* (1976, as amended).

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



ASSISTANT SOLICITOR

WITNESSES

Taylor/UCSO *15d. 214. [Signature]*

ARREST WARRANT NUMBER

2017A4410100736

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: *[Signature]*

7-12-18

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018-GS-44-1128

The State of South Carolina

County of Union

COURT OF GENERAL SESSIONS

JULY 16 TERM, 2018

THE STATE
vs.

WILLIAM SHANE VANDERFORD

Indictment for

DOMESTIC VIOLENCE – 1ST DEGREE

SC Code: 16-25-20(B)
CDR Code: 3811

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

[Signature]
Defendant

Witness: *[Signature]* Ct spec
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF UNION)

INDICTMENT

At a Court of General Sessions, convened on July 12, 2018, the Grand Jurors of Union County present upon their oath:

DOMESTIC VIOLENCE – 1ST DEGREE

That William Shane Vanderford did, in Union County on or about August 21, 2017, cause physical harm or injury or offer or attempt to cause physical harm or injury to **A.S. [REDACTED]**, a household member, causing the victim to fear for her safety, to wit: by striking the victim with his hand(s) and/or pipe and/or striking the victim's head against a wall and/or grabbing and/or holding the victim about her body and/or hair and/or strangling the victim and/or dragging the victim and/or threatening the victim; and

- (1) great bodily injury did result or the act was accomplished by means likely to result in great bodily injury; or
- (2) in the process of the defendant committing domestic violence in the second degree, one of the following also resulted:
 - (a) the offense was committed during the commission of a robbery, burglary, kidnapping, or theft;
 - (b) the offense was committed by impeding the victim's breathing or air flow; or
 - (c) the offense was committed using physical force or the threatened use of force against the victim to block the victim's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider;

in violation of Section 16-25-20, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976) as amended.

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


 ASSISTANT SOLICITOR

WITNESSES

Gilstrap/UCSO

ARREST WARRANT NUMBER

2017A4410100737

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *[Signature]* 7-12-18

VERDICT

Foreperson of Petit Jury

Date:

3

DOCKET NO. 2018-GS-44-1129

The State of South Carolina

County of Union

COURT OF GENERAL SESSIONS

JULY 16 TERM, 2018

THE STATE

vs.

WILLIAM SHANE VANDERFORD

Indictment for

POSSESSION OF METHAMPHETAMINE

SC Code: 44-53-375(A)

CDR Code: 3016

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

[Signature] at specialist
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

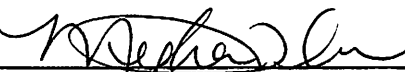
INDICTMENT

At a Court of General Sessions, convened on July 12, 2018, the Grand Jurors of Union County present upon their oath:

POSSESSION OF METHAMPHETAMINE

That William Shane Vanderford did, in Union County on or about August 21, 2017, willfully, knowingly, and unlawfully possess a quantity of Methamphetamine, a controlled substance under provisions of Section 44-53-110, et.seq, *The Code of Laws of South Carolina* (1976, as amended), such possession not having been authorized by law, in violation of Section 44-53-375(A), *The Code of Laws of South Carolina* (1976, as amended).

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



ASSISTANT SOLICITOR

WITNESSES

Gilstrap/UCSO

ARREST WARRANT NUMBER

Direct Indictment (2017A4410100738)

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 7-12-18

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-44-1130

The State of South Carolina

County of Union

COURT OF GENERAL SESSIONS

JULY 16 TERM, 2018

THE STATE

vs.

WILLIAM SHANE VANDERFORD

Indictment for

**POSSESSION OF SCHEDULE III
CONTROLLED SUBSTANCE**

SC Code: 44-53-370(D)(2)

CDR Code: 0180

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

INDICTMENT

At a Court of General Sessions, convened on July 12, 2018, the Grand Jurors of Union County present upon their oath:

POSSESSION OF SCHEDULE III CONTROLLED SUBSTANCE

That William Shane Vanderford did, in Union County on or about August 21, 2017, knowingly or intentionally possess a quantity of Buprenorphine, a Schedule III controlled substance, not having valid prescription for said controlled substance, in violation of Section 44-53-370(D)(2), *The Code of Laws of South Carolina* (1976, as amended).

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


ASSISTANT SOLICITOR

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

Gilstrap/UCSO

The State of South Carolina

County of Union

Defendant

COURT OF GENERAL SESSIONS

JULY 16 TERM, 2018

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

Direct Indictment (2017A4410100739)

THE STATE

Defendant

vs.

WILLIAM SHANE VANDERFORD

Witness:
J. Benjamin J. Specialist
C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 7-12-18

VERDICT

Indictment for

**POSSESSION OF SCHEDULE IV
CONTROLLED SUBSTANCE**

SC Code: 44-53-370

CDR Code: 0180

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

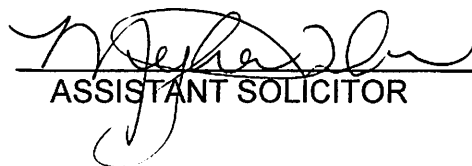
INDICTMENT

At a Court of General Sessions, convened on July 12, 2018, the Grand Jurors of Union County present upon their oath:

POSSESSION OF SCHEDULE IV CONTROLLED SUBSTANCE

That William Shane Vanderford did, in Union County on or about August 21, 2017, knowingly or intentionally possess a quantity of Clonazepam, a Schedule IV controlled substance, not having a valid prescription for said controlled substance, in violation of Section 44-53-370, *The Code of Laws of South Carolina* (1976, as amended).

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


ASSISTANT SOLICITOR

COUNTY OF UNION

STATE VS.

WILLIAM SHANE VANDERFORD

AKA:

Race: White Sex: M Age: 42

DOB: SS#:

Address: McCormick Correctional

City, State, Zip:

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Kidnapping (Up to 30 years)

In violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 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:

Meghan M. Gilmer, Assistant Solicitor SC Bar # 81157

Defendant

Attorney for Defendant SC Bar # 72550

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X 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: 2/11/2019☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on 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 ☐☐ 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) \$ \$ 3.75

TOTAL \$ 123.75

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: Sentence deferred to 2/4/19

- no sex offense

Sentence: 18 months Probation

Code: 2148

Date: Feb. 11, 2019

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees

Presiding Judge:

Judge Code: 2761

Sentence Date: 2/1/19 plea

Clerk of Court/Deputy Clerk: Amy Gibson

Court Reporter: Dileen Butler

SCCA/217 (04/2018)

COUNTY OF UNION

STATE VS.

WILLIAM SHANE VANDERFORD

AKA: _____
 Race: White Sex: M Age: 42
 DOB: [REDACTED] SS#: [REDACTED]
 Address: McCormick Correctional
 City, State, Zip: _____
 DL# [REDACTED] SID# SC00925184

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Domestic Violence - 1st Degree (Up to 10 years)In violation of § 16-25-20 of the S.C. Code of Laws, bearing CDR Code # 3811

INDICTMENT/CASE#: 2018-GS-44-1128
 A/W: 2017A4410100736
 Date of Offense: 08/21/2017
 S.C. Code §: 16-25-0020(B)
 CDR Code #: 3811

SENTENCE SHEET

Negotiated: 10 years active prison + Permanent Restraining Order

☐ CONVICTED OF or ☒ PLEADS

☐ 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:

[Signature] 81157
 Meghan M. Galmer, Assistant Solicitor SC Bar #

[Signature]
 Defendant

[Signature] 72550
 Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
 and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment
 of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X
 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 2/11/19 plea 2/11/2019

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOP.

☐ The Defendant is to be placed on 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 ☐

☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine: _____ \$ _____

Substance Abuse Counseling ☐

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

Random Drug/Alcohol Testing ☐

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

Fine may be pd. in equal consecutive weekly/monthly

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

pmts. of \$ _____ Beginning _____

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

\$ _____ Paid to Public Defender Fund

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

Other: sentence deferred to 2/4/19

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

Sentence: Muryant Culberson

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

Code: 2148
 Date: Feb. 11, 2019

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

☐ Appointed PD or appointed other counsel,

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

Proviso requires \$500 be paid to Clerk

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

during probation and shall be collected before

3% to County (if paid in installments) \$ 3.75

any other fees [Signature]

TOTAL \$ 128.75

Presiding Judge: [Signature]

Judge Code: 2201

Sentence Date: 2/11/19

Clerk of Court/Deputy Clerk: Amy Gibson

Court Reporter: Aileen Butler

SCCA/217 (04/2018)

COUNTY OF UNION
STATE VS.

WILLIAM SHANE VANDERFORD

AKA: _____
Race: White Sex: M Age: 42
DOB: _____ SS#: _____
Address: McCombs Correctional
City, State, Zip: _____
DL# _____ SID# _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Possession of Methamphetamine - 3rd or Subsequent Offense (Up to 10 years or up to \$12,500)
In violation of § 44-53-375(A) of the S.C. Code of Laws, bearing CDR Code # 3016☒ 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:

Meghan M. Gilmer 81157
Meghan M. Gilmer, Assistant Solicitor SC Bar #William Shane Vanderford
DefendantEric D. Delaney 72550
Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X
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: 2/11/2019☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on 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 ☐☐ 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 \$ 150.00

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

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

3% to County (if paid in installments) \$ 8.25TOTAL \$ 283.25

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: sentence deferred to 2/11/19Sentence: Mijanant/CulbertsonCode: 2148Date: Feb. 11, 2019☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees

Presiding Judge: William GibsonJudge Code: 2767Sentence Date: 2/11/19Clerk of Court/Deputy Clerk: Ann Gibson
Court Reporter: Aileen Butler
SCCA/217 (04/2018)William Gibson

COUNTY OF UNION

STATE VS.

WILLIAM SHANE VANDERFORD

AKA: _____
 Race: White Sex: M Age: 42
 DOB: [REDACTED] SS#: [REDACTED]
 Address: MC Cormick Connection
 City, State, Zip: _____
 DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Possession of Schedule III Controlled Substance (up to 1 year w/ or up to \$2,000)
 In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0180 (2nd Offense)

☒ 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,

☐ CONVICTED OF or ☒ PLEADS

The plea is: ☐ Without Negotiations or Recommendation,

☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

☒ Negotiated Sentence,

☐ Recommendation by the State.

ATTEST:

Meghan M. Gilmer 81157
 Meghan M. Gilmer, Assistant Solicitor SC Bar #

[Signature]
 Defendant

[Signature] 72550
 Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
 and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment
 of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X
 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: 2/11/2019

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 590 days

☐ 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 ☐

☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine: _____ \$ _____

Substance Abuse Counseling ☐

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

Random Drug/Alcohol Testing ☐

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

Fine may be pd. in equal consecutive weekly/monthly

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

pmts. of \$ _____ Beginning _____

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

\$ _____ Paid to Public Defender Fund

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

Other: sentence deferred to 2/11/19

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

-Time Served

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

Sentence: Mmjanant/Culberson

§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

code: 2148

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

Date: Feb. 11, 2019
☐ Appointed PD or appointed other counsel.
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees

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

3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/Deputy Clerk: Ann Gibson

Court Reporter: Aileen Cantler

SCCA/217 (04/2018)

Presiding Judge: [Signature]

Judge Code: 276

Sentence Date: 2/11/19

COUNTY OF UNION

STATE VS.

WILLIAM SHANE VANDERFORD

AKA:

Race: White

Sex: M

Age: 42

DOB: [REDACTED]

SS#: [REDACTED]

Address: McCormick Correctional

City, State, Zip:

DL# [REDACTED]

SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or

☒ PLEADS

TO: Possession of Schedule IV Controlled Substance (up to 1 year w/ or up to 12,000) (2nd Offense)
In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0180

☒ 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:

Meghan M. Gilmer, Assistant Solicitor SC Bar # 81157

Defendant

Attorney for Defendant SC Bar # 72550

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X 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: 2/11/2019
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 540 days
☐ 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 ☐

☐ 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 \$ 150.00

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

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

3% to County (if paid in installments) \$ \$ 8.25

TOTAL \$ 283.25

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: sentence deferred to 2/11/19

-Time Served

Sentence: (Minnant/Culbertson)

Code: 2148

Date: Feb. 11, 2019 MKC

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees

Presiding Judge:

Judge Code: 2761

Sentence Date: 2/11/19

Clerk of Court/Deputy Clerk: Amy G. Gibson

Court Reporter: Aileen Butler

SCCA/217 (04/2018)

men

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Union)William Shane Venderford)2019-CP-44-00200)

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

v.)

APPLICATION FOR)

State of South Carolina)

POST-CONVICTION RELIEF)

FILED FOR RECORD
2019 JUN 24 AM 11 54
CLERK OF COURT
UNION, SC

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
386 Redemption Way, McCormick S.C. 29899
2. Name and location of Court which imposed sentence Union County
Court of General Session
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-44-1127, 2018-GS-44-1128,
 - (b) 2018-GS-44-1129, 2018-GS-44-1130

- (c) 2018-65-44-1131
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 11, 2019,
- (b) Terms of Sentence One year in department
- (c) of Correction with 540 days Credit - continue on Back
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty plea of guilty
- (b) ☐ after a plea of not guilty _____
- (c) ☐ after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Attorney Filed a direct Appeal "Ineffective Assist
of Counsel" → continue on Back
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. Appellate Case No. 2019-000311
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 18, 2019
- 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) _____

Question (5) All Sentences Run Concurrent

51

Question (7)

Council was Ineffective Assit of Council

Because he should has filed for Reconsider
of Sentence or had Clerk of Court for
Sentencing Sheets

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

(a) The Sentencing Sheets are Ambiguous to
 (b) Court Transcripts, Ineffective Assst of Counsel
 (c) Enclosed are Sentencing Sheets Exhibit(B) & Court Transcripts Exhibit(A)

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

(a) Sentencing Sheets Have 10 years on them "Enclosed"
 (b) Court transcripts Show the Judge Sentenced
 (c) me to One year Not 10 Also Enclosed See page →
Cont
on
Back

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

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

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. _____

Question 11 "continue See page 11 line 2 through 14

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Clearly Shows I was Sentence to One year department
of Corrections on 3 Charges and One year with time
Served on 2 Charges and 540 days Credit ~~on~~ on all
charges and All charges to Run Concurrent

(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?

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 "Erik Delaney, Esquire"
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
- _____
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. Erik Delaney, Esquire
Public Defender Office
- ii. Union County
P.O. Box 1, Union, South Carolina 29379
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Represented me on 2-1-2019 in York County
I plead guilty to 4 charges and N.C. vs
- ii. Alord on another and He represented me
during my Sentencing Hearing on Feb, 16, 2019
- iii. in Union County He was Ineffective Assit of
Council during Entire Case

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

To Have my Sentencing Corrected to Match
the Court transcripts and the Orally pronouncement
of the Judge's sentence

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

yes

STATE OF SOUTH CAROLINA)

County of Union)

VERIFICATION

I, William Shane Vandertord, 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.

William Shane Vandertord

SWORN to and subscribed before me this 19
 day of June, 2019.

Becky L. Wiseman (L.S.)
 Notary Public

My Commission Expires: 9.30.26

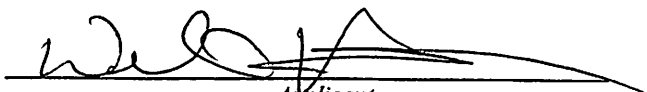
FILED FOR RECORD
 2019 JUN 24 AM 11 55
 CLERK OF COURT
 UNION, SC

2019-CP-44- 200

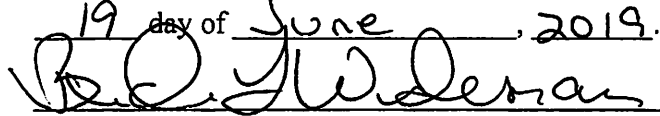
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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

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


Applicant

SWORN or affirmed to and subscribed before me this

19 day of June, 2019.

Notary Public

My Commission Expires: 9.30.26

FILED FOR RECORD
2019 JUN 24 AM 11 55
CLERK OF COURT
UNION, SC

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF UNION)

SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2019-CP-44-00200

WILLIAM S. VANDERFORD, #344689)**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

Plaintiff's Attorney:

Rodney W. Richey, Bar No. _____

Address:

Post Office Box 10916

Greenville, South Carolina 29603-0916

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Brianna L. Schill, Bar No. _____

Address:

Post Office Box 11549

Columbia, South Carolina 29211

Phone: _____ Fax: _____

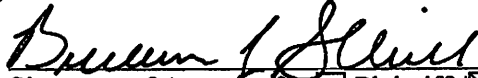
E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)☒ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)☒ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)**SECTION I: Hearing Information**

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO**SECTION II: Motion/Order Type**☐ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

September 9, 2019

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT: \$ _____☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ NA☐ CONTESTED - AMOUNT DUE: \$ _____FILED FOR RECORD
2019 SEP 11 AM 11:10
CLERK OF COURT
UNION, SC

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

William Shane Vanderford,
SCDC #344689)

Case No.: 2019-CP-44-00200

Applicant,)

v.)

