

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable D. Craig Brown, Circuit Court Judge

MICHAEL DARNELL THOMAS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001492

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
2014-GS-40-4537
2014-GS-40-4538
2014-GS-40-4539

State of South Carolina,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
Michael D. Thomas,)
Defendant.)

April 26, 2016
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

MARGARET FENT BODMAN, ASSISTANT SOLICITOR
Attorney for the Plaintiff

ROBERT L. BANK, JR., ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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COURT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
4	COMPETENCE TO STAND TRIAL	6	

1 first degree, all for a negotiated sentence of 30
2 years.

3 THE COURT: Is that correct, Mr. Bank?

4 MR. BANK: Yes, ma'am, it is.

5 THE COURT: And have you explained to your
6 client the charges contained in the indictments,
7 the possible punishment, and his constitutional
8 rights?

9 MR. BANK: I have.

10 THE COURT: And how does he wish to plead?

11 MR. BANK: He wishes to plead guilty.

12 THE COURT: Do you agree with his decision to
13 plead guilty?

14 MR. BANK: I do.

15 THE COURT: And you are Mr. Michael Thomas
16 again; right?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And, sir, it is my understanding
19 you wish to plead guilty to criminal sexual conduct
20 first degree; kidnapping; and burglary first
21 degree? Do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And how old are you, sir?

24 THE DEFENDANT: Twenty-four.

25 THE COURT: And how far did you go in school?

1 THE DEFENDANT: Tenth grade.

2 THE COURT: And are you married?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Do you have any children?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: And you live with your mother?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: I know you are at Alvin S. Glenn,
9 but you normally live with your mom?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Are you on probation or parole?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: And within the last 24 hours, have
14 you taken any medication, drugs, or alcohol?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And what did you take?

17 THE DEFENDANT: Zyprexa medication.

18 THE COURT: And that is your medication? And
19 does that affect your ability to know and
20 understand what you are doing here today?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: All right. You understand what is
23 going on today?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. And the medication

1 doesn't affect that in any way?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: All right, listen closely to the
4 Solicitor as she states the facts.

5 MS. BODMAN: Your Honor, I think -- it just
6 dawned on me, I wanted to bring up one other thing,
7 is he did have a competency evaluation -- and we
8 can make that a part of the record -- where he was
9 found competent to stand trial.

10 THE COURT: All right. You can pass it up.

11 MS. BODMAN: When he mentioned his
12 medications, it made me think about that.

13 But, Your Honor, this happened back --

14 THE COURT: Let's mark this as a Court's
15 Exhibit.

16 THE COURT REPORTER: Do I add to those or
17 start over?

18 MS. BODMAN: You need to add it to those.
19 Four.

20 (WHEREUPON, Court's Exhibit No. 4 was
21 marked for identification only.)

22 MS. BODMAN: This happened back March 15th of
23 2014. The victim is a graduate student working on
24 her PhD here from China at the University of South
25 Carolina. She was living in an apartment at [REDACTED]

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████████████████████, a two-bedroom apartment.

About 11:00 o'clock that night -- she was home alone. It is a two-bedroom apartment, but her roommate was gone for the week for spring break, so she was home alone. And around 11:00 o'clock that night, after she had taken a shower, she Skyped with her mother back in China for some time, getting ready for bed, she heard a loud noise. And she kind of walked through the apartment to see if she could tell what it was. Didn't see anything, and so went back to her bedroom.

A short time later she heard another loud noise. At this point she looked up. In the doorway of her bedroom stood who we now know to be the Defendant. He looked surprised to see her. He immediately turned around, left the room. She was scared, shocked, surprised, and just stood there.

And within seconds, the Defendant came back into her bedroom and he had pulled a hood over his head. He immediately went over to her, turned her around, and grabbed her around the throat, started asking her where her money was. She said that she had a little bit of cash maybe in her purse.

He asked her who she was. She said she was a student here from China. And he said, Do not turn

1 around, do not look at me, I will kill you. And
2 kept repeating to her not to turn around and not to
3 look at him as he held her throat extremely tight.

4 He stayed behind her and walked her into her
5 bathroom where he told her to take off all of her
6 clothes, still holding her tight around the neck.

7 So she stripped down naked after he told her
8 to also take off her panties. And then he took her
9 panties and he stuffed them into her mouth.

10 He then told her to get down on all fours --
11 or, excuse me, to initially lay down on her stomach
12 on the bathroom floor. He then tells her to get up
13 onto all fours, and he penetrates her vagina with
14 his penis. She is screaming in pain and tells him
15 to stop. So he stops that.

16 He then tells her to not look at him. He
17 turns off the light in the bathroom and he tells
18 her to turn over onto her back. At that point he
19 penetrates her again in her vagina, and then he
20 stops that as she is screaming in pain. And then
21 he anally penetrates her.

22 I left out, prior to -- as he was walking her
23 into the bathroom very tightly, she was thrown up
24 against the door, or hit the -- basically the
25 doorjamb or the doorframe, where she suffered a

1 laceration to her nose. And her glasses had fallen
2 off. So it was not only dark, but she also did not
3 have her glasses to be able to see what was going
4 on.

5 While the sexual assault is taking place, she
6 is noticing that there is blood on the floor, the
7 bathroom floor, underneath her, as well as blood
8 other places in the bathroom from being -- from the
9 laceration to her nose.

10 He, you know, continues to tell her to please
11 not look at him, that he will kill her.

12 And at some point towards the end of the
13 sexual assault, she thinks to say, My roommate is
14 going to be home any minute now. I have a male
15 roommate. And she thinks to tell him that he is a
16 basketball player, because she wants him to think
17 that he is really big, and that that roommate is
18 going to come home any minute now. And so that is
19 essentially when the sexual assault stops.

20 He gets her back up off the floor and then
21 walks her back into -- still staying behind her --
22 walks her back into her bedroom where he asks where
23 her money is. She gets a little bit of cash out of
24 her wallet. And then the Defendant takes her cell
25 phone from her. She doesn't have any other form of

1 communication, there is no land line. And then he
2 leaves.

3 She puts on new clothes, and looks down to her
4 computer, and she has basically the software
5 program up that is a Chinese software program that
6 is similar to Skype, and she has that up, and she
7 sees that two of her friends that are Chinese that
8 are also students here are on that website, on that
9 chat. And so she immediately types to them in
10 Chinese: Help! Come to my apartment. I have been
11 raped. Someone has broken into my apartment.

12 And so her two friends, Steven and Jean,
13 immediately come over. They live very close-by.
14 And they immediately come over. And she is already
15 out in the front yard meeting them and runs to them
16 crying and basically runs and hugs them and tells
17 them just briefly, you know, that someone had
18 broken into her apartment and that she had been
19 sexually assaulted.

20 They call 9-1-1. The reporting officer gets
21 there and EMS gets there. Both of their
22 impressions are that she is extremely scared. She
23 is shaking. She is essentially kind of rolled up
24 into a ball. And the officer can't even really
25 approach her because as he starts walking over to

1 ask her what had happened, she turns away from him
2 just in fear also of him. The EMS person couldn't
3 really get much information out of her other than,
4 you know, What else should I have done, or, should
5 I have done something, and that she was in pain
6 vaginally.

7 They get to the hospital. Her friend Jean is
8 with her. And they meet the nurse. And she is not
9 able to really tell the nurse what happened. They
10 suture her nose from the laceration. And then she
11 has a sexual assault exam from the nurse. And they
12 do all the standard swabs. She is not really able
13 to give the nurse a history of what happened to her
14 because she says that she has told the story so
15 many times she can't say it again, but, in fact,
16 she really hadn't told anybody too much about what
17 happened. That is how traumatized she is. So they
18 get rectal swabs, vaginal swabs, and check her
19 clothes that she has on her. Those things are all
20 packaged.

21 She eventually is able to give a full written
22 statement with the help of a friend of hers. She
23 does do a SLED sketch, but that sketch looks
24 nothing like the Defendant.

25 SLED initially analyzes the panties that were

1 collected -- they were left at the home, she did
2 not put those back on -- and the rape kit. And all
3 we can get off the panties at that point is a YSTR
4 profile, and YSTR profiles can't be uploaded to
5 CODIS. So we still have at this point a stranger
6 sexual assault. So we decide to send the clothes
7 out to SLED that she had put on after the sexual
8 assault.

9 And at basically the waistband of her pants we
10 are able to develop a partial profile that can be
11 uploaded into CODIS, and that profile hit on the
12 Defendant. He is in CODIS.

13 She is showed a photo line-up, but did not
14 identify the Defendant. So really the entire case
15 at this point is the partial DNA profile hit from
16 CODIS and the YSTR from the panties.

17 He has been charged and arrested. Essentially
18 he says that he was at a party in Five Points that
19 night. He didn't know this girl, didn't have sex
20 with this girl, was never at the apartment, doesn't
21 know what they were talking about, but couldn't
22 give a single name or phone number of a person that
23 can back up that alibi.

24 And then while he has been sitting in Alvin S.
25 Glenn Detention Center, as you heard in yesterday's

1 motion, is he was being moved from one cell to
2 another because of a stopped up toilet, and once he
3 was removed from his cell to his new cell, a
4 detention officer went in and was inventorying and
5 searching his belongings in that jail cell and came
6 upon the letter, the coded letter, that once was
7 decoded said basically he was reaching out to
8 someone on the outside saying, I need you to go rob
9 this bitch, Phan Pan, of her passport so that she
10 will have to be deported and can't testify against
11 me.

12 So that, Your Honor, is essentially the facts
13 of the case. I'll tell you about, I guess, his
14 criminal record?

15 THE COURT: Sir, do you agree with the facts
16 as stated by the Solicitor?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. And is that what you
19 are pleading guilty to?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And you understand, sir, that the
22 kidnapping charge carries 30 years; the burglary
23 first charge carries up to life in prison; and the
24 criminal sexual conduct first degree carries 30
25 years? I could run those consecutive and you would

1 be looking at life plus 60 years. Do you
2 understand that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Knowing that, do you still wish to
5 plead guilty?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right, sir, you understand all
8 of these are classified as violent most serious
9 offenses. What that means, sir, is that under our
10 two-strike -- as to the most serious offense, that
11 this serves as a -- I assume this is a first strike
12 for him? First strike?

13 MS. BODMAN: Yes.

14 THE COURT: Serves as a first strike. This
15 would serve as a first strike. Meaning, sir, if
16 you were to get another strike, that the State
17 could move before the Court for life without
18 parole. Do you understand that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right. And it is also
21 classified as violent, meaning that you, for
22 purposes of the Department of Corrections, will be
23 classified as violent, and also, sir, that you have
24 to serve 85 percent of any sentence. Do you
25 understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. And, sir, you
3 understand that also as a result of this -- is he
4 already on the registry?

