

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Edward W. Miller, Circuit Court Judge

JEREL MARQUIS HERIOT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000038

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER)

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
20-GS-43-00371

JEREL M. HERIOT,)

DEFENDANT.)

November 15, 2021
Sumter, South Carolina

B E F O R E :

THE HONORABLE R. KIRK GRIFFIN, JUDGE

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

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1 THE COURT: All right, Mr. Brown.

2 MR. BROWN: Your Honor, may it please
3 the Court.

4 THE COURT: Yes, sir.

5 MR. BROWN: This matter is the State
6 of South Carolina v. Jerel Marquis Heriot. Your
7 Honor, this is a true billed indictment
8 2020-GS-43-0371. Your Honor has the indictment
9 before you. Your Honor will notice originally a
10 five count attempted murder indictment, as well as
11 possession of a weapon during a violent crime,
12 possession of a firearm by someone convicted of a
13 crime of violence, and possession of a firearm in
14 an establishment that sells alcohol. Your Honor,
15 we were prepared to call the case on this this
16 morning, only not proceeding on count 2 as we
17 identified that that victim was not actually in
18 the line of fire. But, Your Honor, the defendant
19 has now changed his posture, he's indicated he
20 wishes to plead guilty. Your Honor, he's pleading
21 guilty to two counts of attempted murder, as well
22 as all three of the gun charges. This will be for
23 a negotiated 15 year sentence in the Department of
24 Corrections. He has signed all the sentencing
25 sheets indicating his desire to plead guilty.

1 THE COURT: All right. And as far as
2 the attempted murders, which count -- which counts
3 is he pleading to?

4 MR. BROWN: Your Honor, we can just
5 list it as -- I believe those should be count 1
6 with Andy Stafford, and we'll just put count 3,
7 Mark Meyers. But, Your Honor, the others are just
8 being negotiated as plea negotiations.

9 MR. CHANDLER: And if it please the
10 Court, the two attempted murder charges we would
11 ask for an Alford plea. He will plead on the
12 others straight up.

13 THE COURT: Okay.

14 THE CLERK: Sir, raise your right
15 hand. State your name.

16 THE DEFENDANT: Jerel Heriot.

17 WHEREUPON,

18 **JEREL HERIOT,**
19 having been duly sworn by the Clerk, testified
20 as follows:

21 THE COURT: All right. Folks, Mr.
22 Chandler, you and Mr. Robinson represent Jerel
23 Heriot?

24 MR. CHANDLER: That's correct, Your
25 Honor.

1 THE COURT: You've explained to him
2 the nature of these charges, the possible
3 penalties he could receive, and his constitutional
4 rights with regard to a jury trial?

5 MR. CHANDLER: We have.

6 THE COURT: He understands those
7 things?

8 MR. CHANDLER: He does.

9 THE COURT: All right. Mr. Heriot,
10 this morning -- or this afternoon, I've got a
11 bunch of questions for you. They're aimed at
12 determining whether you're entering this plea
13 freely and voluntarily, so if you need to speak
14 with your lawyer at any time or need to ask me any
15 questions as we go through this process, just let
16 me know. Okay?

17 THE DEFENDANT: (No verbal response.)

18 THE COURT: And I need you to answer
19 out loud, sir.

20 THE DEFENDANT: All right.

21 THE COURT: Okay. Today are you under
22 the influence of any drugs or alcohol?

23 THE DEFENDANT: No. No, sir.

24 THE COURT: Ever had any treatment for
25 any mental health problems?

1 THE DEFENDANT: No, sir.

2 THE COURT: All right, Mr. Heriot, I'm
3 sure your lawyer has explained to you the
4 attempted murder charges carry a maximum penalty
5 of up to 30 years in prison. You understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And they are considered
8 most serious offenses and violent offenses. You
9 understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So you understand that
12 you're gonna walk out of this courtroom, assuming
13 that this plea goes forward, with one strike
14 because you're pleading to two strike offenses at
15 the same time. You understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand that it's
18 classified as a violent offense and what the law
19 classifies as an 85 percent of that. You
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And that you will have to
23 assume that you'll have to do at least 85 percent
24 of the sentences for attempted murder before you
25 would be eligible for release on community

1 supervision. You understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. You understand
4 that the gun offenses carry five years. All three
5 of them carry five years each. You understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. Now, Mr. Heriot,
9 when you plead you give up certain constitutional
10 rights. First you give up your right to remain
11 silent because you're making admissions in this
12 case for the attempted murders. You're making
13 admissions under North Carolina v. Alford. You
14 understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And under -- on the gun
17 charges you'd be admitting your guilt, correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You understand that? And
20 you give up your right to a jury trial. As you
21 can see here this morning, a bunch -- a bunch of
22 effort has been made to allow you to exercise your
23 right to a jury trial; but by pleading either
24 under North Carolina v. Alford or pleading guilty,
25 you give up the right to a jury trial and there