RETURN AND MOTION TO DISMISS

State of South Carolina,)

Respondent.)

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on June 24, 2019, would respectfully show this Court:

I. Procedural History

William Shane Vanderford (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Union County Clerk of Court. In July 2018, the Union County Grand Jury indicted Applicant for possession of schedule IV controlled substance (2018-GS-44-1131), possession of schedule III controlled substance (2018-GS-44-1130), possession of methamphetamine, third or subsequent offense (2018-GS-44-1129), domestic violence, first degree (2018-GS-44-1128), and kidnapping (2018-GS-44-1127). Assistant Public Defender Erik Delaney of the Sixteenth Circuit Public Defender's Office represented Applicant. Assistant Solicitor Meghan Gilmer of the Sixteenth Circuit Solicitor's Office prosecuted the case. On February 1, 2018, Applicant pleaded guilty¹ before The Honorable William A. McKinnon. On

¹ Applicant pleaded guilty to the kidnapping charge pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), and pleaded guilty as indicted to the remaining charges.

February 11, 2018, Applicant was sentenced by The Honorable Benjamin H. Culbertson². Judge Culbertson sentenced Applicant to the following: concurrent sentences of ten years for kidnapping, first-degree domestic violence, and criminal possession of methamphetamine, third or subsequent; one-year with credit for time served for possession of schedule III controlled substance; and one-year with credit for time served for possession of schedule IV controlled substance.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(b)(iv) of the South Carolina Appellate Court Rules. The remittitur was issued June 4, 2019.

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

II. Factual Background

The factual summary was provided at Applicant's sentencing hearing as follows:

"Your Honor, this offense did occur on August 21st of 2017 here in Union County. There was an out building on property where the victim and Applicant were living. It had been converted to a residential area.

A family member of the victim called 911 and reported to law enforcement that the victim came to his residence with multiple injuries, telling him her boyfriend, the [Applicant], had physically abused her and had locked her inside their residence. Responding officer made contact with the victim who was crying and appeared fearful with visible injuries. The victim was transported to Spartanburg Regional Medical center for medical treatment.

Your Honor, she reported that she was in bed asleep at approximately 3:30 that morning when [Applicant] began accusing her of infidelity and striking her head. She reported he [Applicant] slammed her head into the wall and repeatedly pushed her around the residence after

² The Solicitor's Office consented to Applicant's request that sentencing be deferred so that Applicant's family could be present for Applicant's sentencing.

pulling her from the bed. The victim reported [Applicant] continued to repeatedly strike her with his hands and dragged her by her hair. The victim reported that [Applicant] also struck her legs and head with a lead water pipe and repeatedly threatened to kill her. The victim reported she was able to run out of the residence but [Applicant] dragged her back inside by her hair and dead bolted her inside the residence and also took her phone. She reported she was able to push out the air conditioning unit to escape after [Applicant] left.

Your Honor, the victim did have multiple injuries. She reported loss of consciousness. She had multiple bruising to her legs, arms, chest, back and face. She also had cuts to her feet, abrasions to her stomach and mouth. CT scan did show a scalp hematoma to and a deviation of her nasal septum. She also had a large bald spot on her head. That corroborated her account that she has been dragged by her hair.”

(Sent. Tr. 9-10).

III. Allegations Raised

Applicant alleges he is being unlawfully confined for the following reasons:

(1) Ineffective Assistance of Counsel

- a. Counsel was ineffective because “he should have filed [a motion to] reconsider sentence or had the Clerk of Court fix sentencing sheets.”

As relief, Applicant requests “to have [his] sentencing corrected to match the Court’s transcripts and the oral pronouncement of the Judge’s sentence.”

IV. Response to Allegation of Ineffective Assistance of Counsel

Applicant alleges ineffective assistance of counsel for failure to file a motion to reconsider his sentence and for failing to make the clerk of court correct Applicant’s sentencing sheets. Respondent submits these allegations are without merit and directly refuted by the record.

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, he or she would not have pleaded guilty, but would have insisted on going to trial. Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

Respondent submits this argument is without merit and directly refuted by the record. Applicant's plea hearing and sentencing hearing occurred on two different dates. On February 1, 2019, Applicant pleaded guilty before the Honorable William McKinnon. The guilty plea transcript indicates Applicant bargained for concurrent ten-year sentences for kidnapping (2018-GS-44-1127), possession of methamphetamine (2018-GS-44-1129), and first-degree domestic violence (2018-GS-44-1128). (GP Tr. 4, l. 1-3; GP Tr. 6, l. 18-23, GP Tr. 7, l.11). The guilty plea transcript also indicates Applicant bargained for a one-year time served sentence for possession of a schedule IV substance charge (2018-GS-44-1131), and a one-year time served sentence or possession of schedule III drug (2018-GS-44-1130). (GP Tr. 5-6).

Judge McKinnon verified with Applicant that these were negotiated sentences and asked Applicant whether he wanted the plea court to accept the negotiated plea, to which he replied, "Yes, Your Honor." (GP Tr. 7, l. 17-20). The plea court later asked Applicant, "understanding all that do you still want to go ahead and plead guilty today?" to which Applicant replied, "Yes, Your Honor." (GP Tr. 9, l. 1-3). The plea court restated on the record Plea Counsel and Assistant Solicitor Gilmer negotiated an overall ten-year active sentence. (GP Tr. 13, l. -11).

Applicant was sentenced before The Honorable Benjamin H. Culbertson on February 11, 2019. At Applicant's sentencing hearing, Assistant Solicitor Gilmer stated to the plea court that she and Plea Counsel negotiated a ten-year active sentence to run concurrently between the charges. (Sentencing Tr. 3, l. 21-23). Judge Culbertson restated Applicant's sentences later during the sentencing hearing as well, indicating that Applicant would be receiving an overall ten-year active sentence. (Sentencing Tr. 4, l. 21-25). While Applicant is correct that Judge Culbertson inadvertently stated Applicant would receive a one-year sentence for the kidnapping, domestic violence, and possession of methamphetamine charges, Judge Culbertson did so only after: (1) the correct terms had been explained to Applicant at his February 1 plea hearing; (2) Judge Culbertson correctly stated the terms of the plea to Applicant multiple times earlier during the sentencing hearing; and (3) Judge Culbertson accepted the plea, on the record, based on the correct ten-year imprisonment plea terms. (See Sentencing Tr. 3, l. 21-25; Tr. 11; Tr. 12, l. 3-6).

At no point during the colloquy portion of Applicant's sentencing hearing did anyone tell Applicant he would only receive a one-year sentence for his kidnapping, possession of methamphetamine, or domestic violence charges; Judge Culbertson only misspoke as to Applicant's sentence during his final statement of the sentences Applicant would receive. (Sentencing Tr. 12, l. 3-6). It is clear by the record Applicant bargained for ten-year concurrent

sentences for his domestic violence, possession of methamphetamine, and kidnapping charges, and that is precisely what he received and what his sentencing sheets reflect.

Based on the irrefutable record, Plea Counsel was not deficient because he had no legal basis to file a motion to reconsider Applicant's sentence or make the clerk of court "fix" Applicant's sentencing sheets. There is no professional obligation to file a motion for reconsideration of a sentence absent a specific legal reason to do so. The sentence imposed on Applicant was not an illegal sentence, nor was there any allegation the trial court acted with partiality, prejudice, oppression or corrupt motive when sentencing Applicant. See Shraiar v. U.S., 736 F.2d 817, 818 (1st Cir. 1984) ("No court has held that failure to file a [motion to reduce sentence] automatically constitutes ineffective assistance of counsel."). The record irrefutably shows Plea Counsel had no basis to file a motion to reconsider Applicant's sentence, and Applicant received the sentence he bargained for; an overall ten-year active sentence. Applicant's sentencing sheets correctly match the sentences Applicant bargained for; a ten-year concurrent sentence for kidnapping, first-degree domestic violence, and criminal possession of methamphetamine, third or subsequent; one-year with credit for time served for possession of schedule III controlled substance; and one-year with credit for time served for possession of schedule IV controlled substance. Accordingly, based on the irrefutable record of both proceedings, Applicant cannot show either Plea Counsel was deficient or Applicant was prejudiced by any failure to file a motion to reconsider his sentence or failure to have Applicant's sentencing sheets "fixed." Applicant was correctly advised that he would be serving an active ten-year sentence multiple times during two different hearings by two different judges. Accordingly, Respondent requests this Application be dismissed.

I. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to the Uniform Post-Conviction Relief Act³ and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)–(b), SCRCP. 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, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. See Rule 15(a), SCRCP.

II. Response to Any and All Other Allegations

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

³ S.C. Code Ann. §§ 17–27–10 to –160.

III. Request for a Motion Hearing

WHEREFORE, having made its return, Respondent request that a hearing for Respondent's motion to dismiss be held on Applicant's allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

September 9, 2019

STATE OF SOUTH CAROLINA)

COUNTY OF UNION)

IN THE COURT OF COMMON PLEAS

2019-CP-44-00200

WILLIAM S. VANDERFORD, #344689,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Rodney W. Richey, Esquire
Richey & Richey, PA
Post Office Box 10916
Greenville, South Carolina 29603-0916

DATED this the 9th day of September, 2019.



Caroline Collins, Administrative Coordinator
For Respondent

CLERK OF COURT
UNION, SC

2019 SEP 11 AM 11 40

FILED FOR RECORD

1 STATE OF SOUTH CAROLINA

2 -----x

3 WILLIAM S. VANDERFORD,

4 Petitioner,

5 Case No.

6 -against-

2019-CP-44-00200

7 STATE,

8 Respondent.

9 -----x

10 December 7, 2021

11 Held virtually

12

13 B E F O R E:

14 HONORABLE GRACE KNIE

15

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

17 RODNEY W. RICHEY

18 Attorney for the Petitioner

19

20 YASMEEN E. KLEIN

21 Attorney for the State

22

23 Aileen Butler

24 Official Court Reporter

25

1 THE COURT: Good afternoon, sir. Are you William
2 S. Vanderford.

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. Sir, I need to place you under
5 oath, okay?

6 THE DEFENDANT: Okay.

7 THE COURT: If you'll raise your right hand. Do
8 you swear or affirm that the testimony you give will
9 be the truth?

10 THE DEFENDANT: Yes, ma'am. Yes, Your Honor.

11 THE COURT: Thank you. You can put your hand
12 down. Sir, if you would state your full name.

13 THE DEFENDANT: William Shane Vanderford.

14 THE COURT: And Mr. Vanderford, sir, do you
15 understand this hearing today is being conducted via
16 video conference?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you agree with that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And normally you would be in the
21 courtroom with me. Okay. Right now I'm in my office
22 in Spartanburg at the courthouse and Mr. Richey is
23 present remotely from his office and counsel for the
24 State, Miss Klein, is present remotely from her
25 office.

1 Sir, do you waive being physically in my presence
2 for the hearing as well as the physical presence of
3 your legal counsel?

4 THE DEENDANT: You know I really asked for a
5 physical hearing, but it's been cancelled twice on me,
6 so I need to go ahead and get this done cause
7 technically I shouldn't even be here right now. So,
8 yes, I waive it. Yes, I guess.

9 THE COURT: Well, have you talked to your lawyer
10 about that?

11 THE DEFENDANT: Yes, I have. I believe
12 he discussed it with me and he said that it felt it
13 was best we did it via web. Yes, Your Honor.

14 THE COURT: And sir, if you desire to talk to Mr.
15 Richey you let me know and we can take a break so you
16 all can speak privately on the phone, okay?

17 THE DEFENDANT: Okay.

18 THE COURT: All right. And so now with that
19 behind us let me call upon Miss Klein to actually
20 announce the case before I hear from Mr. Richey.
21 Okay. And are there some other folks that are suppose
22 to be on here?

23 MS. KLEIN: Your Honor, I believe we have
24 representatives from our office from the State who are
25 taking notes and observing.

1 THE COURT: Okay, but no witnesses for either side
2 other than Mr. Vanderford?

3 MS. KLEIN: No, Your Honor. So today's hearing is
4 actually on the State's motion to dismiss. So we have
5 not gotten to that yet.

6 THE COURT: Okay. All right. I just wanted to
7 make sure. Sometimes I start talking and realize oh
8 my, the court reporter. So I just wanted to make sure
9 that everybody is on that needs to be and I know Miss
10 Butler is on.

11 Okay, Miss Klein.

12 MS. KLEIN: Thank you, Your Honor. May it please
13 the Court. This is the case of William S. Vanderford
14 versus state of South Carolina. Docket number
15 2019-CP-44-00200.

16 Applicant was in indicted in July of 2018 for
17 first degree domestic violence, kidnapping, possession
18 of methamphetamine; third or subsequent offense,
19 possession of scheduled four controlled substance and
20 possession of scheduled three controlled substance.
21 Applicant plead guilty pursuant to a negotiated
22 agreement with the State on February 1st, 2018 before
23 the Honorable William McKinnon. Applicant entered an
24 Alford plea to the charge of kidnapping and plead
25 guilty as indicted to the remaining charges.

1 Sentencing was deferred until February 11th of 2018
2 where he was sentenced by Judge Benjamin Culbertson
3 pursuant to the negotiated agreement.

4 Your Honor, can you hear me?

5 THE COURT: Miss Klein, can you give me just one
6 moment please.

7 MS. KLEIN: Absolutely.

8 THE COURT: Okay, now its back. Okay. So I'm
9 sorry. I lost the video and the audio about halfway
10 through your recitation. So would you mind going
11 back. I know that you said this was negotiated and I
12 heard the charges that Mr. Vanderford was charged with
13 and if you on could again recite the sentence that he
14 received.

15 MS. KLEIN: Yes, Your Honor. So applicant plead
16 guilty pursuant to that negotiated agreement on
17 February first of 2018. He plead pursuant to Alford
18 on the kidnapping charge and as indicted to the
19 remaining offenses. His sentencing was deferred until
20 February 11th of 2018 and he was sentenced by Judge
21 Benjamin Culbertson pursuant to that negotiated
22 agreement. The terms of that were that he would
23 receive ten years active on the charges of kidnapping,
24 first degree domestic violence and criminal possession
25 of Meth 3rd offense, which would run concurrently. He

1 would additionally receive one year with credit for
2 time served for both of his counts of possession of a
3 controlled substance. Applicant did appeal and the
4 appeal was dismissed for failure to provide a
5 sufficient explanation. Remittitur was issued June
6 4th of 2019. This PCR was filed June 24th of 2019.
7 The State submitted its return and motion to dismiss
8 on September 9th of 2019 requesting a hearing be set
9 on the State's motion to dismiss.

10 Applicant is present and he is represented by Mr.
11 Rodney Richey, and at this time, Your Honor, the State
12 is prepared to proceed on its motion.

13 THE COURT: Okay. Just a couple of things. So I
14 see and I think it was just a misstatement. He
15 actually plead on February the first of 2019 and was
16 sentenced on February the 11th of 2019. Not 2018.

17 MS. KLEIN: Yes, Your Honor, that was my mistake.
18 It is 2019.

19 THE COURT: Okay. And then the paperwork that I
20 have also includes a sentencing sheet for an earlier
21 charge, for shoplifting third or subsequent that he
22 plead to on September the 21st of 2017. Are you all
23 aware of that? He got four years negotiated.

24 MS. KLEIN: Your Honor, my understanding that was
25 not part of the allegations that are part of this PCR

1 application. Sometimes the clerk's records include
2 all of the sentencing sheets for any indictments that
3 have occurred but those aren't specifically related to
4 these charges.

5 THE COURT: Okay. I just wanted to make sure we
6 were on the same page. Okay. Thank you.

7 Mr. Richey, any opening remarks before I hear from
8 the State?

9 MR. RICHEY: That's the procedural history and I
10 will let you hear from the State and then I will rebut
11 what they say.

12 THE COURT: Okay, Miss Klein, I'm happy to hear
13 from you. Thank you.

14 MS. KLEIN: Thank you, Your Honor. As an initial
15 matter, Your Honor, I want to just confirm that you
16 received a copy of the State's return motion to
17 dismiss as well as copies of both the guilty plea
18 transcript and the sentencing transcript for this
19 matter.

20 THE COURT: Yes, ma'am. Give me just one moment.
21 I have your return and motion to dismiss, along with
22 the application and I have the the transcript from
23 February 11th in Union with Megan Gilmer and Erik
24 Delaney. Bare with me just one moment. And I have a
25 transcript from February the first of 2019 before

1 Judge McKinnon.

2 MS. KLEIN: And so, Your Honor, with regard to the
3 State's motion to dismiss in applicant's PCR
4 application, the only plead allegation that was
5 provided was a claim of ineffective assistance of
6 counsel for failure to file a motion to reconsider or
7 inform the Clerk of Court that the sentencing sheets
8 needed to be fixed because applicant alleges that he
9 was actually sentenced to one year and not ten years
10 for the three felony charges which were just listed in
11 his procedural history.