5 MR. BANK: Yes, he is.

6 THE COURT: Okay. All right. You understand
7 you will be on the sex offender registry?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And, sir, as you know, we started
10 a trial and we have already picked a jury in this
11 case. You understand under our constitution you
12 have the right to a jury trial, that you are
13 innocent until proven guilty by a jury of 12. You
14 understand that you and your attorneys would have
15 the right to cross-examine any witnesses that they
16 would present. You would have to testify if you
17 chose to testify; however, if you chose not to
18 testify, I would inform the jurors that they could
19 not hold that against you in any way.

20 Sir, if there were any defenses that you would
21 like to advance, you would be given the opportunity
22 to do that, although you would not be required to
23 do so because, remember, the constitution says that
24 you are innocent until proven guilty and that the
25 burden is on the State to prove you guilty beyond a

1 reasonable doubt. But by pleading guilty, when you
2 plead guilty you give up your right to a jury
3 trial, and you also give up all of those other
4 constitutional rights that I just told you about.
5 Is that what you wish to do, sir?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And you understand -- and, sir,
8 you have been represented by Mr. Bank, Mr. Bell,
9 and Ms. Kuchar. Are you satisfied with their
10 representation?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And do you need any more time to
13 speak with them?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: All right. And have they done
16 everything for you that you feel they could have
17 done or should have done?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And is there anything else that
20 you need to discuss with them?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: And are you completely satisfied
23 with their services?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. And you feel like they

1 have gone over everything with you?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: All right. And, sir, the
4 negotiations are 30 years, which she -- 30 years,
5 and she is asking me to run them concurrent, all
6 together. Is that your understanding of the
7 negotiations?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And are you in agreement with
10 that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: All right. And, sir, have you
13 understood all of my questions?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And have you answered them
16 truthfully?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And I know your attorneys have
19 prepared you for a guilty plea, but the answers
20 that you have given me, those are your answers; is
21 that correct?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And are there any questions that
24 you have of me regarding the guilty plea or
25 anything that we have gone over this morning?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: All right. And you are entering
3 this plea freely and voluntarily?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And no one is forcing you to do
6 so?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: All right. And has anyone offered
9 you anything in exchange for your guilty plea?
10 Other than the negotiations here, has anyone
11 offered you anything in exchange for your guilty
12 plea?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: All right. And you are pleading
15 guilty because you want to plead guilty; is that
16 correct?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. And, sir, you
19 understand -- and all the answers that you have
20 given me today have been truthful; is that correct?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And they have been your answers?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And you understand you have the
25 right to appeal the guilty plea and the sentence of

1 the Court within ten days of today's date. If you
2 could not afford an attorney for that appeal, an
3 attorney would be appointed for you. Do you
4 understand that, sir?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. Knowing all of that,
7 do you still wish to enter a plea of guilty, and
8 you wish for me to accept it; is that correct?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. I find that there is a
11 substantial factual basis for this plea. I also
12 find that the Defendant's decision to plead guilty
13 is freely, voluntarily, knowingly, and
14 intelligently made. I have marked Court Exhibit
15 Number 4 of a competency evaluation that was done,
16 ordered by Judge Hood and done and completed around
17 November 16th of 2015, in which the Department of
18 Mental Health and forensic evaluator found that Mr.
19 Thomas was competent to stand trial. And we will
20 make that a part of the record. I do find that the
21 Defendant is satisfied with the representation of
22 his attorneys. And I will accept the plea.

23 And his priors are?

24 MS. BODMAN: A couple of things, Judge. I
25 misspoke about the facts. That is what I get for

1 not having the report in front of me. The YSTR
2 profile was from a rectal swab, not from the
3 panties. I just want to correct that fact. I'm
4 sorry.

5 THE COURT: You don't dispute that?

6 THE DEFENDANT: No.

7 THE COURT: Okay.

8 MS. BODMAN: So there is a couple of
9 adjudications that are juvenile, so I want to just
10 hand those up to the Court.

11 THE COURT: I was reading the report and
12 listening, but some of them are already in there.

13 MS. BODMAN: Yes. So just -- two of the
14 adjudications are what resulted in his requirement
15 to register as a sex offender.

16 THE COURT: All right.

17 MS. BODMAN: And then he also has from 2014 it
18 looks like a entering premises after warning; and
19 2014, larceny of bicycles.

20 It is my understanding, Your Honor -- this is
21 just a horrific case. And so coming up with the 30
22 years, from my perspective, wasn't easy, but it is
23 my understanding that they have already started SVP
24 proceedings. The petition is already filed. It
25 has been held in abeyance pending the outcome of

1 this case. And it probably will be held in
2 abeyance until he completes this 30-year sentence.
3 And so the fact that that is still a possibility
4 that he could be SVP'd at the end of this 30 years
5 is definitely a factor we're taking into account.
6 Who knows the status of the program at that point.
7 But they have already initiated that.

8 THE COURT: You understand that also, sir?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: The Sexually Violent Predator Act
11 is a civil proceeding, but usually that would not
12 come into play until after -- it would not come
13 into play until after you complete your sentence.
14 Do you understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay.

17 MS. BODMAN: Also, just in -- as we talked to
18 the victim throughout the process of this case, it
19 has been certainly a rollercoaster in terms of
20 agreeing to and understanding the 30 years and
21 thinking we were going to go to trial and then
22 turning back around, but really in talking to her
23 about all of the risks and rewards and consequences
24 of trial, good and bad, she is in agreement with
25 the State's position. And she has written an

1 impact statement that we would like to read to the
2 Court and will be read by Juana Saavedra, a victim
3 advocate from our office, on her behalf.

4 THE COURT: Yes, ma'am?

5 THE VICTIM ADVOCATE: Dear Judge.

6 This incident happened at least two
7 years ago. For most of us, two years is
8 a long time. We enable ourselves to
9 forget what we have done. However, for
10 me, this incident is still as fresh as
11 if it happened yesterday.

12 Last week when I met with Margaret, I
13 didn't even have to review my statement
14 and I was able to tell her very clearly
15 what had happened.

16 Some people say you will never forget
17 some things until we are dead. This
18 incident has already been carved in my
19 memory and will never fade away for the
20 rest of my life.

21 I used to be a very brave girl and I
22 could plan to travel all around by
23 myself. Now everything is ruined. I do
24 not even like to stay at home alone.
25 My friends and my parents, who I have

1 not told yet, are very confused about
2 this change in me. They ask me, What
3 happened to you? You used to be so
4 brave and courageous? I just tell them,
5 Nothing. I'm just a coward now. And I
6 know that the old me will never come
7 back.

8 Immediately after the incident happened,
9 I cried a lot. I would not let my
10 friends see me crying too much because I
11 did not want them to worry about me.
12 What else could I do? I would go into
13 the bathroom and then at midnight when I
14 could not sleep I would cry. Every time
15 I was alone I asked myself, Why did this
16 happen to me? This is so unfair. I
17 haven't done anything wrong. However,
18 after two years I have realized that
19 this is life. We cannot control
20 everything. This is also why it is
21 important to have the law and the
22 justice system. The law and the justice
23 system help people by doing what is
24 right and punishing people who do
25 something wrong. I am really thankful

1 for this country and the nice people who
2 have helped me in this whole process.
3 They have helped me to confront
4 everything I come across.
5 There have been many times that I have
6 wanted to withdraw myself and run away.
7 It is their encouragement that lets me
8 know that I can suffer all these things
9 and still have a beautiful tomorrow.
10 Nevertheless, no matter how nice they
11 are, time cannot go back and erase
12 everything back to when I had no pain or
13 hurt feelings and the nightmares are
14 gone and all this would just be a
15 distant memory.
16 The other day when I chatted with my
17 friends, who would have been witnesses
18 for me, they informed me that they had
19 spoken to Margaret. Margaret asked them
20 if they could come and be willing to be
21 of support for me in the trial. And I
22 could not even speak of what had
23 happened. My fears just started, and I
24 began to cry immediately. Having to go
25 through the trial and speak of all the

1 details has really been a challenge for
2 me, but I was willing to do it in order
3 to hold him responsible for what he did
4 to me.

5 I know that no amount of time will make
6 this all go away, but I am okay with the
7 30 years in order to avoid going through
8 the trial process.

9 Thank you. Phan Pan.

10 THE COURT: All right. Thank you. And thank
11 you, Ms. Pan, for your comments, and thank you for
12 being here. And I'm sorry that you have to be
13 here.

14 All right, yes, ma'am?

15 MS. BODMAN: I am just very incredibly proud
16 of this young lady. And even though she, through
17 her statements, still thinks of herself as fearful
18 and scared, she is one of the bravest people that I
19 know. And I hope that you accept this plea.

20 THE COURT: Thank you. Yes, sir?

21 MR. BANK: Thank you, Your Honor. May it
22 please the Court? I'll be brief. I think that you
23 have been made aware of some of this background by
24 just briefly looking through --

25 THE COURT: Yes.

1 MR. BANK: -- his competency evaluation. But
2 Mr. Thomas has lived an extremely chaotic life.
3 His mother, who is here today, separated from him
4 around the age of two or three, he grew up the rest
5 of his life in Columbia, but either in Foster Care,
6 DJJ, back to Foster Care, hotel rooms. You know,
7 you never like to say that he never had a chance,
8 but he didn't have a real good opportunity to have
9 a chance.

10 He suffered from a number of mental health
11 issues, from bipolar disorder, schizophrenia. He
12 suffered from a learning disability when he was in
13 school. And obviously from a lot of the substance
14 abuse that you see in and out of this courtroom
15 every day, drugs and alcohol. I think that those
16 not only affected his entire life, I think that
17 those are obviously a great big play of things this
18 evening. Of course, it is no excuse, but I think
19 it gives some context of how we get here, as hard
20 as that might be.

21 Your Honor, with all that said, we think that
22 the 30 years is a fair sentence. I think that it
23 resolves it for everybody involved. And we just
24 ask that you accept the negotiations.

25 THE COURT: Anything?

1 MR. BANK: No, Your Honor.

2 THE COURT: All right. On Indictment
3 2014-GS-40-4537, 4538, and 4539, sir, you will be
4 sentenced to the State Department of Corrections
5 for 30 years. The sentences will all run
6 concurrent.

7 How much time does he have?

8 MR. BANK: April 10, 2014.

9 MR. BELL: 747 days.

10 THE COURT: All right. You will be given
11 credit for the 747 days that you have already
12 served.

13 And it is my understanding he is already on
14 the registry, but I will make a note on here, sex
15 offender registry.