12 The State has moved to dismiss this allegation
13 because the applicant has failed to present any
14 genuine issue of material fact. The records in this
15 matter are dispositive as to what the negotiated
16 sentence actually was and in the State's return the
17 sentencing transcript as well as the guilty plea
18 transcript has cited several times to establish how
19 that ten-year negotiation was put on the record.

20 Your Honor, I can can bring your attention to
21 several pages of the transcript. I think particularly
22 the guilty plea transcript page six. The plea Court
23 goes through those sentences with applicant and says
24 do you understand that you are receiving a ten-year
25 active sentence on his charges for first degree

1 domestic violence, for the kidnapping which was later
2 done under Alford, and for the possession of meth
3 third or subsequent. At no point was there a
4 discussion about how the negotiation was for one-year
5 for those charges to be served concurrently. The
6 transcript is extremely clear that the negotiation was
7 for ten years. Applicant acknowledged on the record
8 that is what the negotiated terms were. The only time
9 that there is any confusion at all with regards to
10 what applicant was sentenced to is at the very, very
11 end of the sentencing transcript before Judge
12 Culbertson -- and I believe that's on page 12 of the
13 sentencing transcript -- and before Judge Culbertson
14 gives his sentence he says, you know, I accept the
15 negotiated sentence, which as I stated has been said
16 very clearly in the record as being that ten-year
17 active sentence. And then Judge Culbertson made a
18 misstatement that it was one year.

19 Your Honor, the State would argue that the one
20 year that's not what the intent was for him to be
21 sentenced to. The negotiation was for ten years. It
22 was put on the record that was for ten years. The
23 sentencing sheets themselves reflect that it was a
24 ten-year active negotiated sentence and applicant
25 signed those sentencing sheets. There's not a

1 question of material fact. There's nothing that can
2 be alleged that there's a dispute over with which to
3 move forward on a evidentiary hearing. And moreover,
4 Your Honor, as plead, I believe applicant's request
5 for relief is just to have those sentences changed and
6 I'm not sure how familiar you are with the PCR
7 statute, but essentially he has failed to raise a
8 claim that's cognizable for relief under the PCR act.
9 So specifically section 1727 20(b) of the PCR act
10 which outlines the six various grounds that generally
11 can construe causes of action for PCR. (B) explicitly
12 excludes discussing direct review of the sentence. So
13 sentence reduction and sentence modification is not
14 cognizable as a claim for relief under PCR.

15 So, Your Honor, for those grounds the State has
16 moved to dispense because applicant has failed to
17 state a genuine issue of material fact and he's also
18 failed to provide cognizable grounds for relief and we
19 would respectfully request that you dismiss and deny
20 this application.

21 THE COURT: Okay. So, Mr. Richey, I'm happy to
22 hear from you, but first, do you agree that that is
23 the only issue that has been raised by the applicant?

24 MR. RICHEY: That's the issue that's been raised,
25 Your Honor.

1 THE COURT: Okay. All right. Thank you. I'm
2 happy to hear from you.

3 MR. RICHEY: Thank you, Your Honor. May it please
4 the Court.

5 Your Honor, in this case I think it's clear from
6 the transcript, page 12, that the judge sentenced him
7 to one year on these charges and the applicant at that
8 time as he put in his application and is in the
9 State's return, he asked the lawyer to go back and
10 have the Court clarify the sentence because he's
11 sitting in the courtroom and he hears this one year
12 sentence and he said his counsel was ineffective by
13 not taking steps to clarify the sentence. And Your
14 Honor, I believe that ineffective assistance of
15 counsel, clients (sic) has to discuss the sentence
16 with his client and if the client requests -- as he
17 put in his application, hey, the judge said one year.
18 File a written motion to reconsider the sentence and
19 clarify. And Your Honor, as to the issue in this
20 case, I would cite a case of Boan versus State. It's
21 a PCR case where in fact it was an issue of the
22 judge's oral pronunciation of the sentence and the
23 actual sentence and the Court says in here it talks
24 about the oral pronunciation of the sentence is in
25 front of the defendant and if that sentence is changed

1 from the oral sentence, then it violates his due
2 process rights because he has a right to be present at
3 the sentencing. So once the Court does an oral
4 presentation of the sentence and then in this case a
5 different sentence, that this case talks about that
6 oral sentence controls. So, there is an issue of
7 material fact here whether counsel should have to
8 clear it up because under this Boan versus State, the
9 oral pronunciation would take precedence because it's
10 done within the presence of the defendant. So, Your
11 Honor, in terms of the motion to dismiss, the motion
12 to dismiss is done on the face of it, Your Honor. I
13 think there's a material issue here. The issue is
14 whether the client -- whether counsel should have
15 cleared this up in front of the judge and if he didn't
16 then under the State versus Boan, does the one year
17 control because that's the pronunciation of the Court.
18 And that cite of State versus Boan is 388 S.C. 272.

19 210

20 THE COURT: Okay. Anything else from the State?

21 MS. KLEIN: Yes, Your Honor, just briefly. With
22 regards to whether or not counsel should have
23 clarified there being a sentence, the record is clear
24 that the applicant was present at both the guilty plea
25 and the sentencing proceedings where he was told and

1 he agreed with the Court multiple times that the
2 negotiated sentence was for ten years. There was not
3 a question of whether the sentence was going to
4 deviate from that negotiation. And at the very
5 beginning of the sentencing hearing since Judge
6 Culbertson was not the judge who took the original
7 guilty plea he wanted to clarify on the record and
8 make sure that he understood the the terms of the
9 negotiation and so he is in discussion with the
10 parties and I believe it begins on page four of the
11 record where he says the negotiated sentence is ten
12 years for kidnapping. He continues to say ten years
13 for domestic violation, first degree, criminal
14 possession of methamphetamine, third or subsequent --
15 okay, ten years for that. So it's continued
16 throughout the record that even the judge's
17 understanding is the negotiated sentence was for ten
18 years active to run concurrent on those three charges.
19 And before he gives his oral pronouncement he says
20 expressly, that there is a negotiated sentence which I
21 will accept. So we all know what the negotiated
22 sentence is. It's been placed on the record. Him
23 making a misstatement after the fact doesn't raise a
24 question of fact. And the attorney is clear on what
25 the negotiation was. The client should have been

1 clear on what the negotiation was and the client
2 signed the sentencing sheets which provide at the very
3 top in handwritten notation for those three offenses
4 that it was a negotiated sentence for ten years
5 active.

6 So, Your Honor, the State would submit that
7 there's not a question of material fact. I think it
8 was clear to every party what the negotiated sentence
9 was including the applicant in this matter and one
10 misstatement from a judge doesn't raise a question
11 when the record is otherwise crystal clear as to what
12 was going on in this case.

13 THE COURT: Okay.

14 THE DEFENDANT: Your Honor, may I address the
15 Court please.

16 THE COURT: Is that Mr. Vanderford?

17 THE DEFENDANT: Yes, Your Honor it is.

18 THE COURT: No, sir, I can't allow you to do that.
19 This is being conducted today on arguments of counsel.
20 We are not taking testimony as to the merits of the
21 PCR application. If I deny the motion to dismiss you
22 will then have an opportunity to testify later at A
23 different hearing. Okay.

24 THE DEFENDANT: Okay. Thank you, Your Honor.

25 THE COURT: And so -- all right. So, I reviewed

1 the transcript and I of course understand what was
2 actually said. I also have reviewed the sentencing
3 sheet and I see --

4 THE DEFENDANT: May I speak to my attorney real
5 quick, Your Honor. May I speak to him for a second
6 because I really think he needs to re-enforce the
7 issue of some more factual basis on what the judge
8 said in the court transcript on the -- during the plea
9 hearing.

10 THE COURT: Okay. Sir and I got both of those
11 transcripts right here.

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And so I really do want you to talk to
14 Mr. Richey if you want to.

15 MR. RICHEY: Judge, I was going to make one more
16 point. I think it might help Mr. Vanderford.

17 THE COURT: Okay.

18 MR. RICHEY: One more point I wanted to make on
19 that if I could?

20 THE COURT: Yes, sir.

21 MR. RICHEY: Okay. Judge, I think in this -- in
22 this Boan versus State, I want to read to the Court in
23 this case it, "Accordingly in a situation such, as the
24 one on appeal, due process requires the judge's oral
25 pronunciation controls over a conflicting written

1 sentencing order.

2 So, Judge, it's my position that case is pretty
3 firm. Now, counsel for the State said, hey, the judge
4 misspoke, this and that. I think the applicant
5 requested that the counsel get it straight. Now, the
6 State can allege it misspoke and all this, but they
7 can't get by the law in this case. They can not say
8 that when the Court said that the oral pronunciations
9 controls they can't get by that by simply saying the
10 judge made a mistake because unfortunately when judges
11 speak it means something. It means something, and
12 that's why we have these cases. And applicant --
13 that's the thing that the hearing goes -- the guilty
14 plea goes on, the judge says a year. He says, what's
15 going on. And to ask counsel to clarify that and to
16 go in front of the judge and have that clarified, I
17 think that -- that's more than an issue of material
18 fact and I think it's consistent with the case law.
19 It's consistent with it. And so for the State to say
20 the judge misspoke and -- you know, when Judge's speak
21 it means something and that's why we have this case
22 law to clarify it.

23 THE COURT: Okay. Anything else from the State?

24 MS. KLEIN: Your Honor, I'm not sure if you also
25 received a copy of this in the clerk's records. Did

1 you receive a copy of the Notice of Appeal from this
2 case?

3 THE COURT: One second. I know you all are trying
4 to conserve paper, but it drives me crazy. I'm
5 looking front and back but I do appreciate a paper
6 copy. Bear with me just one moment, okay.

7 I have a copy of the remitter.

8 MS. KLEIN: I apologize, Your Honor, it may have
9 been something that was excluded by virtue of trying
10 not to send too much paperwork.

11 I would just note that the Notice of Appeal was
12 filed by Erik Delaney who was applicant's plea counsel
13 on February 14th of 2019. And that document includes
14 and lists all the offenses and the charges that
15 applicant plead to and it expressly shows for the
16 charges of kidnapping, domestic violence; first degree
17 and possession of methamphetamine third or subsequent
18 offense, ten years for each of those charges. So with
19 regards to the attorney's clarification, I think it
20 was pretty clear to everyone what those charges were
21 and it was included. And moreover, Your Honor, just
22 again, the requested relief in this case is not
23 cognizable for PCR. The allegations and the reason
24 why applicant is here today is to have the sentencing
25 sheets changed to what he believes he should have

1 gotten as a sentence.

2 Sentence reduction modification are not cognizable
3 under PCR. PCR does not get involved in things that
4 are not collateral attacks to the validity of a
5 conviction. And so, Your Honor, we would just again
6 request that this case be dismissed for failure to
7 state a claim for relief under the PCR act.

8 THE COURT: Okay. So first of all, I understand
9 that Mr. Vanderford plead guilty under North Carolina
10 versus Alford to five separate offenses and he
11 received ten years on kidnapping and DV first,
12 concurrent, with credit for 540 days and then -- or
13 the negotiations were that he was to receive ten years
14 on kidnapping, DV first, possession of meth, third or
15 subsequent, right? And then one year for possession
16 of a scheduled three and four controlled substance.
17 One year concurrent. Then he got time served for
18 that. Okay. And so understanding that, I've read the
19 transcript. I read what was said in the sentence.
20 You know, okay, so I think I understand the
21 negotiations and I understand what was said and there
22 was no reconsideration motion filed, correct?

23 MR. RILEY: Yes, Your Honor.

24 MS. KLEIN: Not to my knowledge, Your Honor.

25 THE COURT: Okay. And so, Mr. Richey is it Mr.

1 Vanderford's position there was no motion for recon
2 filed.

3 MR. RICHEY: There was not one filed.

4 THE COURT: Okay. Okay. Anything else?

5 MS. KLEIN: No, Your Honor.

6 MR. VANDERFORD: I would really like --

7 MR. RICHEY: Your Honor --

8 MR. VANDERFORD: I would like to talk to Mr.

9 Richey about this.

10 THE COURT: One at time please.

11 MR. RICHEY: Hold on Mr. Vanderford.

12 Your Honor, if the State alleged that there's no
13 comparable relief, that's quite not accurate under
14 Boan versus State. The Court of Appeals have said
15 that the case was remanded back to the lower court for
16 resentencing. So, that's the relief that the case law
17 gives us. So to say there is no comparable relief,
18 that's not consistent with the case law.

19 THE COURT: Okay. And so -- and again, Mr.
20 Vanderford, right now, sir, I just want you to
21 understand one thing. This motion that is before me
22 is before me to determine if you should be allowed to
23 go forward with your post conviction relief
24 application. Okay. It's not a ruling on whether or
25 not you would ultimately be granted the right to a

1 resentencing or a trial on these charges.

2 THE DEFENDANT: Yes, Your Honor. I understand
3 that and the only thing I was wanting to point out --

4 THE COURT: Okay. Wait. Wait. Wait. I am going
5 to have Mr. Richey call you. Okay. Is there someone
6 in the room with you that can give us a phone number.

7 THE DEFENDANT: Miss Norman. Miss Norman.

8 THE COURT: I'm assuming there is somebody close
9 by.

10 THE DEFENDANT: She is coming. Yes, ma'am. Thank
11 you, Your Honor.

12 THE COURT: All right. So we will take a few
13 minutes. Mr. Richey apparently someone is going to
14 come on and give you a phone number to call and then
15 we will reconvene for anything -- only anything new
16 that Mr. Vanderford feels that you should talk to us
17 about or put on the record and then I'll give Miss
18 Klein an opportunity to to respond. Okay.

19 (Whereupon, there was a brief recess.)

20 THE COURT: Mr. Richey, did you and your client
21 have an opportunity to speak privately.

22 MR. RICHEY: Yes, ma'am.

23 THE COURT: Okay. Mr. Vanderford, is that correct
24 sir?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. Thank you. Let me hear
2 then from Mr. Richey. Is there anything new based
3 upon your communications with Mr. Vanderford?

4 MR. RICHEY: Yes, ma'am. Mr. Vanderford in terms
5 of the argument on page four of the transcript, the
6 February 11th transcript, where the State alleges that
7 the judge told him that it would be a ten-year
8 sentence, it's Mr. Vanderford's position that that is
9 not a statement as to what his sentence would be.
10 It's just the judge asked them what the proposed
11 sentence would be. So he doesn't -- he does not agree
12 with the States have a factual basis in their motion
13 if they're basing it on this particular thing.

14 Also, Your Honor, in this particular thing that he
15 was entitled under the sentence for 540 days on each
16 charge and if you look on the sentencing sheets he was
17 not given that time. So, in looking at the file,
18 motion to reconsider, I mean, the sentence does not --
19 it doesn't comply even with the negotiations because
20 he's not given time for credit and time for credit is
21 not -- you can't get time for credit in a PCR. I
22 understand the Court can not grant him that time, but
23 in terms of ineffective assistance of counsel
24 reconsidering his sentence, that something that could
25 have been taken care of at the take time too.

1 THE COURT: Okay. Miss Mr. Richey is that it?

2 MR. RICHEY: Yes ma'am.

3 THE COURT: Okay. And so, Miss Klein, I'm happy
4 to hear from you.

5 MS. KLEIN: Your Honor, perhaps I'm looking at a
6 different version of the sentencing sheets, but at
7 least for the possession of the controlled substance
8 charges, mine shows that under the portion where it
9 says the defendant is to be given credit for time
10 served the box is checked and 540 days are written is
11 written in so for all intents and purposes it does
12 appear -- the sentencing sheets indicated he did
13 receive credit for time served and that is pursuant to
14 the negotiation that one year was to be served in that
15 way. And Your Honor, during the break I did have the
16 opportunity to review the case of Boan that Mr. Richey
17 cited and without being able to provide you a copy,
18 Your Honor, this case is distinguishable with regards
19 to the oral pronouncement. Boan was a trial and it
20 was a trial matter where the judge provided a
21 different sentence immediately after trial. Then he
22 changed his sentence when he wrote the sentencing
23 sheets.

24 The case with applicant was a negotiated plea. So
25 the terms of that negotiation were discussed not only

1 during the sentencing portions of this agreement but
2 also during the guilty plea portion. With Boan it's
3 reasonable to say there is a question of what counsel
4 should have done immediately after a trial and the
5 Court, you know, indicates that changing the sentence
6 after the fact would have been something which would
7 trigger counsel's responsibility to clarify. In this
8 case there was no need to clarify because the
9 sentencing sheets reflected the negotiated agreement
10 that the parties have come to to enter into this plea.
11 So Your Honor, we would argue that this case is
12 distinguishable and is not on point. And further, I
13 think that with regards to the negotiation, a trial
14 Court doesn't have discretion to deviate from
15 negotiations to that extent, and it was known to the
16 parties and it was stated very clearly for the record
17 as I've argued consistently what the terms were and
18 counsel acted appropriately in this matter. And
19 again, applicant has failed to really raise a claim
20 for relief that should warrant him moving forward into
21 an evidentiary hearing.

22 THE COURT: Okay. Thank you. Anything else?

23 MR. RICHEY: No, ma'am. Thank you.

24 THE COURT: Okay. I did review the sentencing
25 sheets and I saw that on the ones that he was getting

1 time served on it gave the specific days. On the
2 concurrent ones it just checked box and said that, you
3 know, that would be -- he would be given credit for
4 time served pursuant to South Carolina code 24-13-40
5 to be calculated and applied by SCDOC. Okay. So I
6 say this for the benefit of Mr. Vandeford.

7 Sir, I am going to review everything again now
8 that I've had the benefit of your attorney and
9 attorney for the State arguments. I do look at these
10 packets ahead of time to try to ready myself for their
11 arguments, but after I hear them I understand more
12 about where they want me to focus. So I'm going to
13 issue written instructions for an order and I will do
14 that very quickly. I will send those instructions to
15 your lawyer and to the attorney for the State. And so
16 sir, just look to your attorney for guidance as to my
17 decision.

18 I wish you the very best in the future. That will
19 conclude your hearing. Okay.

20 THE DEFENDANT: Thank you, Your Honor.

21 (END OF TRANSCRIPT)
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C E R T I F I C A T E

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I, the undersigned Aileen Butler, Official Court Reporter
for the 16TH Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete transcript of record of all the proceedings in the
captioned case on the 7th day of December, 2021.

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

January 18, 2023

Aileen Butler

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF UNION	)	
William Shane Vanderford,	)	Case No: 2019-CP-44-200
S.C.D.C. No: 344689	)	
	)	
Applicant,	)	
	)	ORDER
vs.	)	(Denying State's Motion to Dismiss)
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter came before the Court by way of an Application for Post-Conviction Relief. The Court convened a hearing via Judge Grace Gilchrist Knie virtual courtroom on December 7, 2021. The State was represented by Yasmeen E. Klein, Esquire of the South Carolina Attorney General's Office. The Applicant was represented by Rodney Richey, Esquire. The Applicant was present via video conference from McCormick Correctional Institution. The hearing was regarding the State's Motion to Dismiss.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Union County Clerk of Court. In July 2018, the Union County Grand Jury indicted Applicant for possession of schedule IV controlled substance (2018-GS-44-1131), possession of schedule III controlled substance (2018-GS-44-1130), possession of methamphetamine, third or subsequent offense (2018-GS-44-1129), domestic violence, first degree (2018-GS-44-1128), and kidnapping (2018-GS-44-1127). Assistant Public Defender Erik Delaney of the Sixteenth Circuit Public Defender's Office represented the Applicant. Assistant

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Solicitor Meghan Gilmer of the Sixteenth Circuit Solicitor's Office prosecuted the case. On February 1, 2019, Applicant pled guilty before the Honorable William A. McKinnon. On February 11, 2019, Applicant was sentenced by the Honorable Benjamin H. Culbertson. Judge Culbertson sentenced Applicant to the follow: concurrent sentences of ten years for kidnapping, first degree domestic violence, and possession of methamphetamine third or subsequent. He also sentenced him to one-year with credit for time served for possession of schedule IV controlled substance.

At the onset of the hearing, the State moved the Court for a dismissal of the application based on the relief the Applicant requested in his application is not available to him pursuant to SC Code Section 17-27-20(B).

FINDING OF FACT AND CONCLUSION OF LAW

1. The Court has reviewed the transcripts of record from the underlying action and plea hearing and deferred sentence hearing, the application, return, and other pertinent documents. The has also taken into consideration all arguments of counsel presented at the State's Motion to Dismiss the Post-Conviction Relief Petition.
2. The Applicant asserted in his application filed June 24, 2019 the following:
 - a. Ineffective assistance of plea counsel;
 - b. Ineffective assistance of counsel for failing to object to or file a motion for reconsideration regarding the misstatement in the oral sentence of the Court:
3. The State argued that pursuant to SC Code Section 17-27-20(B) the relief requested in the PCR application is not available to Applicant:
4. The Applicant argued that the failure to challenge the error in the sentence by filing a motion to reconsider is ineffective assistance of counsel and that Applicant should be



allowed to pursue the issue with an evidentiary hearing citing Brown vs. State, 388 SC 272, 695 S.E.2d 850 (2010):

CONCLUSION

Based on the arguments of counsel and the evidence presented, the Courts hereby denies the State's Motion to Dismiss the Applicant's Post Conviction application. The Applicant shall have an evidentiary hearing on the issues raised in his application.

AND IT IS SO ORDERED this 10th day of July, 2022.



Judge of the Sixteenth Judicial Circuit

Spartanburg, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
CASE NO. 2019-CP-44-00200

WILLIAM S. VANDERFORD,)
)
 Petitioner,)
)
 -vs-)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

TRANSCRIPT OF RECORD

April 11, 2022
York, South Carolina

B E F O R E:

Honorable R. Scott Sprouse, Judge.

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

Mr. Rodney Richey
Attorney at Law
Attorney for the Petitioner
Greenville, South Carolina

Ms. Michael J. Neubauer
Attorney at Law
Attorney for the Respondent
Columbia, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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WILLIAM SHANE VANDERFORD

Mr. Richey	5			
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Mr. Neubauer	13			
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ERIK DELANEY

Mr. Richey	36			
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Mr. Neubauer	42			
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Closing Arguments

Mr. Neubauer	52			
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Mr. Richey	54			
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Certificate	58			
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1 THE COURT: Call the first case.

2 MR. NEUBAUER: Thank you, Your Honor. May it please
3 the Court. The next matter is *William Vanderford versus*
4 *State of South Carolina*, docket number 2019-CP-44-0022 -- or
5 200. Applicant is presently confined to the South Carolina
6 Department of Corrections.

7 During a July 2018 term the York -- or the Union County
8 Grand Jury indicted applicant for possession of a schedule
9 IV controlled substance, it's indictment number 2018-GS-44-
10 1131, possession of a schedule III controlled substance,
11 2018-GS-44-1130, possession of methamphetamine third or
12 subsequent offense, 2018-GS-44-1129, domestic violence first
13 degree, 2018-GS-44-1128, and kidnapping, 2018-GS-44-1127.

14 Assistant Public Defender Erik Delaney, Esquire
15 representing applicant and Assistant Solicitor Meghan Gilmer
16 of the Sixteenth Circuit Solicitor's Office prosecuted the
17 case.

18 On February 1st, 2018, applicant entered into a
19 negotiated guilty plea before the Honorable William N.
20 McKinnon. Applicant's sentencing was deferred until
21 February 11th, 2018 before Judge Benjamin H. Culbertson.
22 Judge Culbertson sentenced applicant to a concurrent ten-
23 year sentence for kidnapping, first degree domestic violence
24 and possession of methamphetamine, and a one-year sentence
25 for possession of a schedule III substance and possession of

1 a schedule IV substance. Applicant was given credit for
2 time served.

3 Applicant filed a notice of appeal and the South
4 Carolina Court of Appeals dismissed applicant's appeal for
5 failure to provide a sufficient explanation, as required by
6 rule 203(e)(1)(b)(iv) of the South Carolina Appellate Court
7 Rules. The remittitur was issued June 4th, 2019.

8 Applicant filed his application for post-conviction
9 relief, alleging ineffective assistance of counsel, that
10 counsel should have filed a motion to reconsider his
11 sentence, have the Clerk of Court fix his sentencing sheets.

12 Additionally, last week I was informed by applicant's
13 counsel, Mr Richey, that applicant would be raising three
14 additional claims, that counsel failed to address an issue
15 where he was not indicted within ninety days, that counsel
16 failed to ensure the victim was in the courtroom during his
17 guilt plea and that applicant has not received credit for
18 time served and the State would submit -- move to summarily
19 dismiss the final allegation of failure to give credit for
20 time served. Pursuant to Al Shabazz, all credit-related
21 issues are an administrative issue to be handled at the
22 South Carolina Department of Corrections and are not proper
23 for post-conviction relief.

24 THE COURT: Okay. Thank you, Mr. Neubauer.

25 Mr. Richey, are those the correct issues?

1 MR. RICHEY: Those are the issues, Your Honor. If you
2 want me to respond to the last one, I will, the statement
3 about the Al Shabazz case.

4 THE COURT: All right. Tell me how this case can be
5 distinguished from -- 'cause that is well-settled law.

6 MR. RICHEY: Well, Judge, we're offering the time --
7 not giving him time served in this particular case when
8 there was a sentencing error that the lawyer was ineffective
9 for not correcting it and that's part of the correction of
10 the case.

11 THE COURT: Okay. Well, I'll reserve judgment on that,
12 but I'll hear testimony.

13 MR. RICHEY: Thank you. We call Mr. Vanderford.

14 (WILLIAM SHANE VANDERFORD, being first duly sworn, was
15 examined and testified as follows):

16 DIRECT EXAMINATION

17 WILLIAM SHANE VANDERFORD BY MR. RICHEY:

18 Q. Sir, if you'd state your name, please.

19 A. William Shane Vanderford.

20 Q. And Mr. Vanderford, you're in the department of
21 corrections. Correct?

22 A. Yes, sir.

23 Q. And you were -- and you're in the department of
24 corrections for first degree domestic violence, possession
25 of meth, possession of a controlled substance. Is that

1 correct?

2 A. Yes, sir.

3 Q. Okay. You pled to these charges. Correct?

4 A. Yes, on February the 1st in front of Judge McKinnon
5 here in York County.

6 Q. Okay. And you have filed an application of post-
7 conviction relief. Is that correct?

8 A. Yes.

9 Q. And who represented you on those charges?

10 A. Erik Delaney.

11 Q. And it's your position that he did not effectively
12 represent you. Is that correct?

13 A. Yes. That is correct.

14 Q. And you heard the Attorney General outline the issues
15 and I'm going to go through those with you. On February the
16 1st you pled guilty. Is that correct?

17 A. Yes. I pled guilt to the four charges and pled *North*
18 *Carolina versus Alford* on the kidnapping charge.

19 Q. And at that February 1st plea hearing, was there any
20 kind of agreement between you and the State?

21 A. My attorney had made the agreement of a ten-year plea
22 on the kidnapping, domestic violence and the possession of
23 meth, a one-year plea on the two counts of controlled
24 substance and at that time they didn't have any time-served
25 credit, according to the Court and according to the

1 solicitor.

2 Q. Well, I'm getting to that, but I'm just saying that--

3 A. Okay.

4 Q. ---on February the 1st that's when the plea -- that's
5 when you pled. Correct?

6 A. Right; right.

7 Q. And you were not sentenced. I'm going to provide --
8 you got the February 11th transcript up there with you?

9 A. Yes, I do.

10 Q. Okay. I'm going to -- so you pled and you came back
11 and got re-sentenced on February the 11th. Is that correct?

12 A. Yeah. My sentencing was deferred from February the 1st
13 'til February the 11th in front of Judge Culbertson in Union
14 County.

15 Q. Okay. And you -- at the sentencing hearing, your issue
16 is, and I want you to turn to page 12 on this.

17 A. Page twelve or eleven?

18 Q. Eleven. I'm sorry.

19 A. It's page eleven. It actually starts on page -- on
20 page ten on line twenty-three, to be exact.

21 Q. Okay. When you were sentenced, what -- what
22 announcement did the Court make for your sentence?

23 A. The Court -- this is the Court, says, All right. Mr.

24 --

25 Q. Tell me where you're reading from, the page and the

1 number.

2 A. This is from page ten.

3 Q. What line?

4 A. Line twenty-three.

5 Q. Okay.

6 A. Okay. And it says, The Court, it says, All right. Mr.
7 Vanderford, you have already pled guilty in front of Judge
8 McKinney (sic) so the sole purpose of this hearing today is
9 for the sentencing. There is a negotiated sentence, which I
10 will accept, sentence of the Court for kidnapping, domestic
11 violence in the first degree and possession of
12 methamphetamine is that you be confined to the State
13 Department of Correction for one year. On the charges of
14 possession of schedule III and -- controlled substance and
15 possession of schedule IV controlled sentence, sentence of
16 the Court is that you be confined to the State Department of
17 Correction for one year. You will receive 540 days of
18 served thus far, so for the possession of the schedule III
19 and the -- controlled substance and possession of schedule
20 IV controlled substance, that will be a time-served
21 sentence. All sentences will run concurrent. Then Mr.
22 Delaney, he pron- -- he said, thank you, Your Honor -- or
23 thank you. Ms. Gilmer, the State, she said, And, Your
24 Honor, if we can just add -- and the Court, Judge
25 Culbertson, said, Yes, the kidnapping, I put no sex offense.

1 Ms. Gilmer, the State, said, Thank you, Your Honor, end of
2 transcript.

3 Q. Okay. And so you were -- so the judge sentenced you to
4 one year in opposed to the these ten years on this
5 recommendation. Is that correct?

6 A. Yes; yes.

7 Q. Okay. Did you discuss this with your lawyer?

8 A. No. I didn't discuss it with my lawyer. This happened
9 in court.

10 Q. Okay. Did you ask him to do something about this when
11 when you received it?

12 A. Directly after court and I have -- I have the direct
13 appeal that he filed.

14 Q. No. Listen to my question; listen to my question. Did
15 you talk to your lawyer about this sentence?

16 A. About this one-year sentence,---

17 Q. Yes.

18 A. ---Erik Delaney? Yes, I did.

19 Q. Okay. Did you ask him to take any action on this?

20 A. Yes, I did.

21 Q. What -- you asked him to do what?

22 A. Directly after court I asked him about having the
23 sentencing sheets corrected to match what the judge said
24 orally on the stand.

25 Q. Okay. So you asked him -- so these sentencing sheets,

1 you talked to him and said, hey, get them changed to what
2 the judge ordered. Correct?

3 A. Yeah, because they're ambiguous to what the judge said
4 on the stand.

5 Q. And so it's your position that you should receive the
6 sentence the judge stated in the transcript?

7 A. Well, due process requires that the oral pronouncement
8 says that.

9 Q. I understand that. Answer my question. So you believe
10 you should get that sentence?

11 A. Yes, sir, I do.

12 Q. Okay; okay. And you did -- and so you believe your
13 lawyer was ineffective by not taking the necessary action to
14 get your sentencing sheets changed?

15 A. Yes, I do.

16 Q. And you believe because he didn't do that, you were
17 prejudiced by that, meaning---

18 A. Exactly.

19 Q. ---you got more time. Correct?

20 A. Exactly. Yes.

21 Q. Okay. And so -- and as to the -- and I'm going to jump
22 to this issue number 4. You believe your lawyer was
23 ineffective because -- did you discuss with him about not
24 getting the time you were supposed to get?

25 A. Yes. I discussed that with him also, 'cause the

1 sentencing sheets have the 540 days on two of the charges,
2 which was the two controlled substances charges, but the
3 other three charges, it doesn't have the other three
4 charges, it doesn't have the 540 days time served on those.

5 Q. So your position's he was ineffective in totality by
6 not getting the sentencing sheets changed to reflect the
7 sentence and the time correct?

8 A. Exactly.

9 Q. Okay. As to -- it's your position, under Criminal Rule
10 3(a), that you should have been indicted ninety days after
11 you were indicted (sic). Is that correct?

12 A. Yes. According to the -- according to the South
13 Carolina State Statute, I should have been.

14 Q. Okay. And you -- did you discuss that with your
15 lawyer?

16 A. At the time before court, I discussed it with the
17 lawyer. I discussed that with him during the -- during the
18 time between I was sentenced and the time I actually went to
19 court.

20 Q. Okay.

21 A. Yes.

22 Q. And you think if that -- if you were indicted within
23 ninety days, that would have changed the outcome of your
24 case?

25 A. I mean, I -- yes. Yes, I do.

1 Q. And you had an issue as to the victim. The victim in
2 this case, that was -- that was someone you knew. Correct?

3 A. Yes.

4 Q. And you believe that she should have been present
5 during the court proceedings?

6 A. I was -- I was told she would be present. I was told
7 she would be present during the plea hearing and that if I
8 didn't plead guilty, say yes, Your Honor to -- and plead
9 guilty, that they would end up taking me trial, give me
10 twenty-five to thirty years.

11 Q. So that was -- is it your position that was induced
12 maybe to get you to plea, the threat of her being there?

13 A. Yes.

14 Q. Okay. And did -- and she was not there. By her not
15 being there, did you tell the lawyer I don't want to do this
16 now?

17 A. He had told me prior to coming in here that if I said
18 anything other than yes, sir, Your Honor, or I plead North
19 -- guilty or I plead *North Carolina versus Alford*, Your
20 Honor, that I would end up going to court later and
21 receiving twenty-five to thirty years on these charges.

22 Q. So you were -- so he basically said if you didn't plea,
23 then she would come and testify and you'd get more time?

24 A. Yes.

25 Q. And so you felt like, with that information, it was in

1 your best interest to plea?