16 All right, thank you.

17 MR. BANK: Thank you, Judge.

18 MS. BODMAN: Thank you, Your Honor.

19 THE COURT: Good luck to you, ma'am.

20 (WHEREUPON, the proceedings were
21 concluded at 11:32 a.m.)

22

23

24

25

(END OF TRANSCRIPT)

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 MICHAEL DARNELL THOMAS #329390)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2017CP4000943

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669
2. Name and location of Court which imposed sentence Richland County Court of General Sessions, 1701 Main Street, Columbia, SC 29201
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Kidnapping - 2014-GS-40-4537
 - (b) Burglary 1st Degree - 2014-GS-40-4539
 - (c) Criminal Sexual Conduct 1st Degree - 2014-GS-40-4538

RICHLAND COUNTY
 FILED
 2017 FEB 22 PM 3:13
 JEANETTE W. MORRIS
 C.C.P. & G.S.
 Revised 3/2003

- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 26, 2016 - 30 years
 - (b) April 26, 2016 - 30 years concurrent
 - (c) April 26, 2016 - 30 years concurrent
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty x
 - (b) after a plea of not guilty
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____ guilty plea
 - (b) _____

(c) _____

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

(a) Ineffective assistance of counsel

(b) Involuntary guilty plea

(c) _____

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

(a) _____ My ATTORNEY FAILED TO ADEQUATELY REPRESENT ME UNDER THE 6th AMENDMENT.

(b) _____ I WAS COERCED INTO PLEADING GUILTY BY MY ATTORNEY WHEN I WANTED A JURY TRIAL

(c) _____

12. Prior to this application have you filed with respect to this conviction: NO

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

(a) _____ BECAUSE I ENTERED A PLEA OF GUILT.

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any?

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

(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. Robert Banks, Esq., Richland County Public Defender's Office, P.O. Box 192,Columbia, SC 29202

ii. _____

iii.

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

i. Pleaii. Sentencing

iii.

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

New trial

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

No

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

I, Michael Darnell Thomas, 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.

Michael Thomas ✓
Applicant

SWORN or affirmed to and subscribed before me this
18th day of January, 2017.

Nancy C. Merchant
Notary Public

My Commission Expires: 1-23-2023

RICHLAND COUNTY
 FILED
 2017 FEB 22 PM 3:13
 JEANNETTE W. MORRIS
 C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
)
County of Anderson)

VERIFICATION

I, Michael Darnell Thomas, 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.

Michael Thomas ✓

SWORN to and subscribed before me this 18th
day of January, 2017.

Nancy C. Murchant (L.S.)
Notary Public

My Commission Expires: 1-23-2023

2017 FEB 22 PM 3:12
JEANNETTE W. NSBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
Michael Darnell Thomas, #329390,)	Case No.: 2017-CP-40-0943
)	
Applicant,)	RETURN
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on February 22, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In July 2014, the Richland County Grand Jury indicted Applicant for kidnapping (2014-GS-40-4537); criminal sexual conduct, first degree (2014-GS-40-4538); and burglary, first degree (2014-GS-40-4539). Robert L. Bank, Jr., Esquire represented Applicant. Assistant Solicitor Margaret Fent Bodman, Esquire prosecuted the case. On April 26, 2016, Applicant pleaded guilty as indicted to all charges before the Honorable Deandra G. Benjamin. Pursuant to a negotiated sentence, Judge Benjamin sentenced Applicant to imprisonment for concurrent terms of thirty years for kidnapping and criminal sexual conduct, first degree and burglary, with credit for 747 days of time served. Applicant did not appeal his conviction or sentence.

Attached to this Return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent

reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel
 - a. “My attorney failed to adequately represent me under the 6th Amendment”
2. Involuntary Guilty Plea
 - a. “I was coerced into pleading guilty by my attorney when I wanted a jury trial”

III.

Respondent submits Applicant’s allegation of ineffective assistance of counsel is without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

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

IV.

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not “within the competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52,

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

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information

conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

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

V.

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

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

request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Nov. 30, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
)
 Michael Darnell Thomas, #329390,)
)
 Applicant,)
)
 vs)
)
 State Of South Carolina,)
)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS

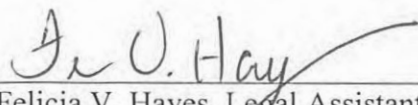
2017-CP-40-0943

CERTIFICATE OF SERVICE BY MAIL

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

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

DATED this the 30th day of November, 2017.



 Felicia V. Hayes, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Michael Darnell Thomas, 329390,)
)
 Applicant,)
)
 Vs.)
)
 State of South Carolina)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

**AMENDMENT TO APPLICATION FOR
 POST CONVICTION RELIEF**

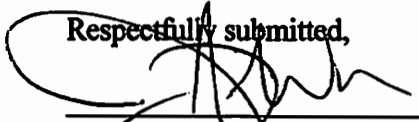
Case No. 2017-CP-40-0943

RICHLAND COUNTY
 FILED
 2019 JUN 14 4 11 53 PM
 JEANNETTE W. MACRICHIE
 C.C.P., G.S. & I.C.

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed February 22, 2017, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Robert L. Bank, Jr., Esquire:
 - a. Counsel was ineffective for failing to properly investigate Applicant’s mental health and have Applicant evaluated for competency and/or criminal responsibility, thus depriving Applicant of potential defenses afforded to those defendants found incompetent or not able to conform their actions to the laws of the State of South Carolina.

Respectfully submitted,



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

June 14, 2019

Columbia, South Carolina

MICHAEL D. THOMAS V. STATE OF SOUTH CAROLINA - 2017-CP-40-00943

1 STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
COUNTY OF RIDGELAND CIRCUIT COURT DIVISION

2
3

4 MICHAEL D. THOMAS,
5 Applicant,

6 vs. CASE NUMBER: 2017-CP-40-00943

7 STATE OF SOUTH CAROLINA,
8 Respondent.
9

10

11 HEARING BEFORE: THE HONORABLE D. CRAIG BROWN

12 DATE: FEBRUARY 21, 2020

13

14 REPORTED BY: KYMBERLEE M. WILLIAMS, CSR/RPR
15 State of South Carolina
16 Official Circuit Court Reporter
17 P.O. Box 8091
Beaufort, South Carolina 29903

18 APPEARANCES:

19 ATTORNEY FOR THE APPLICANT
20 JONATHAN H. WALLER, ESQ.
21 WALLER LAW GROUP
1116 Blanding Street
#2-B
Columbia, South Carolina 29201

22

23 ATTORNEY FOR THE RESPONDENT
24 SAMUEL KEY, ESQ.
25 ASSISTANT ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
1000 Assembly Street
Columbia, South Carolina 29201

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I N D E X

PROCEEDINGS	3
WITNESS: MICHAEL D. THOMAS	
Direct Examination	6
Cross-Examination	17
Redirect Examination	20
WITNESS: ROBERT L. BANK, ESQ.	
Direct Examination	22
Cross-Examination	31
Redirect Examination	33
PROCEEDINGS CONCLUDED	37
CERTIFICATE OF REPORTER	38

EXHIBITS

(NONE OFFERED)

1

2

P R O C E E D I N G S

3

* * *

4

FRIDAY, FEBRUARY 21, 2020

5

COLUMBIA, SOUTH CAROLINA

6

* * *

7

(Whereupon, the following proceedings were held

8

in open court. All parties were present along

9

with their attorneys.)

10

THE COURT: State ready to proceed?

11

MR. KEY: Yes, sir, Your Honor.

12

THE COURT: All right.

13

Mr. Waller, are you ready to proceed?

14

MR. WALLER: Yes, sir, Your Honor.

15

THE COURT: Call the case, please.

16

MR. KEY: May it please the Court, this is the case

17

of Michael Thomas v. State of South Carolina. Case Number

18

2017-CP-40-00943.

19

Mr. Thomas commenced this PCR action on February

20

22, 2017. He is presently confined in the South Carolina

21

Department of Corrections pursuant to orders of commitment of

22

the Richland County Clerk of Court.

23

In July of 2014, the Richland County Grand Jury

24

indicted him for kidnapping, criminal sexual conduct, first

25

degree, and first degree burglary.

1 He was represented by Robert L. Banks. Assistant
2 Solicitor, Margaret Fent-Bogman prosecuted the case.

3 On April 26, 2016, he pleaded guilty as indicted to
4 all charges before the Honorable Deandra Benjamin. Pursuant to
5 a negotiated sentence, Judge Benjamin sentenced him to serve
6 concurrent terms of 30 years for all three charges.

7 He did not appeal his conviction or sentence.
8 Mr. Thomas has alleged ineffective assistance of counsel
9 rendering his guilty plea unknowing and involuntary. He is
10 present today and represented by Mr. Jonathan Waller.

11 At this time, I will hand it over to Mr. Waller.

12 THE COURT: Mr. Waller.

13 MR. WALLER: Thank you, Your Honor, May it please
14 the Court.

15 THE COURT: Yes, sir.

16 MR. WALLER: Judge, back in June of 2019 --
17 additionally, I filed an amendment to the application. That
18 was regarding some mental health issues Mr. Thomas has been
19 suffering from his entire life. Judge, we had him evaluated
20 for criminal responsibility. The criminal responsibility is
21 not going to be a part of our presentation today; however, the
22 mental health issues will certainly be discussed -- but it is
23 not going to be an allegation for us.

24 THE COURT: Let me ask you this: Before we broke,
25 I requested the A.G.'s file on this case. I was back there in

1 my office looking at it. It appears that an evaluation was
2 done on December 13, 2019. One was attempted to have been done
3 on October 29, 2019, wherein the applicant, Mr. Thomas, did
4 not -- according to the record in here -- did not cooperate
5 with the evaluation that was done. There was one that
6 addressed criminal responsibility as well as capacity to
7 conform.

8 MR. WALLER: That's correct, Your Honor. The
9 October one -- I think there was a little bit of
10 misunderstanding. I had spoken to the Department of Mental
11 Health that day. It wasn't that he was not cooperating. It
12 was simply that he wanted me to be present for the evaluation.
13 I subsequently was present for the December evaluation. I
14 think that was the only issue there, Judge.

15 THE COURT: I am gleaning what I said from the
16 Department of Mental Health's October 30, 2019 letter.

17 In addition in reading -- I didn't get through the
18 entire transcript of the plea. It appears that he was
19 evaluated prior to his plea as well. Is that right?

20 MR. WALLER: He was, Your Honor.

21 THE COURT: Okay.

22 MR. WALLER: I believe he had been evaluated some
23 years before that as a juvenile as well.

24 THE COURT: Okay. Anything else at this point?

25 MR. WALLER: Nothing further, Your Honor.

1 THE COURT: Are you ready to proceed?

2 MR. WALLER: Yes, sir, Your Honor.

3 THE COURT: Yes, sir, Mr. Key.

4 MR. KEY: Do you have a copy of the December of
5 2019 evaluation in your packet?

6 THE COURT: Evaluation?

7 MR. KEY: Evaluation.

8 THE COURT: Yes, sir.

9 MR. WALLER: Thank you, Your Honor.

10 We will call Michael Thomas. Raise your right
11 hand.

12 **MICHAEL D. THOMAS,**

13 Called as a witness by and behalf of the Defense
14 to testify, being first duly sworn was examined
15 and testified as follows:

16 * * *

17 DIRECT EXAMINATION

18 BY {SPEAKER3}:

19 Q. Good morning, Mr. Thomas, how are you today?

20 A. Fine, how about yourself?

21 Q. Mr. Thomas, I need you to speak into the
22 microphone. Speak loudly and slowly, so everybody can hear you
23 and she can transcribe it, okay?

24 A Okay.

25 Q Mr. Thomas, I want to take you back to when you were

1 first arrested.

2 Do you remember that?

3 A. Yes, sir.

4 Q. When you were first arrested, what all were you
5 charged with?

6 A. Burglary, first, kidnapping, CSC first.

7 Q. Criminal sexual conduct, first degree?

8 A. Yes, sir.

9 Q. You were not arrested on the day of the alleged
10 incident, isn't that right?

11 A. Yes, sir.

12 Q. You were arrest sometime later?

13 A. Yes, sir.

14 THE COURT: Sir, I need you to speak up please,
15 okay?

16 THE WITNESS: Yes, sir.

17 BY MR. WALLER:

18 Q. All right. When you were arrested, were you given
19 a lawyer?

20 A. No, sir, not at that time, I wasn't.

21 Q. About how long after you were arrested did you get
22 a lawyer?

23 A. I can't quite remember.

24 Q. Was it weeks? Was it months? Days?

25 A. A few months, if I am not mistaken.

1 A. Who was your first attorney?

2 A. I think Ms. Tracy Penock (phonetic), if I am not
3 mistaken.

4 A. At some point did you get another lawyer?

5 A. Mr. Banks.

6 Q. When you met with Mr. Banks the first time, do you
7 recall that meeting?

8 A. No, sir.

9 Q. About how long after you were arrested did
10 Mr. Banks become your attorney, if you remember?

11 A. Much, much later.

12 Q. Had you and Mr. Banks talked about your case at all
13 then?

14 A. I am not quite sure.

15 Q. When Mr. Banks became your attorney, did you-all
16 have a chance to talk about your case?

17 A. Yes, sir.

18 Q. Did you-all talk about your Constitutional rights?

19 A. I don't recall that conversation.

20 Q. Did you-all talk about your right to remain silent?

21 A. I don't recall the conversation.

22 Q. Did you-all talk about your right to a jury trial?

23 A. I believe he spoke about a jury trial, yes, sir.

24 Q. We will come back to this in a minute. You-all
25 were actually starting a trial, is that correct?

MICHAEL D. THOMAS V. STATE OF SOUTH CAROLINA - 2017-CP-40-00943

1 A. Yes, sir.

2 Q. There was some forensic testing in your case that
3 was done, do you remember that?

4 A. Yes, sir.

5 Q. Did you-all have a chance to talk about those
6 different things?

7 A. I believe so, I can't quite recall that.

8 Q. Did you talk about the DNA in the case?

9 A As far as DNA, the only thing I know about that
10 was, he had a little scratch sheet of paper where he had some
11 numbers written down on the it.

12 A. Come back to that in a second. Did you-all have a
13 chance to talk about any of the cell phone tracking, GPS Data
14 that was taken from the cell phones?

15 A. Yes, sir.

16 Q. Did you-all have a chance to talk about the
17 database, the CODIS database, the DNA database?

18 A. Yes, sir.

19 Q. Did you have a copy of your discovery while the
20 charge was pending?

21 A. No, sir.

22 Q. Did you make bond in this case, or were you in the
23 detention center?

24 A. In the detention center.

25 Q. The whole time?

1 A. The whole time.

2 Q. You did not have a copy of that report, isn't that
3 right?

4 A. No, sir, I didn't.

5 Q. Did you get a copy at some point?

6 A. After I took the plea.

7 A. Did you get a copy from the Department of
8 Corrections, or where did you get a copy?

9 A. Department of Corrections.

10 A. Did you ask Mr. Banks to get you one?

11 A. I was asking Mr. Banks numerous times the whole
12 time, he refused to get me copy.

13 Q. Did he give you part of it or --

14 A. He never gave me none of it.

15 Q. Did you ever have a chance to see the incident
16 reports or anything like that?

17 A. No, sir.

18 Q. What did you and Mr. Bank talk about as far as
19 potential defenses in this case?

20 A. The only thing he ever spoke to me about was
21 pleading guilty, saying he don't see no way around it. Just
22 plead guilty.

23 Q. You-all were in the middle of pretrial motions when
24 you entered your plea, isn't that right?

25 A. Yes, sir.

1 Q. Obviously you-all had been preparing for trial.

2 What was your strategy for the trial?

3 A. Nothing that I can recall.

4 Q. Did you give him any information you wanted him to
5 look into?

6 A. I didn't really know nothing about the case. I
7 didn't know nothing. Hoping he knew what to do.

8 Q. Did you give him any witnesses you wanted him to
9 call?

10 A. Yes, sir.

11 Q. Did he call or talk to any of those people?

12 A. Not that I know of.

13 Q. When I say witnesses, were you able to give
14 Mr. Banks names and addresses, like real names and addresses?

15 A. I gave him the name and locations where he could
16 have found people at.

17 Q. Was it a real name or a street name?

18 A. It was both. A nickname and a first name. I
19 didn't know his last name.

20 Q. The public defender's office had a private
21 investigator in the case, do you remember that?

22 A. Yes, sir.

23 Q. Did you give that private investigator any of these
24 names?

25 A. I believe so.

1 Q. Did you have a chance to meet with the investigator
2 about this?

3 A. Yes, sir, I believe so.

4 Q. You maintain that you -- until you pled guilty
5 --that you were not at this location. You were at a park,
6 isn't that right?

7 A. Yes, sir.

8 Q. Did you give Mr. Bank or the investigator any
9 information as to what -- how they could corroborate that?

10 A. Yes, sir.

11 Q. What did they tell you about your investigation?

12 A. I don't quite remember.

13 Q. All right. Let me ask you this: You have been
14 treated for mental health issues your entire life, isn't that
15 right?

16 A. Yes, sir.

17 Q. You have been hospitalized before because of that?

18 A. Yes, sir.

19 Q. I don't want to get into everything, but was
20 Mr. Banks aware of your prior mental health issues?

21 A. Yes, sir.

22 Q. Did you-all talk about how that might affect your
23 case or your understanding of the case?

24 A. No, sir.

25 Q. Did you have any difficulty understanding your

1 conversations with him because of that?

2 A. I did, yes, sir.

3 Q. Were you on your -- were you taking any medication
4 during the time he was representing you?

5 A. Yes, sir.

6 Q. Did you recall what you were taking then?

7 A. I believe it was Depress (phonetic).

8 Q. When you actually entered the guilty plea, did you
9 tell the judge that you were taking that medication?

10 A Yes, sir?

11 Q. You told the judge it didn't affect you?

12 A. Yes, sir.

13 Q. Were you on medication the entire time you were
14 incarcerated?

15 A. Yes, sir.

16 Q. Was it the same medication?

17 A. Yes, sir.

18 Q. Did you have any issues with it? Did they have to
19 adjust it or anything like that?

20 A. No, sir.

21 Q. Do you know if Mr. Bank ever got any of your mental
22 health records?

23 A. No, sir. I don't know.

24 Q. You-all were preparing to go to trial. You
25 mentioned the DNA earlier. You said he had some numbers

1 written down on a scratch piece of paper. What do you mean by
2 that?

3 A. He just had a scratch sheet of paper where he had
4 written down some numbers and showed them to me. I didn't
5 understand or know what that meant.

6 Q. Like a legal pad?

7 A. A legal pad like that, yes, sir.

8 Q. Was it his trial notes? Do you know?

9 A. It was just -- I don't know what it was, it was
10 just numbers.

11 Q. So he is telling you about the DNA, you didn't see
12 the actual --

13 A. No, sir.

14 Q. Did you ever see a copy of that report?

15 A. Not until after the Department of Corrections.

16 Q. Mr. Thomas, you obviously had started a trial. You
17 picked the jury. You were going through pretrial motions,
18 isn't that right?

19 A. Yes, sir.

20 Q. What changed? Why did you decide not to go
21 forward?

22 A. When I heard the solicitor and the judge speaking
23 about life, I didn't want that life sentence. I just plead
24 (sic) guilty to 38.

25 Q. Had you talked to Mr. Banks about what the State

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1 has to do in order for you to be convicted?

2 A. Sir?

3 Q. Had you talked to Mr. Banks about what the State
4 had to prove in order for you to be convicted?

5 A. No, sir.

6 Q. You can't get a life sentence without being
7 convicted, isn't that right?

8 A. Yes, sir.

9 Q. Did you understand in the conversations of
10 Mr. Banks the elements of the three different offenses that the
11 State had to prove?

12 A. No, sir.

13 Q. Had you-all talk about the three individual charges
14 that you had?

15 A. We spoke about it, yes, sir.

16 Q Did you-all talk about the how the State intended to do
17 that? What evidence they had to try to do that

18 A. I believe so. I am not quite sure.

19 Q. Based on your conversations with Mr. Bank, do you
20 think he was ready to go to trial?

21 A. No, sir.

22 Q. Why did you not think he was ready?

23 A. The whole time he ever spoke to me, even the week
24 before -- I tried him and the other two that was representing
25 me -- the only thing they was spoking (sic) about was me

1 pleading guilty to the charge, saying that that was the best,
2 for me to just plead guilty.

3 Q. You didn't think they were preparing. They were
4 just trying to get you to plead guilty?

5 A. Yes, sir.

6 Q. Is there anything else you have seen since you
7 received a copy of your own file that you did not know about?

8 A. Yes, sir.

9 Q. What else did you see?

10 A. Like the DNA, that Mr. Bank could have fought it.
11 It never excluded me from the crime scene, but it never fully
12 concluded me to the crime scene. Do you see what I am saying?
13 It could have been DNA from any member of my family.