2 A. Yes.

3 Q. Okay. And -- and are you seeking a new trial from this
4 Court?

5 A. I'm seeking my sentencing sheets to be fixed to
6 coincide with what the court transcript says what the judge
7 sentenced me to, 'cause he sentenced me within the
8 guidelines of the law, which was anywhere from zero to
9 thirty years, 'cause he had that right to do so and he
10 sentenced me to one year in the Department of Correction and
11 the sentencing sheets, therefore, said ten years on them
12 instead of one year in the Department of Correction.

13 Q. And so you believe the lawyer was ineffective for
14 failure to change the sentencing sheets to reflect what the
15 judge said?

16 A. Yes. He's my attorney, so that would be his job, I
17 would think.

18 Q. Thank you. Answer questions the Attorney General will
19 have for you.

20 A. Yes, sir.

21 THE COURT: Mr. Neubauer.

22 MR. NEUBAUER: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 WILLIAM SHANE VANDERFORD BY MR. NEUBAUER:

25 Q. Mr. Vanderford, did you have discussions with your

1 attorney about the negotiated guilty plea prior to entering
2 your plea?

3 A. Yes, I did.

4 Q. And he told you that the sentence would be ten years
5 concurrent for kidnapping, domestic violence first?

6 A. No. He told me that the sentence would be -- that the
7 State was recommending ten years to the judge, that the
8 charges started from zero years and went all the way to
9 thirty years and the judge had the discretion to decide
10 whether I would receive zero or thirty and it was still up
11 to him.

12 Q. Well, do you recall at your guilty plea on February 1st
13 the solicitor informing the Court, We have worked out a
14 negotiated guilty plea on this case of ten year active
15 prison -- active prison, along with a permanent restraining
16 order?

17 A. I can't -- I can't say that I recall. No.

18 Q. And do you recall -- that would be page four, line one
19 through three of February 1st transcript.

20 A. Okay.

21 Q. Do you recall the Court informing you during your
22 guilty plea that you understand your attorney has negotiated
23 a ten-year active prison sentence on the possession of
24 methamphetamine charge?

25 A. Yes.

1 Q. Do you remember telling the Court that, yes, that is
2 correct?

3 A. Yes, I do.

4 Q. All right. Do you recall the judge informing you that
5 on the domestic violence first, there is a negotiated ten-
6 year active prison sentence?

7 A. Uh-huh; yes.

8 Q. Do you remember telling the Court, That's correct?

9 A. Yes.

10 Q. And, again, kidnapping, on page 7, do you recall the
11 Court telling you that you are pleading under *North Carolina*
12 *versus Alford* and your attorney has negotiated a ten-year
13 active prison sentence?

14 A. Yes.

15 Q. And you told the Court, That is correct?

16 A. Yes.

17 Q. All right. And then, further, at your sentencing, do
18 you recall on page three the solicitor informing the Court,
19 We did work out a negotiated plea in this case of ten-year
20 active prison to run concurrent between the charges?

21 A. I -- I recall page three of that sentencing that the --
22 that the judge asked the solicitors what was the time and
23 she -- she advised him that it was for ten years, but he
24 didn't advise me that he was going to sentence me to ten
25 years.

1 Q. And do you recall on page four the Court informing you,
2 It's a negotiated sentence, time served for the schedule IV
3 and schedule III possession charges and then ten years for
4 kidnapping?

5 A. On the page four?

6 Q. Page four, line seventeen through line nineteen.

7 A. Of the sentencing hearing?

8 Q. And this is -- this is the February 11 transcript.

9 A. This is February -- I don't see nowhere where it says
10 anything about ten years at all from line---

11 Q. Page four.

12 A. ---seventeen through nineteen.

13 Q. Page four and I will read.

14 A. Okay.

15 Q. From The Court, So the negotiated sentence is time
16 served -- well, let's see, it's ten years for the kidnapping
17 and Solicitor Gilmer says, Yes, sir.

18 A. Excuse me. You said page four. Am I right -- correct,
19 sir?

20 Q. Yes.

21 A. Okay. And here's the February 11th court transcript,
22 page four. This is what I have, page seventeen it says, The
23 Court, says, All right, Mr. Delaney, you represented William
24 Shane Vanderford on the charges of kidnapping, domestic
25 violence first degree, possession of methamphetamine third

1 and subsequent offense, possession of schedule III
2 controlled substance and possession of schedule IV
3 controlled substance. I don't read anything what you just
4 read off of that.

5 Q. On page -- you said that's page seventeen. Correct?

6 A. No. You just said page four. Am I correct?

7 Q. Yes and we're reading from seven- -- all right.

8 A. Am I correct, you did say page four?

9 Q. Yes, sir. That is correct. Let me find -- let me make
10 sure I have the correct transcript. I'm certain that I do.

11 THE COURT: Do you have another hard copy of that that
12 you can present to the witness? That may save some time.

13 MR. NEUBAUER: Yes, Your Honor.

14 THE WITNESS: I have -- I have a hard copy of it, Your
15 Honor.

16 THE COURT: Okay.

17 MR. NEUBAUER: Permission to approach?

18 THE COURT: Yes, sir.

19 Q. Okay.

20 A. Hang on. You said this is the same one, the February
21 the 11th?

22 Q. Yes. This may save you some time.

23 A. And --

24 Q. February 11,---

25 A. Okay.

1 Q. ---full transcript. You can hold onto this one. I
2 have another copy.

3 A. Okay.

4 Q. And line seventeen -- and this is from your attorney,
5 Mr. Richey, hold onto this.

6 A. This -- this is different from the one I have, because
7 this is not the February the 11th -- this is -- you can see,
8 I have two different ones (indicating).

9 Q. And it appears --

10 A. I have two different ones.

11 Q. -- it appears the copy that you are holding is the copy
12 that you attached with your application, which has had pages
13 removed.

14 A. No. I -- there was no pages removed off of it, 'cause
15 I got it directly from the court reporter. I got it
16 directly from the court reporter.

17 Q. From that copy of the transcript that I just handed
18 you, would you familiarize yourself with page four, line
19 seventeen through line twenty-five?

20 (Whereupon, the witness reviewed the referenced
21 document.)

22 A. I'm reading line four and I do not see that on my copy
23 that I received straight -- directly from the court reporter
24 myself.

25 Q. And if you'll flip to the copy that I gave you, sir, to

1 the very last page, it should have -- there should be a
2 certificate from the court reporter herself, I understand,
3 I, the undersigned --

4 A. Wait a minute. This is page three, Negotiated sentence
5 is for time served for kidnapping. This is page 3 on mine
6 and page four on yours. So it's -- I've got -- I mean, if
7 anybody would like to come and see, I mean, I have on yours
8 it says page four, but on mine it is on page three, okay,
9 where it says, The Court, it says in line -- on line
10 seventeen, So the negotiated sentence is for time served.
11 Well, let's see. It is for ten years of kidnapping, and
12 that's on page three on mine, but on yours it says page
13 four. It's two different -- two different transcripts.

14 Q. But if you'll -- so the first page of the transcript
15 that I provided you, does it say February 11, 2019 in Union,
16 South Carolina, *State versus William Shane Vanderford*, case
17 number 2007-DR-42-2000?

18 A. Yes, it does and --

19 Q. It has Aileen Butler listed as the court reporter?

20 A. Okay. Yes, it does,---

21 Q. And --

22 A. ---mine and yours---

23 Q. And on the --

24 A. ---both says that.

25 Q. -- on the 13th page of the transcript that I

1 handed you --

2 A. On the first page?

3 Q. Yes, sir. And now we'll flip to the last page that --
4 there should be a certificate that says, I, the undersigned
5 Aileen Butler, Official Court Reporter of the Sixteenth
6 Judicial Circuit---

7 A. Okay.

8 Q. ---of the State of South Carolina, do hereby certify
9 the foregoing is a true, accurate and complete transcript of
10 the record of all the proceedings in the captioned case for
11 the Circuit Court of York County, South Carolina on the 11th
12 day of February, 2018.

13 A. Okay.

14 Q. I hereby certify---

15 A. And I'm --

16 Q. ---that I'm neither kin, counsel, nor interested party
17 -- or interest to any party hereto, and it's dated March
18 14th, 2019.

19 A. This transcript that you handed me---

20 Q. Yes.

21 A. ---has thirteen pages in it. The original transcript
22 that I turned in to the -- to the -- for my PCR hearing and
23 Mr. Butler, you should have -- I mean, Mr. Richey, you
24 should have -- okay. But this -- these are two different
25 transcripts. One has thirteen pages, one has twelve pages

1 and there's nothing been removed on here from mine, I know,
2 'cause you can see it was -- it was -- it's clear and but
3 one has an extra page in it, okay, and one doesn't.

4 Q. Well, I'll represent to you, and the Court can
5 determine whether they believe me that --

6 THE COURT: Well, why don't we make the rival
7 transcripts each exhibits so that I can review those.

8 MR. NEUBAUER: Yes, Your Honor.

9 THE COURT: Make one Applicant's Exhibit Number 1 and
10 the other Applicant's Exhibit Number 2.

11 Mr. Richey, if you want to come up--

12 MR. RICHEY: Yes, sir. Let me --

13 THE COURT: --and get them marked.

14 A. Yeah, because you can clearly see on --

15 MR. RICHEY: Don't -- you can't talk. Let me get that.
16 We're going to make that --

17 THE WITNESS: That's mine.

18 MR. RICHEY: Here you go.

19 THE WITNESS: That's mine.

20 MR. RICHEY: Okay. I know; I know. I know; I know.
21 It's going to be a Court Exhibit.

22 MR. NEUBAUER: Your Honor, if we can have a five-minute
23 recess, I have to take a call from my supervisor.

24 THE COURT: Okay.

25 MR. NEUBAUER: I apologize.

1 THE COURT: And in the -- while we're taking a break,
2 y'all can -- if there's some --

3 MR. RICHEY: Yeah. We --

4 THE COURT: -- if there's some problem in the way the
5 copies were made, you may be able to resolve this. If not,
6 again, make them exhibits and I'll look at them.

7 MR. RICHEY: Your Honor, can he step down and go to the
8 table, go through --

9 THE COURT: Yes, sir. Yes, sir. Y'all can --

10 MR. RICHEY: Thank you, Your Honor.

11 THE COURT: We'll take about a five-minute break.

12 MR. RICHEY: Okay. Thank you.

13 (Whereupon, a brief recess was observed.)

14 MR. RICHEY: Judge, we found the issue in the
15 transcripts. The transcript that my client received
16 directly from the court reporter, she did not put in the
17 exhibit page, which is -- it says, no exhibits received.
18 That page is left out of his copy, therefore, his copy is
19 11 and the copy that the State got was 12. Okay. So that
20 one page, which is --

21 MR. NEUBAUER: The exhibit page processed --

22 MR. RICHEY: -- the exhibit page is not in his
23 transcript, so with the numbering, it was 11 and then when
24 the State got it, she put that in and made it 12, so that's
25 the difference in the pages.

1 THE COURT: Okay. So with that -- with that
2 explanation, is each side agree that you have the same
3 transcript?

4 MR. RICHEY: We -- other than that page, we have the
5 same transcript. Yes, Your Honor.

6 THE COURT: Okay. You agree with that, Mr. Vanderford?

7 THE WITNESS: Yes, Your Honor. Yes, Your Honor.

8 THE COURT: Okay. All right. So noted.

9 MR. RICHEY: Do you still -- let me make sure he got
10 all his stuff back. I'm going to give you back your
11 transcript that you had.

12 (Whereupon, the referenced document was handed to the
13 witness).

14 MR. RICHEY: That's your transcript, right, Mr.
15 Vanderford?

16 THE WITNESS: The one you just gave me?

17 MR. RICHEY: It's yours?

18 THE WITNESS: Yes.

19 MR. RICHEY: Yeah.

20 (Whereupon, Mr. Richey and Mr. Neubauer conferred off
21 the record.)

22 Q. So on -- for your transcript it would be page three and
23 the copy that we provided Your Honor is page four, line
24 seventeen through line twenty-five.

25 Q. Do you see where Judge Culbertson informed -- or asked,

1 So there's been a negotiated sentence and it's ten years for
2 kidnapping?

3 A. Yes. I see where it was a question. Yes.

4 Q. And then immediately he follows up, Ten years for
5 domestic violence, first degree, criminal possession of
6 methamphetamine, third or subsequent offense, ten years for
7 that and time served for the possession of a schedule III
8 controlled substance and possession of a schedule IV
9 controlled substance?

10 A. Yes. I see where he was making that statement. He
11 doesn't say, Mr. Vanderford, this is ten years. He just
12 made the statement to the Courts.

13 Q. And on page 11 of your transcript, would be 12 of ours,
14 the first line he indicates, There is a negotiated sentence,
15 which I will accept.

16 A. There is a negotiated -- it's singular -- singular
17 statement, not a plural.

18 Q. And you understand that when he said that, he meant
19 these sentences are negotiated?

20 A. Yeah, but I understand that that's not what he said.

21 Q. All right. And do you have a copy of your sentencing
22 sheets?

23 A. Yes, I do.

24 Q. And do you see on the top of them -- we'll look at the
25 kidnapping one first. It says, *N.C. v. Alford*?

1 A. If you'll just give me a second, 'cause, you know, they
2 got me in handcuffs up here, so --

3 Q. Yes.

4 A. And you said the kidnapping one?

5 Q. Yes, sir.

6 A. Yes, at the top -- where -- where are you saying?

7 Q. Right underneath of the words, "Sentencing Sheet," is
8 there writing that indicates negotiated ten-year active
9 prison sentence, and then c-o-n-c?

10 A. Yes, I see that, but also -- I can also see that -- I
11 can also see that these were dated on 2/1 of 2019 and that
12 that the sentencing wasn't until 2/11, so they shouldn't
13 have been -- they shouldn't have been dated or anything on
14 that date to begin with.

15 Q. And these were the dates that you actually entered into
16 your plea agreement. Correct?

17 A. It was a plea. Yes.

18 Q. Okay.

19 A. There was no sentencing, 'cause it is in the February
20 1st transcript that the judge clearly stated that the only
21 thing he was doing that day was hearing my plea, that the
22 sentencing would be deferred to February the 11th.

23 Q. And do you see on that sentencing sheet where you
24 signed?

25 A. On February the 1st, whenever it shouldn't have been

1 signed or anything until February 11th, if I'm correct.

2 Q. And---

3 A. I don't know.

4 Q. ---do you see where right above your signature it
5 indicates a negotiated sentence?

6 A. Yes, I do.

7 Q. And right underneath of that, do you see where it says,
8 The defendant is committed to the South Carolina or State
9 Department of Corrections for a determinate term of ten
10 years?

11 A. Yes, but I also still, once again, see that it was
12 dated on February the 1st and scratched out and that's
13 ambiguous to the transcripts.

14 Q. And --

15 A. They should be -- they should coincide.

16 Q. And do you see -- we'll flip to the domestic violence,
17 the same question, do you see where it says, Negotiated ten-
18 year active prison and permanent restraining order?

19 A. Yes, I do.

20 Q. And you signed that sentencing sheet?

21 A. And once again, I still signed it on February the 1st
22 instead of February the 11th. So that was -- that was
23 ambiguous. It was still -- it's something that was, in my
24 opinion, it was illegal by the Courts for them to have that
25 done. Erik Delaney should have -- should have -- being my

1 counsel, should have made sure that that was done correctly,
2 you know, according with the Courts and the law.

3 Q. And, again, on possession of methamphetamine, third, do
4 you see, Negotiated ten-year active prison?

5 A. Yes, I do.

6 Q. And you signed that as well on February 1st,---

7 A. On February the 1st.

8 Q. ---the day that you entered your guilty plea?

9 A. But I -- there was -- the sentencing wasn't carried out
10 until February the 11th, so why were they filed out on the
11 1st?

12 Q. And on all three of these sheets there is a box that
13 says, Other, right above the judge's signature and it says,
14 Sentencing deferred until February 11th, 2019. Correct?

15 A. Yes; correct, deferred. Yes.

16 Q. Yes. So you would have accepted -- you would have
17 entered the plea and accepted the negotiated sentence on
18 February 1st. Correct?

19 A. No. If I'd have known -- if I'd had known whenever I
20 come in the courtroom that the victim wasn't going to be
21 here, I wouldn't have never pled guilty and my attorney
22 being my attorney and having my -- my rights in his best
23 interest or my best interest, he should have said, Mr.
24 Vanderford, I don't want you to plead guilty, 'cause there
25 ain't no victim here.

1 Q. And let's discuss that issue. You said that -- well,
2 first, were you told that there was going to be a trial in
3 February of 2019?

4 A. On February the 11th. I had planned on going all the
5 way to trial. Yes, sir.

6 Q. And even at the time of February 1st when you entered
7 your guilty plea, you -- you were told that there was going
8 to be a trial February 11th?