14 Q. Did you-all have a chance to go over the
15 conclusions in the DNA report?

16 A. No, sir.

17 Q. Did you have a full understanding about that DNA
18 report?

19 A. No, sir.

20 Q. Is it your understanding that that is the main
21 evidence the State has connecting you to this crime?

22 A. It is now, yes, sir.

23 MR. WALLER: Thank you.

24 Mr. Thomas, I think I have asked you all the
25 questions I have. Is there anything else that you think the

1 Judge needs to be aware of from Mr. Bank's representation?

2 A. No, sir.

3 MR. WALLER: Please answer any questions Mr. Key
4 asks.

5 THE COURT: Mr. Key.

6 * * *

7 **CROSS-EXAMINATION BY MR. KEY**

8 BY MR. KEY:

9 Q. Mr. Thomas, I believe on direct you testified that
10 you remember discussing your case with Mr. Bank?

11 A. I believe I spoke with him some time about the
12 case.

13 Q. You and Mr. Bank did talk about your case before
14 trial and before you pled guilty?

15 A. Yes, sir.

16 Q. He discussed the DNA report. He just didn't show
17 you the actual report he had notes on.

18 A. It wasn't quite notes. It was just numbers he had
19 written on a legal pad.

20 Q. But he did discuss with you -- he told you about
21 the DNA report?

22 A. Yes, sir.

23 Q. You talked about the cell phone tracking with
24 Mr. Bank?

25 A. Yes, sir.

1 Q. You knew about the CODIS database?

2 A. Not until after I took the plea and got all my
3 paperwork.

4 Q. So you did not know about the CODIS hit until
5 after?

6 A. After I got the paperwork, after the plea.

7 Q. When you were going through your pretrial, you said
8 you heard the solicitor and the judge say you could get life.
9 That is when you decided to plead guilty, is that correct?

10 A. Yes, sir.

11 Q. So you pled guilty because you didn't want to
12 receive a life sentence?

13 A. Yes, sir.

14 Q. You said Mr. Bank kept talking to you about wanting
15 you to plead guilty. Was he in any way forcing you to plead
16 guilty, or was he just advising you that he thought it was in
17 your best interest to plead guilty?

18 A. He just kept saying, he don't see no way around it.
19 Just catch a plea instead of taking a life sentence.

20 Q. So essentially he said, if you go to trial, he
21 thinks you will be found guilty and advised you -- or
22 recommended you to take a guilty plea?

23 A. Yes, sir.

24 Q. He knew, obviously, that you could have a jury
25 trial in this case and not plead guilty?

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1 A. Yes, sir.

2 Q. You knew what you were charged with?

3 A. Yes, sir.

4 Q. Did Mr. Bank ever explain to you the State's burden
5 of proof?

6 A. No, sir.

7 Q. He did not?

8 A. No, sir.

9 Q. You testified you didn't know anything about what
10 he had done to prepare for trial, but at the time you were
11 relying on your lawyer for that?

12 A. Yes, sir.

13 Q. Then when you were in court and you heard you could
14 get a life sentence, that is when you decided to plead guilty?

15 A. Yes, sir.

16 Q. You testified you gave Mr. Bank names and addresses
17 of some possible witnesses?

18 A. Not addresses. Locations, like areas.

19 Q. Names and locations?

20 A. Yes, sir.

21 Q. Do you know if any of them were going to come to
22 your trial?

23 A. I didn't know for sure, but I know they could have
24 verified my whereabouts with them at that time.

25 Q. So they couldn't have located the witnesses?

1 A. I am assuming not.

2 Q. Are those witnesses here today?

3 A. No, sir.

4 Q. Did you know if Mr. Bank was aware of your mental
5 health issues?

6 A. He was.

7 Q. Did he have you evaluated before you pled guilty?

8 A. Yes, sir.

9 Q. Do you recall telling the judge in your guilty plea
10 that you were taking your medications?

11 A. Yes, sir.

12 Q. You told the judge that taking your medications did
13 not -- you knew what was going on?

14 A. Yes, sir.

15 MR. KEY: Nothing further, Your Honor.

16 THE COURT: Anything else, Mr. Waller?

17 MR. WALLER: Thank you, Your Honor, briefly.

18 * * *

19 **REDIRECT EXAMINATION BY MR. WALLER**

20 BY MR. WALLER:

21 Q. Mr. Thomas, we talked about the DNA, exactly what
22 did Mr. Bank tell you about the DNA?

23 A. I don't quite remember him speaking too much about
24 it. I don't quite remember.

25 Q. You said he had numbers written down. Did he tell

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1 you when it was a match? Did he go over the numbers with you?

2 Do you recall?

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

4 Q. We talked earlier about you not having a copy of
5 any of your discovery, not going over all of it with Mr. Bank,
6 isn't that right?

7 A. Yes, sir.

8 Q. Also that you didn't think he was prepared for
9 trial, right?

10 A. Yes, sir.

11 Q. Knowing what you know now, would you still have
12 pled guilty, or would you have gone to trial?

13 A. I would have went through with the trial.

14 Q. You would have have continued on to the trial?

15 A. Yes, sir.

16 Q. Nothing further, thank you.

17 THE COURT: Any re-cross?

18 MR. KEY: No, Your Honor.

19 THE COURT: Sir, you may step down, thank you.

20 Mr. Waller, anything further?

21 MR. WALLER: Nothing further from the applicant,
22 Your Honor.

23 THE COURT: Mr. Key.

24 MR. KEY: Your Honor, the State would call Bobby
25 Bank.

1 THE COURT: Sir, come around and be sworn, sir.

2 **ROBERT BANK, ESQ.,**

3 Called as a witness by and behalf of the Court

4 to testify, being first duly sworn was examined

5 and testified as follows:

6 * * *

7 DIRECT EXAMINATION BY MR. KEY

8 BY MR. KEY:

9 Q. Mr. Bank, do you recall representing Mr. Thomas?

10 A. Yes, sir. He was charged with CSC, burglary in the
11 first degree, and kidnapping. I believe the warrants were
12 served on him while he was doing a sentence that was unrelated
13 at the Department of Corrections. Tracy Penock, who was an
14 assistant public defender with the Richland County public
15 defenders office, was originally appointed to represent him. I
16 took over her entire caseload, including Mr. Thomas' case,
17 sometime after that. Shortly after I received the case, he was
18 transferred back to the Alvin S. Glenn detention center.

19 Q. Did you go and meet with Mr. Thomas while he was at
20 Alvin Glenn?

21 A. Yes, sir.

22 Q. Do you recall how many times?

23 A. Many times. 15, 20, 25 times.

24 Q. Mr. Thomas testified that he hasn't received a full
25 copy of his discovery. Did you go over the discovery with him?

1 A. Yes, sir. I don't recall whether he asked to
2 retain a copy our not, but I certainly brought the discovery
3 materials down to the jail. I specifically remember
4 immediately prior to trial going down several times with our
5 trial notebooks, which were filled with the discovery.

6 Q. Did you usually give your clients a copy of your
7 discovery while they were at Alvin Glenn?

8 A. My practice is to advise against it. But if they
9 are -- it is their decision. I usually advise against it. If
10 they decide they still want it, we will go ahead and give it to
11 them.

12 Q. Could you describe your ability to communicate with
13 Mr. Thomas, were you able to communicate with him?

14 A. There were obviously concerns with his mental
15 health. He struggled with mental health issues and a learning
16 disability his entire life. I believe there was some rocky
17 times in the relationship. I think that he filed a complaint
18 with ODC, and we also had a motion to be relieved.

19 I still felt comfortable being able to work and
20 communicate with him.

21 Q. Did you have Mr. Thomas evaluated before he pled
22 guilty?

23 A. I had him evaluated twice for competency.

24 Q. I believe you testified you went over the discovery
25 with him several times. Do you recall what the State was

1 alleging that he had done?

2 A. Sure. There was a USC student that lived in Five
3 Points who was at her home alone. There was an intruder who
4 came into the house during the nighttime hours. He confronted
5 her and then sexually assaulted her and left. She was unable
6 to give any identifying information outside of generalized race
7 and gender. Later a CODIS hit for DNA came back to the rape
8 kit that they had taken from her when she went to the hospital.
9 That was the main evidence against him.

10 She was not able to identify him out of a lineup.
11 There were no other witnesses placing him on the scene. The
12 DNA was the significant evidence for the State.

13 Q. Did you explain that the DNA was the State's
14 significant evidence to Mr. Thomas?

15 A. Yes, sir.

16 Q. He testified that when you talked to him about DNA,
17 you just had numbers on a sheet of paper?

18 Do you recall -- when you discussed with him the DNA, do
19 you recall that?

20 A. Sure. Any DNA, particularly when it is the main
21 piece of evidence, we hire a DNA expert. In this case, we
22 hired Dr. Escouty (phonetic), who has since passed away.
23 Dr. Escouty would review not only the DNA reports, but what
24 most people commonly refer to as the bench notes, which is the
25 scientific lab reports that include a lot of charts and graphs

1 and electropherograms.

2 I would consult with Dr. Escouty, and I did on this
3 case about whether he believed the notes were credible and what
4 the benchnotes meant and how they applied to them. I recall
5 going down with Mr. Thomas and showing him the reports, which
6 are generally not lengthy, they are anywhere from 2 to 8 pages.
7 Basically they lay out the general conclusions of the lab
8 technician. Rather than trying to go through all of the
9 electropherograms and charts and graphs that even I have a
10 difficult time understanding, we would have gone through and
11 shown how the alleles and electropherograms would have worked.
12 I definitely would have done that through charting on legal
13 pads and paper.

14 Q. Do you recall what the DNA showed?

15 A. I was just sitting back there. If you have a
16 report that would be helpful. Off the top of my head, I
17 believe it was two hits. One was a lower probability, YSTER.
18 A match to Mr. Thomas. And the other was a very high
19 probability match through STR testing.

20 Q. So there were two hits YSTR, and a higher
21 probability. Did you explain to him why STR could be anyone in
22 his -- a male in his family who could be the result of the
23 YSTR?

24 A. Sure. When it says that on the reports.

25 Q. Did you explain to him that it was the other DNA

1 match with a much higher probability that it was him?

2 A. Yes, sir.

3 Q. DNA reports, do they say that this is a match, or
4 do they say that he cannot be excluded as the contributor?

5 A. It depends, I won't pretend to be a DNA expert.
6 Usually, they will give a number that will say, this person
7 could be one in a million, or one in 500 million. A DNA report
8 doesn't ever say it's exactly the same person.