9 A. Two days before -- two days before the February 1st,
10 Erik Delaney showed up at Union County Detention Center and
11 told me that they were offering me ten years if I pled
12 guilty on Friday and I asked him and he made me aware that
13 A.S. [REDACTED], the victim, was going to be in court and was
14 going to testify and was going to be here at the -- at the
15 plea hearing, but when we came in the courtroom, she was not
16 present in the courtroom at all and that is even stated in
17 the February 1st transcripts by Megan Gilmer, okay, and also
18 -- and Megan Gilmer also stated it in the February the 11th
19 transcripts that the victim was not going to be able to be
20 in court was the reason why they had me transferred to York
21 County to plead guilty in front of Judge McKinney (sic) so
22 they could go ahead and get the guilty plea, because she
23 wasn't going to be able to be in court for trial.

24 Q. You also claim that there -- so why did you -- seeing
25 that she wasn't in the courtroom the day of your plea, why

1 did you still decide to plead guilty?

2 A. 'Cause, in my opinion, my attorney should have made
3 that statement. I didn't -- he should have told me not to
4 plead guilty. He was my attorney. He'd already told me,
5 too, if I said anything other than guilty, Your Honor, or
6 anything, that I would end up going to trial and getting
7 twenty-five/thirty years. So I was thinking and, you know,
8 it'd be in my best interest to do what he said do, but
9 seeing that he's supposed to have my best interest, you
10 know, being my attorney.

11 Q. So you pled guilty because you were told that you would
12 be found guilty if you went to trial?

13 A. No. I was told that they were going -- they were going
14 to give me twenty-five/thirty years if I was found guilty in
15 court and that the victim was going to testify.

16 Q. And do you recall at your actual guilty plea hearing
17 the judge telling you that you have a right to a trial and
18 that you have the right to a lawyer to represent you during
19 that trial?

20 A. Yes, and if I had a lawyer that had -- was effective in
21 my counsel, he would have said then, Your Honor, I believe
22 with the victim not being in court that it would be in Mr.
23 Vanderford's best interest not to plead guilty, and he would
24 -- he's the one that, you know, should have -- should have
25 actually told me, Mr. Vanderford, I believe that, you know,

1 it's in your best interest to plead not guilty today and
2 that's what I'm going to do since I'm your attorney.

3 Q. And do you recall the judge asking you if you were
4 pleading guilty on your own accord?

5 A. Oh, yeah, because, I mean, I was standing there. There
6 wasn't nobody have a gun to my head, telling me to plead
7 guilty. They just had -- they just had my life in their
8 hands, telling me that they were going to give me twenty
9 five to thirty years if I didn't.

10 Q. But you still had the option to choose to go to trial.
11 Correct?

12 A. I didn't have -- I didn't know no better. I was naive
13 of the law. You know, I'm not no -- I'm not attorney. I
14 didn't -- I wasn't the one that was assigned to represent me
15 as my attorney.

16 Q. And this was not your first criminal conviction, was
17 it?

18 A. No. It wasn't my first. No.

19 Q. So you had experience with the criminal justice system
20 prior to this incident?

21 A. I don't see where that has anything to do with this
22 case on these -- on these charges.

23 Q. So having prior experience, would you say that you had
24 a general understanding of the criminal justice system, that
25 you participated in the criminal justice system?

1 A. Yeah, but my attorney -- yeah, but my attorney should
2 represent me to the best of his ability. He should have my
3 best interest at hand, not the State's or anybody else.

4 Q. And do you recall the judge telling you -- asking you
5 if it was your choice to plead guilt today or your own
6 decision made freely and voluntarily?

7 A. Yes, I do.

8 Q. And other than the negotiations we've already talked
9 about for ten-year active time for domestic violence,
10 kidnapping, methamphetamine charge and time served on the
11 other two, that no one had promised you anything or
12 threatened you in any way to get you to plead guilty?

13 A. No. All they said was they was going to be able to
14 get me my time served on there, which I didn't get to begin
15 with and then whenever it was deferred to February the 11th
16 and I told the judge there, Judge Culbertson, that I felt
17 like my due process rights had been violated and being that
18 Erik Delaney was my attorney and me saying that clearly in
19 open court, I believe it would have been in him representing
20 me, he should have said, uh, excuse me, Your Honor. I would
21 like to -- I would like to speak with my -- with my client
22 and maybe we should just go ahead and withdraw his guilty
23 plea today and go ahead and take this on to trial, seeing
24 that I said that, you know, seeing that I'm -- I'm, you
25 know, the one he should represent, you know, but he didn't

1 and I -- and I told the judge that -- on that February 11th
2 transcript that I had already pled guilty and it was up to
3 -- you know, he was the one that was going to sentence me
4 and, therefore, he went to -- and he said there is a
5 negotiated sentence, which I will accept.

6 Q. And do you recall during your guilt- -- or during the
7 sentencing on February 11th, you did address with the Court
8 that you felt that your due process rights were violated and
9 claimed you never had an initial appearance or preliminary
10 hearing, Judge Culbertson actually asked if you wanted to
11 withdraw your guilty plea and go to the trial stage on
12 these---

13 A. Right.

14 Q. ---charges?

15 A. Right. He did and I -- and I stated -- I stated, no,
16 that I'd already pled guilty, I was there for him to
17 sentence me and he sentenced me to one year in the
18 Department of Correction for those charges of kidnapping,
19 domestic violence and third offense possession of meth,
20 which is clear in black and white, no mistakes. There was
21 no objection by the State after I -- after he -- after he
22 stated those statements and the State actually thanked him
23 for doing so and so did my attorney, so, therefore, it was,
24 basically, in my attorney's job should have been to have the
25 Courts fix my court transcripts to coincide and -- with what

1 the judge had just sentenced me to on the stand, because in
2 a negotiated sentence, the judge -- he either has to do one
3 of two things, he either has to accept the sentence or not
4 and in that he said, There is a negotiated sentence, which I
5 will accept, and the negotiated sentence that he sentenced
6 me to that is the only one on there is the -- the time
7 served sentence of the two controlled substance counts. The
8 other one was -- he sentenced me to one year in the
9 Department of Correction, 'cause he even asked the State was
10 the victim in court and they even stated at that time, no,
11 the victim was not going to be able to be in trial this
12 week, Your Honor, was the reason why we had him took to York
13 County to insert a guilty plea on February the 1st. So it's
14 like they -- they just -- you know, they coincided together
15 to hang me up on these charges whenever he clearly seen
16 there wasn't a victim in court whenever he come into court
17 and he should have said, hold up, Shane. We're not going to
18 enter a guilty plea, because the victim's not here and I was
19 told that she was going to be here and even she made that
20 statement that she was supposed to be in court, but she
21 wasn't there and then she---

22 Q. On February --

23 A. ---told the judge that she was going to be in the
24 February the 11th court, so she lied to the judge and in
25 court on court transcripts on February the 1st, stating that

1 the victim would be in court for a sentencing hearing and
2 then she was not present at the sentencing hearing. So, you
3 know, how is -- how is that in - 'cause she lied. That
4 should be perjury, if I'm not -- if I'm not mistaken,
5 because she lied in the courtroom on court transcript under
6 oath that she said that the -- the victim was not going to
7 be able to be in court that week, but she was going to be in
8 there on the sentencing hearing, okay, and then in the
9 sentencing hearing she wasn't there, either.

10 Q. So on February 11th Judge Culbertson gave you the
11 opportunity to withdraw your guilty plea and you chose not
12 to. Correct?

13 A. I pled guilty.

14 Q. But you had the --

15 A. I pled guilty.

16 Q. -- you had the opportunity to withdraw your guilty plea
17 and you chose not to. Correct?

18 A. I pled guilty. Yes. Yes, I pled guilty. He --

19 Q. And you did not withdraw it on February 11th. Correct?

20 A. No. I did not withdraw it. I didn't withdraw.

21 MR. RICHEY: Judge, I'm going to object here. I think
22 this has been answered -- asked and answered. He asked if
23 he could withdraw it, he said --

24 THE COURT: He just answered the question. Let's move
25 on to something else.

1 Q. And as far as credit for time served, do you see on
2 each of your sentencing sheets there's a box that indicates
3 the defendant is to be given credit for time served pursuant
4 to S.C. Code 24-13-40 to be calculated and applied by S.C.
5 DOC?

6 A. No. As long as it -- if it's not on that sheet, they
7 don't apply it. They applied on the -- they applied it on
8 the controlled substance charges, but on the three charges
9 that they put the ten years on, they did not put on there --
10 on those three sentence -- on those three sheets, so it was
11 not applied towards my sentence at the -- at SCDC, 'cause if
12 it's not on there they're not going to apply it.

13 Q. And the box indicating that you were to be given credit
14 for time served is checked on every one of your sentencing
15 sheets. Correct?

16 A. It doesn't -- as long -- if it's not wrote on there how
17 much time served, they're not going to give to you.

18 Q. Have you addressed this issue with the---

19 A. Oh. I addressed it --

20 Q. ---South Carolina Department of Corrections?

21 A. I addressed it with Erik Delaney and, you know, -- and
22 I even have the direct appeal where he even stated and put
23 in the direct appeal that I should receive the time served
24 and he stated that the -- that the judge actually sentenced
25 me to ten years in the Department of Correction, whenever he

1 clearly knows that the judge did not sentence me to ten
2 years in the Department of Correction. He clearly stated on
3 the charges of kidnapping, domestic violence in the first
4 degree and possession of methamphetamine, third offense, I
5 sentence you to one year in the Department of Correction.
6 That is in black and white --

7 MR. NEUBAUER: Your Honor, I have no more questions at
8 this time.

9 THE COURT: Okay. Mr. Richey, redirect?

10 MR. RICHEY: No questions. We call Mr. Delaney.

11 THE COURT: Thank you, Mr. Vanderford.

12 THE WITNESS: Yes, Your Honor.

13 THE CLERK: Mr. Delaney, if you'll place your left hand
14 on the Bible and raise your right.

15 (ERIK DELANEY, being first duly sworn, was examined and
16 testified as follows):

17 THE CLERK: Thank you. You can have a seat.

18 DIRECT EXAMINATION

19 ERIK DELANEY BY MR. RICHEY:

20 Q. Sir, will you state your name, please?

21 A. Yes. Erik Delaney.

22 Q. And, Mr. Delaney, you represented Mr. Vanderford?

23 A. I did. Yes.

24 Q. And in February the 1st, 2019, where were you employed?

25 A. York County or Union County Public Defender's Office.

1 Q. Okay. Are you still in that capacity today?

2 A. I am. Yes.

3 Q. Okay. And you were appointed to represent him?

4 A. That's correct.

5 Q. And you've been in the courtroom and you've heard what
6 the issues are. Let me --

7 MR. RICHEY: Can I approach the witness, Your Honor,
8 please?

9 THE COURT: Yes, sir.

10 Q. Mr. Delaney, I'm going to hand you a copy of this
11 February the 11th, 2019 transcript and -- and on that
12 transcript did the judge sentence him to something different
13 than the negotiations?

14 A. Yes. In the transcript it states that the sentence of
15 the Court for kidnapping, domestic violence, first degree,
16 possession of methamphetamine is that you be confined to the
17 State Department of Corrections for one year.

18 Q. Did you -- okay. At that -- did Mr. Vanderford discuss
19 that sentence with you?

20 A. He did.

21 Q. And did he ask you to take any actions to change the
22 sentencing sheet to reflect that sentence?

23 A. Well, the best that I can remember, when he discussed
24 it with me at the time, when he brought it to my attention
25 was the first that I -- I did not catch this in the

1 courtroom.

2 Q. Yes, sir.

3 A. I don't believe the solicitor did as well. If that's
4 something either I would have heard or the solicitor would
5 have heard, I believe one of us probably would have had the
6 judge correct it. Mr. Vanderford told me what he believed
7 the judge said. At that time we just discussed, you know,
8 what was the actual -- unfortunately, what was the actual
9 sentence in the case, you know. He asked me to do an appeal
10 for him, I did an appeal for him, but I didn't do anything
11 specifically on the sentencing sheets. No.

12 Q. Did he ask you to file any motion to recon- -- for
13 reconsideration or modify the sentencing sheets or any
14 action prior to filing an appeal?

15 A. I don't -- I don't remember, honestly.

16 Q. But he did tell you to take some action?

17 A. He did. He did. We did discuss it. I do -- I do
18 remember that. I do remember that after the plea, I don't
19 know how soon, but it was sometime shortly after, whenever I
20 got back to the holding area, that that is something that we
21 did discuss and --

22 Q. If this -- well, let me ask you this: if this was
23 something that you had heard it in the courtroom and you
24 knew it was not accurate, would you have done something to
25 take him back in front of the judge or do something in that

1 regard, if you had heard the judge say one year?

2 A. I believe so. Yes.

3 Q. Okay. But in this particular case, I think what I'm
4 hearing is you didn't hear the judge say that and he talked
5 about it, so you just didn't do anything with it? I'm just
6 trying to figure that out.

7 A. Yeah. That's -- I think that's correct. I mean, he --
8 I remember it being discussed. I remember Shane, Mr.
9 Vanderford, saying something to me about the one year and my
10 response at that time was, no, Shane, you did not,
11 unfortunately, get, you know, you did not get one year, you
12 know. This sentence -- this deal was for ten. It was
13 negotiated. That's something that I had prepped him on back
14 on February the 1st when we entered this plea or before that
15 and then, obviously, up until that day is that, you know, we
16 just didn't have any -- you know, this was an agreed upon
17 sentence that we had in the case and there just wasn't any
18 say that we had to get it any lower.

19 Q. So your position on February 1st, he pled to this
20 negotiation---

21 A. Yes.

22 Q. ---sentence and the sentence itself, for all intents
23 and purposes, was locked in at that point, assuming the
24 second judge took it. Correct?

25 A. Say it again. I'm sorry.

1 Q. On February 1st, when he pled to that recommendation,
2 it was your position that that sentence was locked in,
3 assuming the second judge would take it---

4 A. Yeah. I mean, it was --

5 Q. ---and didn't do anything else?

6 A. It was a nego- -- yeah. That negotiation. It wasn't
7 a recommendation, it was a negotiation that we entered into
8 on the 1st and then the reason that we didn't have the --
9 the best that I can remember, the reason why -- one, we were
10 getting close to trial and that's why there was discussion
11 to bring him over here to York to get a plea entered. At
12 that time, you know, we were able to get Mr. Vanderford's
13 family here, over to York, so that was part of the reason
14 why sentencing was asked to be delayed and brought back to
15 Union so that he could have some family there.

16 Q. So you -- he was brought here to get the plea done
17 because he was on the Union docket at the time?

18 A. Exactly; yeah. He was first up. The best I can
19 remember, he was -- we were being told he was first up for
20 trial on, I think it was, the term of the 11th and that if
21 we wanted to take this deal, we needed to take it before the
22 term of court started.

23 Q. Okay. Let me talk to you a little bit about the deal.
24 Prior to February the 1st, did you discuss with him what all
25 this meant, the negotiated -- did you explain all that to

1 him?

2 A. I did.

3 Q. And what did you explain to him about pleading to this
4 negotiated sentence?

5 A. That a negotiation sentence is worked out ahead of
6 time. The ten years is, you know, -- you know walking into
7 the courtroom you're going to get ten -- if the judge takes
8 it, you're going to get ten years.

9 Q. Okay. The victim being in the courtroom, did you have
10 discussions with him about the victim showing up for a plea?

11 A. I -- what I had discussions with him about was the
12 victim showing up for trial. I didn't -- as far as her
13 showing up to the plea, that's just not something that, I
14 guess, either I was concerned about, I was concerned about
15 showing up for the trial and that's what I discussed with
16 him.

17 Q. And did you discuss with him about him not being
18 indicted within ninety days of arrest? Did you talk to him
19 about that?

20 A. I don't know if I talked to him about that. I don't
21 doubt or deny that Shane talked to me about that, but I
22 don't know if I had much of a response to him.

23 Q. Did he ask you about having the indictment -- the
24 sentencing sheet changed to reflect the time served, the 540
25 days that he did -- that he wanted credit for on all his

1 charges? Did he discuss that?

2 A. I don't recall him ever discussing that. I --
3 obviously, I recall us discussing the other matters with the
4 -- with the judge, what he heard the judge say in the
5 courtroom and what the judge did say in the courtroom, but I
6 don't specifically remember talking about credit.

7 Q. Okay.

8 MR. RICHEY: One moment, Your Honor, please.

9 (Whereupon, Mr. Richey and Mr. Vanderford conferred off
10 the record.)

11 MR. RICHEY: No more questions, Your Honor. Thank you.

12 THE COURT: All right. Mr. Neubauer.

13 MR. NEUBAUER: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 ERIK DELANEY BY MR. NEUBAUER:

16 Q. Good afternoon, Mr. Delaney. How long you been
17 practicing law?

18 A. For seventeen years.

19 Q. Seventeen years. And what percentage of that has been
20 criminal practice?

21 A. About sixteen years.

22 Q. About sixteen years of it. And you were appointed to
23 represent Mr. Vanderford. Correct?

24 A. I was.

25 Q. And how long before his plea were you appointed?

1 A. I was looking for that. Shane -- I'm not -- I'm not
2 sure. Shane was charged, I want to say it was August of
3 '17. He was in McCormick, in the Department of Corrections
4 at McCormick, so it wasn't a traditional initial appearance.
5 I just remember Shane being brought over to Union to the
6 courthouse during court weeks and we would meet with him
7 throughout, you know, during the week. I had my
8 investigator meet with him. I had some meetings with Shane
9 and then I think Shane mentioned about a week before the
10 trial, they moved Shane to Union County. That's where I had
11 some talks with him there.