9 Q. He could not be excluded from the DNA in this case?

10 A. Yes. Correct.

11 Q. Do you recall what probability it was, ballpark?

12 A. I believe it was many zeros more than a million.
13 Again, I really prefer to rely on the report.

14 Q. Did you explain it Mr. Thomas his Constitutional
15 rights?

16 A. Yes.

17 Q. His right to a jury trial?

18 A. Yes, sir.

19 Q. Did you explain to him he had the right to testify
20 and that he did not have to testify. Did you explain that?

21 A. Yes, sir.

22 Q. Did you explain to him the charges he was facing?

23 A. Yes, sir.

24 Q. Did you explain the elements of the charges?

25 A. Yes, sir.

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1 Q. Did you explain the State's burden of proof?

2 A. Yes, sir.

3 Q. Did you advise or recommend that Mr. Thomas plead
4 guilty in this case?

5 A. There were three lawyers on the case. I am not
6 here to obviously testify for them. The defense team as a
7 whole had varying opinions of the likelihood of being found
8 guilty at trial. But at the end of the day, we all, including
9 myself, believed that it was very likely that he would be
10 convicted at trial. That he very likely could receive a life
11 sentence.

12 Q. Did you explain to Mr. Thomas his exposure that he
13 was facing if he had gone forward?

14 A. Yes, sir.

15 Q. Did you explain to him what the State's plea offer
16 meant?

17 A. Yes, sir.

18 Q. It was a negotiated offer?

19 A. Yes, sir.

20 Q. Do you recall if there were any other offers made?

21 A. There was nothing lower than that. For the
22 majority of the case, there was never any offer made to any
23 degree. I believe the 30 year offer came closer to trial.

24 Q. That was the best offer that the State made?

25 A. Yes, sir.

1 Q. Do you recall when during the pretrial Mr. Thomas
2 decided he wanted to plead guilty?

3 A. The discussions were ongoing. There was at least
4 one time that we went into a jury room with Mr. Thomas so that
5 he could speak with his mother, I believe. I don't recall if
6 it was the first day after jury selection. I think it may have
7 been the second day when we were still finishing pretrial
8 motions.

9 Q. But at some point during the pretrial motions, he
10 indicated to you that he wanted to plead guilty?

11 A. Yes, sir.

12 Q. Did you and Mr. Thomas ever discuss your trial
13 strategy if it had gone forward with the trial?

14 A. Sure. The strategy was to say that he wasn't
15 present. That the DNA was in some way inaccurate.

16 Q. So he knew that that was your trial strategy going
17 into the trial?

18 A. Yes, sir.

19 Q. Were you prepared for trial?

20 A. Yes, sir.

21 Q. Did Mr. Thomas ever indicate to you that he was not
22 taking his medications?

23 A. Not that I recall.

24 Q. Do you recall at the guilty plea him telling the
25 judge that he was taking his medications?

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1 A. I believe so, yes.

2 Q. Did you ever look into getting Mr. Thomas' mental
3 health records?

4 A. Yes, sir. We did.

5 Q. You did get those mental health records?

6 A. Yes, sir.

7 Q. Did that help -- was that to help with your trial
8 prep?

9 A. We would have gotten those for a number of reasons,
10 one to help us evaluate any issues of competency and to help
11 any of the doctors that were evaluating him. It would have
12 also been something that we could have used in mitigation at
13 sentencing.

14 Q. Did he ever ask you to investigate any potential
15 witnesses?

16 A. Yes, sir.

17 Q. Did he give you the names or addresses or
18 locations?

19 A. The best he could.

20 Q. Did you hire an investigator in this case?

21 A. I did.

22 Q. Did the investigator talk to Mr. Thomas?

23 A. Yes, sir. I believe so.

24 Q. Were you-all able to locate any of those potential
25 witnesses?

1 A. Without any last names or addresses, it was
2 difficult. We were unable to.

3 MR. KEY: Beg the court's indulgence.

4 THE COURT: All right.

5 BY MR. KEY:

6 Q. Mr. Bank, would you describe your trial strategy
7 was. You said that he wasn't there, and the DNA did not match
8 his. What information did he give you to lead to that being
9 your trial strategy?

10 A. That he said he wasn't there and didn't commit the
11 crime.

12 Q. From your discussions with him?

13 A. Yes.

14 Q. Did he tell you that these witnesses would have
15 verified that information?

16 A. Yes, sir.

17 Q. He couldn't give you the names, the full names of
18 the witnesses?

19 A. That's correct.

20 Q. And you had an investigator try to locate these
21 witnesses?

22 A. That's correct.

23 Q. I may have already asked this. Did you explain
24 each element of the offenses to Mr. Thomas?

25 A. That is my practice, yes.

1 Q. No further questions, Your Honor.

2 THE COURT: Hold on a minute.

3 Are you attorneys back there?

4 UNKNOWN SPEAKER: I am, Your Honor.

5 THE COURT: You-all need to put your phones up,
6 please

7 UNKNOWN SPEAKER: Yes, sir.

8 THE COURT: Thank you.

9 Mr. WALLER

10 MR. WALLER: Thank you, Your Honor.

11 * * *

12 **CROSS-EXAMINATION BY MR. WALLER**

13 BY MR. WALLER:

14 Q. Good morning, Mr. Bank, how are you today?

15 A. I am doing well.

16 Q. Mr. Bank, you testified that it is practice to
17 advise against having a copy of discovery materials in the
18 detention center?

19 A. Yes, sir.

20 Q. Why is that?

21 A. Because if any of the other inmates get access to
22 it or learn anything about the case, they can oftentimes try to
23 offer themselves as witnesses to the government, essentially
24 lie to the government and tell them what a client has discussed
25 and then confess the case to them and then use the material

1 from the discovery to try to corroborate that position.

2 And the State is always ready to use a jail house
3 informant in a case.

4 Q. Is that a blanket policy for all discovery, or are
5 different things more susceptible to that witness statement? A
6 DNA report, for instance?

7 A. I apply it to the entirety of discovery. Again,
8 the policy is not to refuse to give the discovery, it is simply
9 to advise against it. We usually actually have the clients
10 sign something acknowledging that they have been advised
11 against retaining the discovery in jail. I won't refuse to
12 give it to them.

13 Q. I wasn't trying to intimate that you would. In
14 this case in particular, would it have -- in your opinion,
15 would it have caused any possible difficulty to give him a copy
16 of the DNA report?

17 A. It's hard for me to speculate what another
18 jailhouse inmate what have tried or attempted to use it for.

19 Q. You testified that Mr. Thomas maintained he was not
20 present and that he didn't commit the crime?

21 A. That's correct.

22 Q. He gave you -- attempted to give you some witness'
23 names and the general locations.

24 Is it unusual that a criminal defendant doesn't know the full
25 names of other people who might be witnesses?

1 A. Yes, sir.

2 Q. Do you recall Mr. Thomas asking for his discovery
3 in this case?

4 A. Not specifically. I would rather not dispute
5 whether he did or not. If he believes he did, we could have
6 had that conversation.

7 A. Do you recall if you advised him of the dangers of
8 getting his discovery, or having a copy of his discovery?

9 A. Again, not specifically. I can just say that is my
10 general practice of what I do when they ask.

11 Q. If he had really wanted his discovery, is there any
12 reason you would not have given it to him?

13 A. No, sir.

14 MR. KEY: No further questions, Your Honor.

15 THE COURT: Sir, you may step down, thank you.
16 Anything further from the State?

17 MR. KEY: No, Your Honor. We would ask if Mr. Bank
18 could be released from his subpoena.

19 THE COURT: Any objection?

20 MR. WALLER: No objection, Your Honor.

21 THE COURT: Mr. Bank, you are released. Have a
22 nice day. Thank you for being here.

23 Anything by way of argument?

24 MR. WALLER: From the testimony of Mr. Thomas and
25 Mr. Bank, Mr. Thomas has been treated life long for mental

1 health issues as well as learning disabilities, we learned that
2 through Mr. Bank testimony. Judge, we have a discussion where
3 Mr. Thomas maintained his innocence throughout the pendency of
4 the case, right up until the very end.

5 He was not provided a copy of his discovery
6 materials and the main piece of evidence was discussed with him
7 through a legal pad, notes on a legal pad. I certainly
8 understand Mr. Bank might be making his notes, however, he also
9 testified that the actual report from a DNA report is not
10 lengthy, it's not complicated, it's just, here is the
11 probability of this person.

12 Judge, all of that happened when the trial started
13 and Mr. Thomas felt that Mr. Bank wasn't prepared. He tried to
14 get him to plead guilty. He was fearful of getting a life
15 sentence.

16 I think we have a situation here where Mr. Thomas
17 did not, was put in the ultimate difficult position of
18 proceeding to trial where he might get a life sentence with a
19 lawyer he feels is unprepared and does not have his best
20 interests at heart versus pleading guilty against his interests
21 to a sentence where he knows what he is going to get.

22 Judge, I think that -- given the testimony today, I
23 would ask that you grant Mr. Thomas' application. Let him
24 proceed with that trial that had been started and let the
25 system come out where it should, Your Honor

1 THE COURT: All right. Thank you. Mr. Waller.

2 Mr. Key.

3 MR. KEY: Judge, May it please the Court, Mr. Bank
4 testified that he reviewed all the discovery with his client,
5 with Mr. Thomas. He met with him several times. Mr. Bank
6 testified he was ready for trial. They had started pretrial
7 motions. It was during those pretrial that Mr. Thomas decided
8 he wanted to plead guilty instead of proceeding forward with
9 his trial.

10 Mr. Thomas testified that he decided to plead
11 guilty when he heard the solicitor and the judge mention that
12 he could get a life sentence for these crimes. He was charged
13 with first-degree burglary. He very well certainly could have
14 gotten a life sentence on first-degree burglary alone. At that
15 point, he decided he wanted to plead guilty.

16 So Mr. Thomas testified that he -- that Mr. Bank
17 did discuss with him the DNA report, but he said when Mr. Bank
18 discussed with him the DNA report, all he had were his notes on
19 a legal pad.

20 Your Honor, Mr. Thomas knew of the DNA results. He
21 knew there was DNA evidence out there linking him to this
22 crime. He chose to plead guilty because he wanted to avoid a
23 life sentence.

24 THE COURT: I will take a look at this and let you
25 know.

1 MR. WALLER: Thank you Your Honor.

2 THE COURT: Thank you.

3 (Whereupon, at 11:21 a.m. the proceedings were
4 concluded.)

5 * * *

6 END OF TRANSCRIPT

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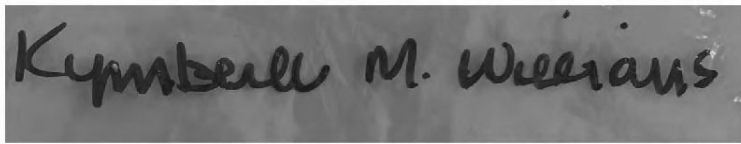
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CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the hearing of the captioned case, relative to appeal, in the Family Court for Dorchester County, South Carolina, on the 21st day of February, 2020.