12 Q. Okay. And do you recall how the charges against Mr.
13 Vanderford arose?

14 A. As far as the allegations?

15 Q. Yes.

16 A. Yeah. There was -- it was -- I think it was somebody
17 he had been in a long-time, kind of on again/off again
18 relationship with. There were allegations that he had
19 assaulted her and locked her in a shed that they were, I
20 think, living in at the time.

21 Q. Okay. And then the drug charges flowed from that?

22 A. I believe so.

23 Q. And did you discuss with Mr. Vanderford the charges and
24 his version of the events?

25 A. Yeah. I discussed this with him and I also had an

1 investigator on my case that was also going through all the
2 discovery with Shane.

3 Q. Okay. And would you have discussed the possible
4 punishments and the sentences he could have received if he
5 took this to trial?

6 A. We would have, yes, and we did.

7 Q. And do you remember what you told him about this?

8 A. It was a concern. As far as Shane going to trial on
9 this kidnapping charge is what concerned us, concerned me.
10 There was a -- it was a case that was just a little more
11 than the allegations coming from the victim in the case.
12 This -- Shane was on video. He had taken some pills. He
13 was about to be charged with something. I don't know if it
14 was with these offenses or some others and he had taken some
15 pills. They had to take him to the hospital. There was
16 police there. He had said a lot of things on video, on
17 body-cam video, that I felt really hurt his case should he
18 took it -- take it to trial and that was a big part of my
19 advice to him, that I do believe he should have -- he should
20 have went to trial on these charges because of his record.
21 I just thought he could -- it could have turned out really
22 bad. Ten years, I didn't think anybody should be excited
23 about that, but I thought it was a deal that he should take.
24 That was my advice to him, ultimately.

25 Q. And, ultimately, how did plea negotiations begin

1 between you and the State?

2 A. Well, unfor- -- you know, --

3 MR. RICHEY: Judge, I'm going to object here. I think
4 that's outside the scope of direct and the issues that were
5 presented to the Court. I think this is outside the scope
6 of direct. I think the issue here is about the plea itself.

7 THE COURT: Well, it's cross-examination. I'll
8 overrule the objection.

9 Q. So, ultimately, how did plea negotiations begin between
10 you and the State?

11 A. I honestly don't recall, you know, a whole lot about it
12 other than the point where, you know, when the State became
13 very serious about calling his case to trial and that's
14 where I remember, you know, as far as them coming at him
15 with that number.

16 Q. And the ten year negotiated offer, is that only offer
17 that was presented to Mr. Vanderford?

18 A. I don't recall. I was looking through --
19 unfortunately, I was looking through the file and I don't
20 know if that was the only offer that was made in the case,
21 if we had a higher offer, if it started higher, I don't
22 remember.

23 Q. But any negotiations that would have been brought to
24 you, would you have relayed those to Mr. Vanderford?

25 A. Yes.

1 Q. And was he -- initially, was he interested in taking
2 the guilty plea?

3 A. No. He was never -- you know, he -- this was never
4 something that he, you know, that he was excited to do and
5 wanted to. He had talked to us about wanting to go to
6 trial, but he ultimately, you know, -- this was -- you know,
7 we talked about it. I gave him my advice, but I believe
8 this was truly Shane's decision.

9 Q. And were you prepared to go forward to a trial if he
10 had refused this plea offer?

11 A. We would have been. Yes.

12 Q. And you discussed it -- or you discussed with Mr.
13 Vanderford that these were a ten year negotiated sentence on
14 the kidnapping, domestic violence and methamphetamine
15 charge. Correct?

16 A. Yes. That's correct.

17 Q. And do you remember how that was conveyed to him or how
18 it was explained to him?

19 A. It would have been conveyed to him face to face, me
20 talking to him and, I believe, as he testified to, the best
21 that I can remember as well, that would have been
22 communicated to him at the Union County Detention Center,
23 obviously, before we came to York to do the plea. I don't
24 recall, you know, how earlier in the week it was, if it was
25 two days before, three days before, but I do remember going

1 to the Union County Detention Center and seeing Shane
2 multiple times that week and us discussing that, the
3 negotiations.

4 Q. And prior to the actual sentencing on February 11th,
5 was there any confusion about the sentence he would receive?
6 Did he understand that he was accepting a ten year sentence?

7 A. I believe he did.

8 Q. Did he ever tell you that he thought he was getting a
9 lesser sentence or that the judge -- did you ever tell him
10 that the judge could give him a lesser sentence?

11 A. No. I don't -- I would have never told him that in
12 this type of scenario where it was a negotiated ten.

13 Q. And was there ever any discussion about the victim
14 being present at the guilty plea?

15 A. At the actual plea? No. I don't recall that and,
16 again, that's not something with a negotiated sentence, you
17 know, 'cause sometimes in these type of cases, if the victim
18 -- alleged victim comes in for a plea, that could be
19 beneficial to my client, but being a negotiated sentence
20 already, that's not something that I would have been
21 concerned about, the victim coming to the plea. My
22 discussions with Shane would be was the victim coming to the
23 trial, you know, that would have been my discussions with
24 Shane, is -- and we had heard -- we had heard from the
25 solicitor's office that they had been in contact with her

1 and we had done our own work as far as my investigators and
2 we believed that she was going to come to the trial on
3 February the 11th.

4 Q. And was there ever any promise made to him that the
5 victim would be present at the guilty plea?

6 A. No. I don't recall that.

7 Q. And as far as the indictments themselves, Mr.
8 Vanderford was indicted more than ninety days after he was
9 arrested. Is that correct?

10 A. I believe so. Yes.

11 Q. Did you see any issue with the indictments regarding
12 the time?

13 A. No, I didn't.

14 Q. Did you feel that there was -- that if you would have
15 made any motion regarding the indictments, it would have
16 ultimately been successful?

17 A. No. I don't believe so.

18 Q. All right. And so on February 11th, on the last page,
19 Judge Culbertson does state that he would be confined to the
20 Department of Corrections for one year.

21 A. That's correct.

22 Q. Was this the only time that a one-year sentence was
23 ever stated for the kidnapping, domestic violence and
24 possession of methamphetamine charge?

25 A. That's correct.

1 Q. And in front of Judge McKinnon, did both you, the
2 solicitor and Judge McKinnon state that the sentence would
3 be for ten years?

4 A. Yes. That's correct.

5 Q. Additionally, at the sentencing hearing, did Judge --
6 or did Solicitor Gilmer inform the Court that there was a
7 negotiated sentence of ten years for domestic violence?

8 A. She did; she did.

9 Q. And on page twelve Judge Culbertson does indicate that
10 there is a negotiated sentence, which he will accept.
11 Correct?

12 A. That's correct.

13 Q. And, in fact, on the sentencing sheets there is -- it's
14 written multiple times that there was a negotiated ten-year
15 active prison sentence. Correct?

16 A. That's correct.

17 Q. So other than that one misstatement by Judge
18 Culbertson, there was no ambiguity or confusion regarding
19 the sentence that Mr. Vanderford would receive. Correct?

20 A. Correct.

21 Q. And you indicated he did -- or did raise the issue or
22 inform you that Judge Culbertson told him it would be a one-
23 year sentence right at the end. Correct?

24 A. That's right.

25 Q. And did you ever consider filing a motion to

1 reconsider?

2 A. I don't think so. I'm just trying to remember. I
3 don't believe so. I know I checked the -- I know after that
4 I checked the sentencing sheets and to make sure what was on
5 the sentencing sheets that week, but as far as filing a
6 motion to reconsider, no. I don't remember or don't recall
7 taking any steps any further.

8 Q. And is it your opinion if you filed a motion to
9 reconsider, do you feel that that would have been
10 successful?

11 A. No.

12 Q. And why do you feel that way?

13 A. Well, what the -- you know, what the deal was, what we
14 agreed to, it was negotiated, you know. To do it over
15 again, you know, just to get it cleaned up and to get it on
16 the -- on a transcript of that, sure, I would agree that
17 that would have been beneficial to do, but I don't believe
18 that would have changed anything as far as a motion to
19 reconsider. I don't believe he would have been actually
20 given any lesser time than ten years.

21 Q. And at one point Mr. Vanderford said that you told him
22 all he could tell the judge was yes, sir, or accept
23 everything that the judge said. Did you ever have that
24 discussion with him?

25 A. I don't remember saying anything like that

1 specifically. No. I don't believe I --

2 Q. Do you believe --

3 A. I know, you know, I would have advised him or went
4 through, you know, as far as the plea colloquy and what
5 would have been asked to him and, you know, I know one of my
6 responses probably would have been, you know, answer yes,
7 sir, no, sir, those type of things, or yes, Your Honor, no,
8 Your Honor, but I don't recall saying anything other than
9 that or saying that he couldn't say anything additional.

10 Q. And you did not force him to enter this guilty plea,
11 did you?

12 A. No.

13 Q. You did not promise him anything or threaten him in any
14 way to get him to enter this guilty plea?

15 A. No. The only promise that was given was in this
16 particular type of case I could guarantee as far as what he
17 would be given by the judge if the judge took it. That's
18 what I could guarantee.

19 Q. And that was because this was a negotiated guilty plea?

20 A. Yes.

21 Q. And, again, part of the negotiations, it was understood
22 that Mr. Vanderford would get credit for time served for all
23 of his sentences. Correct?

24 A. That's correct.

25 Q. And it was stated as much during the guilty plea and

1 the sentencing. Correct?

2 A. That's correct.

3 Q. And it was actually listed on the sentencing sheets
4 that he would get credit for time served. Correct?

5 A. Correct.

6 MR. NEUBAUER: I have no further questions.

7 THE COURT: All right. Redirect?

8 MR. RICHEY: No other questions.

9 THE COURT: Thank you, Mr. Delaney.

10 THE WITNESS: Thank you.

11 THE COURT: You can step down.

12 MR. RICHEY: Those are all the witnesses, Your Honor.

13 THE COURT: Okay.

14 MR. NEUBAUER: The State has no witnesses, Your Honor.
15 If we could have a brief closing argument.

16 THE COURT: Yes, sir. I'll - the State will go -- Mr.
17 Richey, you have the burden of proof, so I'm going to give
18 you the last argument--

19 MR. RICHEY: Yes, sir.

20 THE COURT: ---and so I'll hear from the State first.

21 MR. NEUBAUER: It would be the State's position that
22 Mr. Vanderford has failed to show that his counsel was
23 ineffective in any way. Though there was -- though he was
24 not indicated within ninety days, Mr. Delaney testified that
25 he felt that there was -- he did not see any issue with this

1 or that if he moved to quash these indictments in any way
2 that it would have been successful for his client.

3 Additionally, he was not prom- -- or he did not promise
4 Mr. Vanderford that the victim would be present at the
5 guilty plea. He testified that he did not believe that was
6 an issue, as it was a negotiated guilty plea and there was
7 no possible discretion for the judge as far as sentencing,
8 other than to accept or reject the negotiation.

9 As far as credit for time served, all parties were in
10 agreement that Mr. Vanderford would receive credit for time
11 served and the sentencing sheets accurately reflect as much.
12 Additionally, pursuant to Al Shabazz, this is a
13 administrative issue that should be dealt with with the
14 South Carolina Department of Corrections as opposed to post-
15 conviction relief and the State would renew our motion to
16 dismiss that allegation.

17 As far as issues with the sentence, it was understood
18 at Mr. Vanderford's guilty plea on February 1st that he was
19 entering into a ten-year negotiated sentence. He signed the
20 sentencing sheets indicating as much and that oral sentence
21 was stated at his hearing on February 1st, as well as was
22 restated by Solicitor Gilmer on February 11th and Judge
23 Culbertson on February 11th.

24 Though Judge Culbertson misspoke on the final page of
25 the transcript, pursuant to *Tant versus South Carolina*

1 *Department of Corrections*, 408 S.C. 334, this is page 337,
2 The Department of Corrections is generally confined to the
3 face of the sentencing sheets in determining the length of a
4 sentence, but may refer to the sentencing transcript if
5 there is any ambiguity in the sentencing sheets. There's
6 clearly no ambiguity within these sentencing sheets. They
7 all indicate these are negotiated ten-year active prison
8 sentences with credit for time served. There's no confusion
9 or ambiguity within the sentencing sheets. Though Judge
10 Culbertson misspoke, it is clear from the written documents
11 that Mr. Vanderford and all parties signed that Mr.
12 Vanderford was pleading guilty to ten years.

13 Therefore, he's failed to show how his counsel was in
14 any way deficient or how he was prejudiced as a result of
15 counsel's actions.

16 THE COURT: Thank you, Mr. Neubauer. Mr. Richey.

17 MR. RICHEY: Thank you, Your Honor. May it please the
18 Court, Your Honor.

19 The issue here with this sentence, I will say to the
20 Court, while my client appeared in court and the judge
21 pronounced his sentence, I don't think that we should hold
22 a client to the lawyer's standard. Okay. Holding Mr.
23 Vanderford to the lawyer's schedule -- standard would say
24 all of it's negotiated; he should know. That's holding him
25 to a lawyer's standard.

1 As the client, when the judge gives the sentence, he
2 actually goes to the lawyer and says, hey, the judge just
3 gave me a year. Now, you know, I've been representing these
4 clients a long time and at that point the client is, at
5 minimum, confused. I got a year. He actually talks to the
6 lawyer about the sentence and I think the lawyer's testimony
7 was if I had have heard it, I would have done -- taken some
8 steps, which is reasonable. The lawyer also testified that
9 this time -- credit for time served, that he wished he had
10 have got it all cleaned up and that's the crux of the
11 argument. I think it's reasonable for client -- for the
12 lawyer to present something to the judge to clarify the
13 sentence for this particular client.

14 Your Honor, we would rely on *Bonnell (ph.) versus the*
15 *State of South Carolina*. In that case what they talk about
16 is when a client is sentenced in front of the judge, the
17 oral presentation should trump because he's there in front
18 of the judge and that's when he gets his sentence. If the
19 written sentence is different, this case talks about a due
20 process of it being fair to the defendant, that he gets the
21 oral presentation, 'cause he's there and that's what the
22 judge gave him. And so, in this particular case, Your
23 Honor, is it's our position that counsel was ineffective by
24 not going and having the -- to go to the judge and say,
25 clear the sentence up. That's our position. And I think

1 Mr. Delaney pretty much referenced that.

2 And, Your Honor, as to these other issues about being
3 indicted ninety days, I know that what the Rule of Criminal
4 Procedure says. I don't know we can prove that he was
5 prejudiced by that.

6 The victim in the courtroom, I think that was the
7 inducement to get him to plea. It is his position, because
8 the victim wasn't there that the lawyer should have moved --
9 withdrew his plea, but I think the issue here that -- the
10 issue here that we're dealing with, Your Honor, is the
11 sentence and it's our position that the lawyer should have
12 at least filed some motion to clarify it.

13 As far as his time, his credit for time served, Your
14 Honor, if you look at the sentencing sheets, it's actually
15 listed out the days that he get for. I think when you look
16 at all these sentencing sheets together, because it's not
17 marked on the other ones, that SCDC might assume that he
18 doesn't get credit for these days, but they are on the two
19 sentencing sheets and I think the Attorney General just said
20 is that there's no dispute that he should have gotten those
21 credit for all these charges, that he didn't get it based
22 off these sentencing sheets. Thank you, Your Honor.

23 THE COURT: Counsel, I want to look at those cases that
24 you've cited and I want to go back and read the transcripts
25 again and the documents. I'm going to take this under

1 advisement and I'll have my law clerk email you a decision.

2 MR. RICHEY: Thank you, Your Honor.

3 THE COURT: Thank you, Counsel.

4 MR. NEUBAUER: Thank you, Your Honor.

5 (END OF REQUESTED TRANSCRIPT)

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STATE OF SOUTH CAROLINA)
) C E R T I F I C A T E
COUNTY OF YORK)

I, the undersigned Shannon E. McGilberry, official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 11th day of April, 2022.

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

In witness whereof, I have hereunto subscribed my name,
this 27th day of December, 2022.

Shannon E. McGilberry

Shannon E. McGilberry, CVR-M

My Commission Expires:

April 26, 2027

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF UNION	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
	)	
	)	
William Shane Vanderford,	)	Case No.: CASE NO: 2019-CP-44-00200
SCDC#344689	)	JUL 11 12:50
Applicant,	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

This matter comes before this Court by way of Applicant William Shane Vanderford's post-conviction relief application filed June 24, 2019. Respondent made its return on September 9, 2019, moving to summarily dismiss the application because the allegations were refuted by the record and did not raise a claim upon which relief could be granted and requesting a motions hearing be convened on the motion to dismiss.