I do further certify that I am not related, of counsel, or of interest to any party hereto.

This, the 9th day of February, 2021.

A rectangular box containing a handwritten signature in black ink that reads "Kymberlee M. Williams".

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2017CP4000943

Michael Darnell Thomas #329390

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried and heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

RICHLAND COUNTY
 FILED
 20 OCT 26 PM 1:56
 JANE T. WOODBRIDGE
 CLERK OF COURT
 C.P.C.S., & F.C.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 26 October 2020 to attorneys of record or to parties (when appearing pro se) as follows:

Michael Darnell Thomas Jonathan D Waller
#329390

Lindsey Ann McCallister

Michael Darnell Thomas
#329390

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Michael Darnell Thomas, #329390,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2017-CP-40-0943

ORDER OF DISMISSAL

CLERK OF COURT
 C.C.P., G.S., & F.C.
 2020 OCT 26 PM 1:56
 RICHLAND COUNTY
 FILED

The matter before the Court is Michael D. Thomas’s (Applicant) action for post-conviction relief (PCR) commenced on February 22, 2017. In his PCR application, Applicant alleged ineffective assistance of counsel and involuntary guilty plea. The State submitted its return requesting an evidentiary hearing on November 30, 2017. On June 14, 2019, Applicant, through PCR counsel, amended his application alleging ineffective assistance of counsel for failure to investigate Applicant’s mental health and have Applicant evaluated for competency and/or criminal responsibility.

An evidentiary hearing into the matter convened before the undersigned on February 21, 2020. Applicant was present and represented by Jonathan D. Waller. Assistant Attorney General Samuel L. Key represented the State. Applicant and Assistant Public Defender Robert L. Bank, Jr. (Counsel) testified at the PCR hearing. Also before the Court were the Richland County Clerk of Court’s records of the underlying charges, Applicant’s records from the South Carolina Department of Corrections (SCDC), the plea transcript, and the records of this PCR action. After observing the testimony presented at the PCR hearing and a review of the entire record before the Court, the Court finds Counsel was not constitutionally ineffective and Applicant knowingly and voluntarily pleaded guilty. Therefore, for the reasons discussed below, this action is denied and dismissed with prejudice.

I. FACTS AND PROCEDURAL HISTORY

Applicant is presently confined in SCDC pursuant to orders of commitment from the Richland County Clerk of Court. Applicant was indicted at the July 2014 term of the Richland County Grand Jury for kidnapping (2014-GS-40-4537); first-degree criminal sexual conduct (2014-GS-40-4538); and first-degree burglary (2014-GS-40-4539). Assistant Public Defender Robert L. Bank, Jr. (Counsel) represented Applicant. Assistant Solicitor Margaret Fent Bodman prosecuted the case.

Applicant's charges stem from an incident on March 15, 2014. That night, Applicant broke into the victim's apartment, forced the victim from the bedroom into the bathroom, and then vaginally and anally raped her. Plea Tr. 6–13. The victim was a Chinese exchange-student working towards her graduate degree at the University of South Carolina. Plea Tr. 6. The victim could not identify Applicant; however, Applicant was identified by a CODIS hit of a partial DNA profile taken from the victim's clothing. Plea Tr. 12. Applicant, under oath, agreed with the facts presented by the State at the plea hearing. Plea Tr. 13.

On April 26, 2016, Applicant pleaded guilty as indicted to all charges before Judge DeAndrea G. Benjamin. Applicant pleaded guilty with negotiated concurrent thirty year sentences on all charges. Judge Benjamin accepted Applicant's guilty plea and sentenced him as negotiated. Applicant did not appeal.

Applicant timely commenced this PCR action on February 22, 2017, alleging ineffective assistance of Counsel and involuntary guilty plea. The State submitted its return requesting an evidentiary hearing into the matter on November 30, 2017. Thereafter, on November 30, 2018, Applicant, through PCR counsel, moved for discovery and funding. On March 5, 2019, Judge Jocelyn Newman issued an order granting limited discovery.

Thereafter, Applicant moved to be evaluated for competency and/or criminal responsibility on June 12, 2019, and subsequently amended his application alleging ineffective assistance of Counsel for failure to investigate Applicant's mental health and have Applicant evaluated for competency and/or criminal responsibility on June 14, 2019. On August 20, 2019, Judge Diane Schafer Goodstein ordered for Applicant to be evaluated pursuant to *M'Naghten*¹ for criminal responsibility and capacity to conform.

II. Allegations

In his original PCR application, Applicant alleged he is unlawfully in custody due to:

1. Ineffective assistance of Counsel:
 - a. Counsel failed to adequately represent Applicant under the Sixth Amendment; and
2. Involuntary guilty plea:
 - a. Counsel coerced Applicant into pleading guilty when Applicant wanted a jury trial.

On June 14, 2019, Applicant, through PCR counsel, amended his application alleging:

1. Ineffective assistance of Counsel:
 - a. Counsel was ineffective for failing to properly investigate Applicant's mental health and have Applicant evaluated for competency and/or criminal responsibility, thus depriving Applicant of potential defenses afforded to those defendants found incompetent or not able to conform their actions to the law of the State of South Carolina.

Applicant requested relief in the form of a new trial.

At the outset of the PCR hearing, Applicant, through PCR counsel, indicated he was not going forward on the amended allegation regarding his competency and/or criminal responsibility. Therefore, the Court finds Applicant waived his amended allegation and dismisses it with prejudice. Accordingly, the only issues before the Court are those pleaded in Applicant's original application.

¹ *M'Naghten's Case*, 8 Eng.Rep. 718 (1843). See also *State v. Lewis*, 328 S.C. 273, 277, 494 S.E.2d 115, 117 (1997) ("South Carolina has adopted the M'Naghten test to determine insanity.").

III. DISCUSSION

This Court has reviewed the entire record and evidence introduced at the hearing, and the Court has observed the witnesses' testimony, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985).

Applicant alleged his guilty plea was unknowing and involuntary due to ineffective assistance of Counsel alleging Counsel coerced Applicant into pleading guilty when he wanted a jury trial. For the reasons discussed below, this Court finds Applicant knowingly and voluntarily pleaded guilty. The Court finds Counsel did not coerce Applicant into pleading guilty, and Counsel's performance was reasonable. Further, Applicant has failed to show prejudice resulted as the Court is not convinced Applicant would have chosen to go to trial rather than plead guilty despite Counsel's allegedly deficient advice.

Involuntary Guilty Plea

Applicant alleged Counsel was constitutionally ineffective because Counsel coerced Applicant into pleading guilty when Applicant wanted to go to trial. For the reasons discussed below, the Court disagrees.

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). Plea counsel is not deficient for advising a defendant to plead guilty based on what counsel believes the sentence would be if the defendant were convicted at trial. *Bennett v. State*, 371 S.C. 198, 204-05, 638 S.E.2d 673, 676 (2006).

To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Applicant testified at the PCR hearing and recalled Counsel being his second attorney on the case. Applicant stated Counsel did go over the discovery with him in their meetings including the DNA evidence, cellphone GPS, CODIS database; however, Applicant claimed he did not get a copy of his discovery while awaiting trial. Applicant also testified he and Counsel only spoke about pleading guilty and did not discuss any defenses. Applicant gave Counsel witnesses to investigate, but could only provide nicknames or first names of the witnesses, and only gave a general location to find the witnesses.

Applicant asserted he was at a party when the incident occurred and gave Counsel information to corroborate his alibi. Applicant testified Counsel was aware of his prior mental health issues. Further, Applicant testified he was taking Zyprexa, but Applicant recalled telling the plea court the medication did not affect his ability to know what was happening.

Applicant recalled the trial on these charges had started, but he decided to plead guilty when he heard the court speaking about life imprisonment which he did not want. Applicant

testified Counsel did not advise him of the State's burden of proof, but Counsel did explain the individual elements of each charge. Also, Applicant knew of his right to a jury trial. Applicant felt as though the defense was not ready for trial because the defense attorneys were trying to get him to plead guilty. Applicant also testified he did not have a full understanding of the DNA evidence in the case; however, Applicant testified Counsel did discuss the DNA, and other evidence, against him.

Finally, Applicant testified he pleaded guilty because he did not want to receive a life sentence, and he did not think he could win at trial. Applicant knew his right to a jury trial and what he was charged with, but did not know about the State's burden of proof.

Counsel testified he was assigned Applicant's case when Applicant's previous attorney left the Public Defender's office. Counsel recalled meeting with Applicant at Alvin S. Glenn about fifteen-to-twenty times to review the discovery with Applicant and prepare for trial. Counsel knew of Applicant's mental health history, but felt comfortable working with Applicant. Further, Counsel moved for Applicant to be evaluated and Applicant was found competent to stand trial.

Counsel testified he discussed with Applicant that Applicant's DNA was found in the rape kit and the DNA was the State's significant evidence against him. Counsel recalled hiring an expert to review the DNA and he charted the report on a legal pad, which is what Applicant testified to. Counsel recalled there were two DNA hits, a YSTR hit that was a lower probability of the DNA being Applicant's, but the partial profile DNA hit had a much higher probability of being Applicant. Counsel recalled Applicant could not be excluded from either DNA hit.

Counsel testified he advised Applicant of his constitutional rights, including: his right to a jury trial, right to remain silent, and the State's burden of proof. Additionally, Counsel recalled advising Applicant of the charges he was facing and the elements of the charges. Counsel

recalled the entire defense team, three Public Defenders, suggested Applicant take the plea offer. Counsel recalled advising Applicant of the sentencing exposure he faced, and what the plea offer meant. Further, Counsel testified the offer Applicant received was the best plea offer.

Counsel testified he was ready for trial, and the defense strategy was to say the DNA was not his but possibly a cousins. Counsel stated he had an investigator search for the alibi witnesses Applicant provided, but the investigator was unable to locate the witnesses. Counsel testified generally he advises against defendants having their discovery in the detention center while awaiting trial because other inmates could taint the case. Counsel stated that when a client insists on having the discovery, he provides it to them, but requires them to sign an acknowledgement that he advised them against it. Counsel testified that if Applicant really wanted his discovery, he would have given it to him.

Applicant alleged Counsel coerced him into pleading guilty. This Court finds this allegation is without merit based on Applicant's credible PCR testimony as to this issue and the guilty plea transcript. The Court finds credible Applicant's testimony that he decided to plead guilty when he heard the court talking about the possibility of Applicant receiving a life sentence, and that Applicant pleaded guilty because he did not want to receive a life sentence. Additionally, Applicant, under oath, advised the plea court no one had forced him into pleading guilty, he was satisfied with Counsel's representation, did not need any more time to speak to Counsel, and Counsel had discussed everything in the case. Plea Tr. 16-18. The Court finds Counsel did not coerce Applicant into pleading guilty based on Applicant's credible testimony that he pleaded guilty to avoid a potential life-sentence, and his indication to the plea court no one forced him into pleading guilty.