A hearing on Respondent's motion to dismiss was convened December 9, 2021, before the Honorable Grace Gilchrist Knie, who denied the motion to dismiss and set the matter for an evidentiary hearing.

An evidentiary hearing was held on April 11, 2022 before this Court. Applicant was present alongside counsel Rodney Richey, Esquire. Assistant Attorney General Michael Neubauer of the South Carolina Attorney General's Office represented Respondent. Applicant testified on his own behalf at the evidentiary hearing, as did Applicant's former plea counsel, Erik D. Delaney. At the conclusion of the hearing, this Court took the matter under advisement.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and

dismissed this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. In July 2018, the Union County Grand Jury indicted Applicant for possession of schedule IV controlled substance (2018-GS-44-1131), possession of schedule III controlled substance (2018-GS-44-1130), possession of methamphetamine, third or subsequent offense (2018-GS-44-1129), domestic violence, first degree (2018-GS-44-1128), and kidnapping (2018-GS-44-1127). Assistant Public Defender Erik Delaney of the Sixteenth Circuit Public Defender's Office represented Applicant. Assistant Solicitor Meghan Gilmer of the Sixteenth Circuit Solicitor's Office prosecuted the case. On February 1, 2018, Applicant pled guilty¹ before the Honorable William A. McKinnon, circuit court judge. Following a thorough plea colloquy, Judge McKinnon accepted Applicant's guilty plea and deferred sentencing upon Applicant's request and the consent of the State to allow Applicant's family to attend sentencing.

On February 11, 2018, Applicant appeared before the Honorable Benjamin H. Culbertson, circuit court judge, for a sentencing proceeding. Judge Culbertson sentenced Applicant to the following: concurrent sentences of imprisonment of ten years for kidnapping, first-degree domestic violence, and criminal possession of methamphetamine, third or subsequent; one-year with credit for time served for possession of schedule III-controlled substance; and one-year with credit for time served for possession of schedule IV-controlled substance.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed

¹ Applicant pled guilty to the kidnapping charge pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).

Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(b)(iv) of the South Carolina Appellate Court Rules. The remittitur was issued June 4, 2019.

Summary of Relevant Facts

The factual summary was provided at Applicant's sentencing hearing as follows:

Your Honor, this offense did occur on August 21st of 2017 here in Union County. There was an out building on property where the victim and Applicant were living. It had been converted to a residential area.

A family member of the victim called 911 and reported to law enforcement that the victim came to his residence with multiple injuries, telling him her boyfriend, the [Applicant], had physically abused her and had locked her inside their residence. Responding officer made contact with the victim who was crying and appeared fearful with visible injuries. The victim was transported to Spartanburg Regional Medical center for medical treatment.

Your Honor, she reported that she was in bed asleep at approximately 3:30 that morning when [Applicant] began accusing her of infidelity and striking her head. She reported he [Applicant] slammed her head into the wall and repeatedly pushed her around the residence after pulling her from the bed. The victim reported [Applicant] continued to repeatedly strike her with his hands and dragged her by her hair. The victim reported that [Applicant] also struck her legs and head with a lead water pipe and repeatedly threatened to kill her. The victim reported she was able to run out of the residence but [Applicant] dragged her back inside by her hair and dead bolted her inside the residence and also took her phone. She reported she was able to push out the air conditioning unit to escape after [Applicant] left.

Your Honor, the victim did have multiple injuries. She reported loss of consciousness. She had multiple bruising to her legs, arms, chest, back and face. She also had cuts to her feet, abrasions to her stomach and mouth. CT scan did show a scalp hematoma to and a deviation of her nasal septum. She also had a large bald spot on her head. That corroborated her account that she has been dragged by her hair.

(Sent. Tr. 9-10).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

(1) Ineffective Assistance of Counsel

- a. Counsel was ineffective because “he should have filed [a motion to] reconsider sentence or had the Clerk of Court fix sentencing sheets.”

As relief, Applicant requests “to have [his] sentencing corrected to match the Court’s transcripts and the oral pronouncement of the Judge’s sentence.”

At his evidentiary hearing, Applicant proceeded forward on the allegations above and the following allegations:

1. Applicant was not indicted within 90 days.
2. Victim was not in the courtroom during guilty pleas.
3. Applicant did not receive credit for 540 days jail credit.

Summary of the Testimony

Applicant testified first on his own behalf. He testified that he entered into a plea agreement with the State for a negotiated aggregate ten-year sentence. However, he contends he was actually sentenced to one year. He quoted the following from the transcript “sentence of the court for kidnapping, domestic violence in the first degree, and possession of methamphetamine, is that you be confined to the State Department of Corrections for one year.” Sent.Tr. p. 12 lines 3-6. “On the charges of possession of a scheduled three, controlled substance and possession of scheduled four controlled substance, sentence of the court is that you be confined to the State Department of Corrections for one year.” You will receive credit for 540 days served thus far. Applicant testified that he should not have received a 10-year sentence based on the judge’s oral sentencing.” He testified that he requested his lawyer to have the sentencing sheet reflect what the judge ordered. Thus, Applicant alleged that his lawyer was ineffective for not having the sentencing sheets corrected.

Applicant testified that he did not receive 540 days credit for all his charges because the credit for time served was only on one of his sentencing sheets. He stated that his lawyer was

ineffective for not having the 540 days credit written on his sentencing sheets. He testified he asked his attorney to get the sentencing sheets fixed immediately after sentencing. Applicant further testified that he was not indicted within 90 days pursuant to SCRCF Rule 5. Applicant also testified that the victim was not present for the plea even though he had been told she would be present.

On cross-examination, Applicant stated that he recalled on page 4 of the sentencing transcript being informed of a negotiated ten-year sentence. He also stated that he recalled the judge informing him of a negotiated ten-year sentence on the domestic violence case. He recalled a ten-year sentence for the kidnapping charge on page 4 of the sentencing transcript.

Applicant testified that the victim was not at trial. He claimed that his lawyer should have not had him plead guilty. Once the victim did not appear at the plea, Applicant testified he believed his lawyer should have pursued a jury trial but acknowledged his attorney advised him he would likely receive a sentence of twenty-five to thirty years of imprisonment if convicted following a trial and that the victim would likely testify at trial.

Counsel testified he was appointed to represent Applicant. He testified the charges stemmed from an incident in which Applicant locked the victim, with whom he had been in an on-and-off relationship, in a shed and the drug charges were related. He testified he reviewed Applicant's version of events with him, as well as the potential sentences and the elements of the offenses. He testified that the plea agreement between Applicant and the State was for a negotiated sentence of ten-years. He testified the case was near being called for trial when the plea agreement was reached, and it was for a determinate ten-year sentence, which he explained to Applicant. He testified that Applicant appeared to understand the plea agreement would result in a ten-year term of imprisonment. However, at the sentencing, the court misspoke and said one year, which he did not catch during sentencing. He stated that had he heard it he would have corrected it. He stated

that Applicant asked him to appeal the case and he did. He testified he did not consider a motion to reconsider because it was a negotiated sentence and the court clearly misspoke.

Counsel testified that he was not concerned with victim showing up for the guilty plea. He was only concerned about the victim showing up for a jury trial. He did not make any promises that the victim would be in court. Also, counsel did not recall whether Applicant was entitled to 540 days credit on all charges.

Lastly counsel testified that he did not have any issues with the Applicant not being indicted within 90 days of his arrest. He believed that raising this issue would not have changed the outcome of the case.

Findings of Fact and Conclusions of Law

Applicant has alleged various claims of ineffective assistance of plea counsel and asserts that as a result of counsel's purported errors, he is entitled to have his guilty plea undone and proceed back to the court of general sessions for a new disposition of his case.

Standard of Review

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief 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).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP.

Applicant's claims for relief as set forth in his application and as pled at the evidentiary hearing pertain to ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief 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 post-conviction relief 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), SCRCP; 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

or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth

Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” *Id.* The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and

raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance

was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant's decisionmaking” and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting 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. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Id. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

Findings as to Specific Claims Raised

Applicant has alleged twenty-two claims of ineffective assistance of plea counsel and asserts that as a result of counsel’s purported errors, he is entitled to have his guilty plea undone.

This Court has had the opportunity to review the record in its entirety and has heard the

testimony and arguments presented at the PCR hearing. Before this Court are the Union County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

This Court finds has failed to meet his requisite burden of proof as to each allegation. Each allegation is addressed below:

Counsel should have filed a motion to reconsider the sentence

Applicant asserts that counsel was ineffective for failure to file a motion to reconsider his sentence based on Judge Culbertson stating the sentence was for a one-year term of imprisonment rather than the negotiated ten-year term of imprisonment pursuant to the plea agreement. However, this claim is refuted by the record and Applicant cannot satisfy his requisite burden of proof.

Applicant's plea hearing and sentencing hearing occurred on two different dates. On February 1, 2019, Applicant pleaded guilty before the Judge McKinnon. The guilty plea transcript indicates Applicant bargained for concurrent ten-year sentences for kidnapping (2018-GS-44-1127), possession of methamphetamine (2018-GS-44-1129), and first-degree domestic violence (2018-GS-44-1128). (GP Tr. 4, l. 1-3; GP Tr. 6, l. 18-23, GP Tr. 7, l.11). The guilty plea transcript also indicates Applicant bargained for a one-year time served sentence for possession of a schedule IV substance charge (2018-GS-44-1131), and a one-year time served sentence or possession of schedule III drug (2018-GS-44-1130). (GP Tr. 5-6). Judge McKinnon verified with Applicant that these were negotiated sentences and asked Applicant whether he wanted the plea court to accept

the negotiated plea, to which he replied, “Yes, Your Honor.” (GP Tr. 7, l. 17-20). The plea court later asked Applicant, “understanding all that do you still want to go ahead and plead guilty today?” to which Applicant replied, “Yes, Your Honor.” (GP Tr. 9, l. 1-3). The plea court restated on the record Plea Counsel and Assistant Solicitor Gilmer negotiated an overall ten-year active sentence. (GP Tr. 13, l. -11).

At Applicant’s request, sentencing was delayed. Applicant was sentenced before Judge Culbertson on February 11, 2019. At Applicant’s sentencing hearing, Assistant Solicitor Gilmer stated to the plea court that she and Plea Counsel negotiated a ten-year active sentence to run concurrently between the charges. (Sentencing Tr. 3, l. 21-23). Judge Culbertson restated Applicant’s sentences later during the sentencing hearing as well, indicating that Applicant would be receiving an overall ten-year active sentence. (Sentencing Tr. 4, l. 21-25). While Applicant is correct that Judge Culbertson inadvertently stated Applicant would receive a one-year sentence for the kidnapping, domestic violence, and possession of methamphetamine charges, Judge Culbertson did so only after: (1) the correct terms had been explained to Applicant at his February 1 plea hearing; (2) Judge Culbertson correctly stated the terms of the plea to Applicant multiple times earlier during the sentencing hearing; and (3) Judge Culbertson accepted the plea, on the record, based on the correct ten-year imprisonment plea terms. (Sentencing Tr. 3, l. 21-25; Tr. 11; Tr. 12, l. 3-6).

At no point during the colloquy portion of Applicant’s sentencing hearing did anyone tell Applicant he would only receive a one-year sentence for his kidnapping, possession of methamphetamine, or domestic violence charges; Judge Culbertson only misspoke as to Applicant’s sentence during his final statement of the sentences Applicant would receive. (Sentencing Tr. 12, l. 3-6). It is clear by the record Applicant bargained for ten-year concurrent

sentences for his domestic violence, possession of methamphetamine, and kidnapping charges, and that is precisely what he received and what his sentencing sheets reflect.

Based on the irrefutable record, Plea Counsel was not deficient because he had no legal basis to file a motion to reconsider Applicant's sentence or make the clerk of court "fix" Applicant's sentencing sheets. There is no professional obligation to file a motion for reconsideration of a sentence absent a specific legal reason to do so. The sentence imposed on Applicant was not an illegal sentence, nor was there any allegation the trial court acted with partiality, prejudice, oppression or corrupt motive when sentencing Applicant. See Shraiar v. United States, 736 F.2d 817, 818 (1st Cir. 1984) ("No court has held that failure to file a [motion to reduce sentence] automatically constitutes ineffective assistance of counsel."). The record irrefutably shows Plea Counsel had no basis to file a motion to reconsider Applicant's sentence, and Applicant received the sentence he bargained for; an overall ten-year active sentence. Applicant's sentencing sheets correctly match the sentences Applicant bargained for; a ten-year concurrent sentence for kidnapping, first-degree domestic violence, and criminal possession of methamphetamine, third or subsequent; one-year with credit for time served for possession of schedule III controlled substance; and one-year with credit for time served for possession of schedule IV controlled substance. Accordingly, based on the irrefutable record of both proceedings, Applicant cannot show either Plea Counsel was deficient or Applicant was prejudiced by any failure to file a motion to reconsider his sentence or failure to have Applicant's sentencing sheets "fixed." Applicant was correctly advised that he would be serving an active ten-year sentence multiple times during two different hearings by two different judges. Accordingly, this Court DENIES this allegation.

Applicant was not indicted with 90 days

Applicant next asserts that counsel was ineffective for failing to move for dismissal of his charges when he was not indicted within ninety days as required by the South Carolina Rules of Criminal Procedure (SCRCrimP).

Pursuant to Rule 3(c), SCRCrimP,

(c) Action on Warrant. Within ninety days after receipt of an arrest warrant from the Clerk of Court, the solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the Grand Jury; (2) formally dismissing the warrant, noting on the face of the warrant the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court.

However, this rule is administrative and non-jurisdictional, and thus failure of solicitor to act on warrant within ninety days does not within itself invalidate warrant or prevent subsequent prosecution. See State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984) (the South Carolina Supreme Court held that Rule 3, SCRCrimP, is administrative not jurisdictional and a violation of this rule does not within itself invalidate a warrant or prevent subsequent prosecution); see also State v. Edwards, 374 S.C. 543, 572, 649 S.E.2d 112, 127 (Ct. App. 2007), rev'd on other grounds, 384 S.C. 504, 682 S.E.2d 820 (2009) (reaffirming Culbreath).

This Court notes that a violation of the rule governing the disclosure of evidence in criminal cases is not reversible error unless prejudice is shown. State v. Landon, 370 S.C. 103, 634 S.E.2d 660 (S.C. 2006). Here, Applicant has utterly failed to show any prejudice for his failure to be indicted within ninety days, as counsel correctly testified his charges would not have been dismissed based on this.

The Court finds that the Applicant has not met his burden and has not shown prejudice. Accordingly, this Court DENIES this allegation.

Victim was not in the courtroom during guilty pleas

Applicant testified that counsel was ineffective for not pursuing a jury trial when the alleged victim did not appear for the guilty pleas. However, Applicant never testified he wanted a jury trial and unequivocally testified the decision to plead guilty was his and his alone, free from any threats or coercion. Applicant was aware that the victim was not present for the plea when he entered the plea, and despite, this, still entered the plea. This Court has reviewed the record in its entirety and finds that Applicant's plea was knowing, intelligent, and voluntarily entered. The Court finds that the Applicant has not met his burden and has not shown prejudice. Accordingly, this Court DENIES this allegation.

Applicant did not receive credit for 540 days jail credit

Applicant asserts he is entitled to relief because he was not given credit for his entire time served on all of his sentencing sheets. He testified that he did not received credit for 540 days jail credit. Applicant testified that 540 days jail credit was written on some of his sentencing sheets but not all of them. He alleged that he is entitled to 540 days jail credit on all his charges.

Post-conviction relief "is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence.*" Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). The only non-collateral matters that are reviewable through post-conviction relief are those that are specifically enumerated in the Uniform Post-Conviction Procedure Act: (1) a claim that the applicant's sentence has expired and (2) a claim that the applicant's probation, parole, or conditional release has been unlawfully revoked. Id. Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered non-collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 206, 525 S.E.2d 886, 888 (2000). Such non-

collateral or administrative matters must be reviewed through the Administrative Procedures Act. Al-Shabazz, 338 S.C. at 378–79, 527 S.E.2d at 754–55. Accordingly, this Court finds this claim must be dismissed pursuant to Rule 12(b)(6), SCRCR, as it is not a cognizable claim under the Uniform Post-Conviction Procedure Act, and instead, this claim is appropriately handled through inmate grievance procedures and the Administrative Procedure Act. (S.C. Code Ann. Sections 1-23-10-160, 1-23-310 to 400, 1-23-500 to 660). Accordingly, this Court DISMISSES this allegation.

Conclusion

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

This Court notes that if Applicant wishes to appeal this order, Applicant, though his counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 8 day of July, 2022.



R. SCOTT SPROUSE
Presiding Judge
Sixteenth Judicial Circuit

Wallace, South Carolina.