At the PCR hearing, there was testimony regarding Applicant not getting a copy of the discovery while he was in the detention center. The Court finds this allegation is without merit

based on Counsel's credible testimony. The Court finds credible Counsel's testimony that he advises his clients against having their discovery in the detention center, but if Applicant wanted the discovery he would have provided it to him and made him sign an acknowledgment that Counsel informed him of the risks with having the discovery. Based on Counsel's credible testimony, the Court finds Counsel did not provide the discovery to Applicant because Applicant did not want the discovery after being advised of the dangers of having it. Therefore, Counsel reasonably did not give Applicant a copy of the discovery while Applicant was in the detention center. Accordingly, this allegation is denied and dismissed with prejudice.

Further, the Court finds Counsel reasonably reviewed the discovery with Applicant in preparation for trial. The Court finds credible Counsel's testimony that he visited Applicant numerous times to discuss the discovery and he explained all of the discovery to Applicant. The Court finds Counsel reasonably investigated the case by hiring a DNA expert to review the DNA results, discussed the results with Applicant, and also reasonably investigated Applicant's alibi witnesses by having an investigator search for the witnesses. However, Applicant could not provide full names of the witnesses and could only provide first names or nicknames and a general location to find them. Based on these findings of fact, the Court finds Counsel was not deficient in any respect in his investigation of the case or in reviewing the discovery with Applicant. Therefore, this allegation is denied and dismissed with prejudice.

As discussed above, Applicant waived and abandoned his allegation regarding Counsel's failure to have him evaluated for criminal responsibility. Further, Counsel did have Applicant evaluated for competency, and Applicant was deemed competent to stand trial. Therefore, the allegations of ineffective assistance of Counsel relating to Applicant's mental health are denied and dismissed with prejudice.

The Court finds Applicant knowingly and voluntarily pleaded guilty. The Court finds credible Applicant and Counsel's testimony that Counsel advised Applicant of the charges against Applicant and the elements of the charges he faced. It is also clear from Applicant's testimony that he was aware of the sentencing exposure he faced at trial or in pleading guilty to the charges. The Court also finds Applicant knew the nature of the constitutional rights he waived by pleading guilty. Applicant testified he was aware of his right to a jury trial and the right to remain silent, but Counsel failed to explain the State's burden of proof at trial. The Court finds not credible Applicant's testimony that Counsel never explained to him the State's burden of proof at trial. The Court finds credible Counsel's testimony he explained Applicant's constitutional rights, including the State's burden of proof. Therefore, the Court finds Applicant knowingly and voluntarily pleaded guilty with a negotiated sentence.

Finally, the Court finds Applicant has failed to show prejudice resulted from any of Counsel's alleged deficiencies. The Court is not convinced Applicant would have chosen to continue the trial instead of pleading guilty as negotiated. The Court finds credible Applicant's testimony he pleaded guilty to avoid a potential life sentence. Therefore, Applicant cannot show prejudice and all of Applicant's allegations are denied and dismissed with prejudice.

IV. CONCLUSION

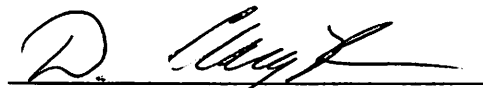
Based on all the foregoing, the Court finds Counsel was not constitutionally ineffective and Applicant knowingly and voluntarily pleaded guilty. The Court finds Counsel was not deficient in his investigation, his review of the discovery with Applicant, his failure to have Applicant evaluated, and his advice to Applicant on whether to plead guilty. Further, the Court finds Applicant has failed to show prejudice because the Court is not convinced Applicant would have proceeded to trial despite Counsel's alleged deficiencies. Therefore, the Court denies relief on all allegations and dismisses them with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

THEREFORE:

1. The Court denies relief on all allegations and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED.



D. CRAIG BROWN
Presiding Judge
Fifth Judicial Circuit

Florence, South Carolina

10-14, 2020.

WITNESSES

(S) Officer Narowski
- Columbia Police Department

DOCKET NO. 2014-09-4004637

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2014

ARREST WARRANT NUMBER

2014A4021660850

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUL 18 2014

VERDICT

Foreperson of Petit Jury
Date:

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

Defendant

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

Michael Thomas
Defendant

Witness

C.C.C. PLS. AND Q.S.

UNIFIED TRUE COPY
OF ORIGINAL FILED

Jeanette Wray
C.C.C. P & Q.S.

HIGHLAND COUNTY
SOUTH CAROLINA

THE STATE
vs.

MICHAEL DARNELL THOMAS

Indictments for
KIDNAPPING

BC Case # 2014-016
Court Case # 10975

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JULY 16, 2014, the Grand Jurors of Richland County present upon their oath.

KIDNAPPING

That MICHAEL DARNELL THOMAS did in Richland County on or about MARCH 15, 2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one ~~XXXXXX~~ without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended

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


DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#: 2014GS4004537
A/W#: 2014A4021600850
Date of Offense: 3/15/2014
S.C. Code §: 16-03-0910
CDR Code #: 0095

Michael Darnell Thomas

AKA:
Race: BLACK Sex: M Age: 24
DOB: SS#
Address: 229 Cool Shade Drive
City, State, Zip: Columbia, SC
DL#: SID#: 02090870

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Margaret Bodman 70937 Michael Thomas Robert Burke 10117
Bodman, Margaret Fent SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 747 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS
Recipient:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jeannette Mc Bride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Table with 3 columns: Description, Amount, Total. Rows include various assessment and surcharge items like § 14-1-206, § 14-1-211(A)(1), etc.

Appointed PD or appointed other counsel, § 47.12 requires \$500. be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Jeannette Mc Bride
Court Reporter:
SCCA/217 (03/2011)
Presiding Judge:
Judge Code: 216
Sentence Date: 4-26-14

DOCKET NO. 2014-8-40-04538

The State of South Carolina

County of
Richland

COURT OF GENERAL SESSIONS

JULY TERM 2014

82

THE STATE
vs.

Michael Dennell Thomas

WITNESSES

(9) Officer Narewski
- Columbia Police Department

ARREST WARRANT NUMBER

2014A4021600851

ACT OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury JUL 16 2014
Date:

VERDICT

Foreperson of Petit Jury
Date:

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

Defendant

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

Michael Thomas
Defendant

Witness:

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

Indictment for
CRIMINAL SEXUAL CONDUCT (ADULT)
1ST DEG

SC Case: 13-00-0667
GDR Code: 0180

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JULY 16, 2014, the
 Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT, FIRST DEGREE

That MICHAEL DARNELL THOMAS did in Richland County on or about
 MARCH 15, 2014, engage in sexual battery with ~~XXXXXXXX~~ by using
 aggravated force to accomplish sexual battery and/or the victim submits to
 sexual battery by the actor under circumstances while the victim was also
 the victim of forcible confinement and/or kidnapping and/or robbery and/or
 extortion and/or burglary and/or housebreaking and/or any other similar
 offense(s) or act(s), in violation of Section 16-03-0652, S. C. Code of
 Laws, 1976, as amended.

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


 DAN JOHNSON, SOLICITOR

COUNTY OF Richland
STATE VS. Michael Darnell Thomas
AKA:
Race: BLACK Sex: M Age: 24
DOB: SS#:
Address: 229 Cool Shade Drive
City, State, Zip: Columbia, SC
DL#: SID#: 02090870

INDICTMENT/CASE#: 2014GS4004538
A/W#: 2014A4021600851
Date of Offense: 3/15/2014
S.C. Code §: 16-03-0652
CDR Code #: 0160

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Sex / Criminal sexual conduct - First degree

CONVICTED OF or PLEADS

in violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Margaret Bodman 70937 SC Bar# Michael Thomas Defendant Robert Bank Attorney for Defendant 101112 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 747 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette McBride
C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$

Clerk of Court/ Deputy Clerk Jeannette McBride
Court Reporter: McHardy
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2160
Sentence Date: 4-26-16

ORIGINAL

WITNESSES

(8) Officer Narewski
- Columbia Police Department

DOCKET NO. 20 08-40-04899

The State of South Carolina

County of
Richland

COURT OF GENERAL SESSIONS

JULY TERM 2014

THE STATE
vs.

Michael Darnell Thomas

ARREST WARRANT NUMBER

2014A4021600853

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury
Date:

JUL 16 2014

VERDICT

Foreperson of Petit Jury
Date:

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

Defendant

Michael Darnell Thomas
hereby appear in my own proper person and plead guilty to the within indictment of

[Signature]
Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
with JMM/Ende
C.C.C. P&G S.
RICHLAND COUNTY
SOUTH CAROLINA

Indictment for
BURGLARY 1ST DEGREE

SO Code: 16-11-1071
CDR Code: 0029

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JULY 16, 2014, the
 Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That MICHAEL DARNELL THOMAS did in Richland County on or about
 MARCH 15, 2014, enter the dwelling of ~~XXXXXXXX~~ located at ~~XXXXXXXX~~
 SALUDA AVENUE, without consent and with the intent to commit a crime
 therein and when, in effecting entry or while in the dwelling or in immediate
 flight, the defendant or another participant in the crime did cause physical
 injury to a person who was not a participant in the crime, and/or the
 defendant did enter and or remain during the nighttime, in violation of
 Section 16-11-0311(A), 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.


 DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS: Michael Darnell Thomas
AKA:
Race: BLACK Sex: M Age: 24
DOB: SS#:
Address: 229 Cool Shade Drive
City, State, Zip: Columbia, SC
DL#: SID#: 02090870

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS4004539
A/W#: 2014A4021600853
Date of Offense: 3/15/2014
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

CONVICTED OF or PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: Margaret Bodin 70937 SC Bar# Defendant
Robert Bank 10112 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
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and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
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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:

VERIFIED TRUE COPY
OF ORIGINAL FILED
Janette Mc Bride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Table with 3 columns: Description, Amount, Total. Rows include assessments like § 14-1-206, § 14-1-211(A)(1), § 14-1-211(A)(2), § 56-5-2995, § 56-1-286, Proviso 47.9, § 14-1-212, § 14-1-213, § 50-21-114, § 56-5-2942(J), Proviso 90.5, and 3% to County.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Janette Mc Bride
Court Reporter: Melinda
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2161
Sentence Date: 4-26-14

ORIGINAL