1 will not be a jury trial. You understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: In that jury trial you
4 would have the right to confront the State's
5 witnesses against you. You'd have the right to
6 call witnesses to testify for you. You have the
7 right to present a defense. But when you plead,
8 you give up those jury trial rights and there will
9 not be a jury trial. You understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And knowing that you're
12 giving up all of those rights, do you want a jury
13 trial?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay. Looking at this
16 indictment, it states on count 1 that in Sumter
17 County on or about February the 2nd, 2020, that
18 you did with intent to kill -- intent to kill,
19 attempt to kill another person, Anthony Stafford,
20 with malice aforethought either expressed or
21 implied by firing a pistol multiple times in his
22 direction. Now it's my understanding that you
23 want to plead under North Carolina v. Alford to
24 that charge; is that correct?

25 (Attorney confers with defendant.)

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. You understand
3 that North Carolina v. Alford is a supreme court,
4 United States Supreme Court case that states that
5 a defendant can choose to enter a plea under North
6 Carolina v. Alford and not necessarily admit
7 guilt, but admit that there is potentially
8 sufficient evidence if presented at trial that
9 could potentially lead to you being convicted of
10 an offense; and so you are allowed to take
11 advantage of a bargain, which is the negotiated
12 plea in this case, and not necessarily say I
13 intended to kill someone, but based upon the
14 evidence that would be presented, I think it's in
15 my best interest to take this plea. You
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. And as to the
19 second attempted murder count, it states February
20 -- on February 2nd, 2020, you did violate section
21 16-3-29 of the South Carolina Code of Laws that
22 you did with intent to kill -- attempt to kill
23 another person, Mark Meyers, with malice
24 aforethought either expressed or implied by firing
25 a pistol in his direction. How do you plead under

1 North Carolina v. Alford as to that charge?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You -- you want to plead
4 under North Carolina v. Alford?

5 THE DEFENDANT: Yeah.

6 THE COURT: Okay. And looking at the
7 weapons charges, count 6, it states that you did
8 possess a weapon during the commission of a
9 violent crime on or about February 2nd, 2020. You
10 did possess a firearm, visibly displayed what
11 appeared to be a firearm or visibly displayed a
12 knife, I believe, applies during the commission of
13 a violent crime and that violent crime being the
14 attempted murder. You understand that charge?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How do you plead?

17 THE DEFENDANT: Guilty.

18 THE COURT: And count 7, carrying a
19 pistol on a premises serving alcohol, that you did
20 in Sumter County on or about February 2nd carry a
21 pistol, a firearm on the premises of Melted
22 Whiskey which sold alcoholic liquor, beer, or wine
23 for on premises consumption in violation of
24 section 16-23-0465 in the South Carolina Code of
25 Laws. How do you plead to that charge?

1 THE DEFENDANT: Guilty.

2 THE COURT: And finally, Mr. Heriot,
3 possession of a weapon by a person convicted of a
4 crime of violence, that you did on February 2nd,
5 2020, possess a pistol having been convicted of a
6 crime of violence as defined in section 16-23-10
7 of the South Carolina Code of Laws as amended.
8 Apparently you have a conviction on your record of
9 a crime of violence that fits that statute. How
10 do you plead to that charge?

11 THE DEFENDANT: I'm guilty.

12 THE COURT: All right, sir. You
13 understand that the State and your lawyers have
14 negotiated a sentence of 15 years in this case,
15 and my options in this situation are to accept the
16 negotiations if I believe they're appropriate.
17 And I'm gonna go ahead and tell you I do believe
18 they're appropriate, or reject the negotiations
19 and you would be back at square one. You
20 understand those are the negotiations in this
21 case?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. You
24 understand, like I said before, that it's my job
25 either to accept or reject the negotiations?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Other than the
3 negotiations, has anybody promised you anything to
4 get you to plead?

5 THE DEFENDANT: No, sir.

6 THE COURT: Has anybody forced or
7 threatened you to get you to plead guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you pleading freely
10 and voluntarily?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you completely
13 satisfied with the services of Mr. Chandler and
14 Mr. Robinson?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: They've done everything
17 you've asked them to do to represent you in this
18 case?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: They've gone over the
21 discovery with you that's been provided by law
22 enforcement?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: They showed you the video
25 that was provided in discovery by law enforcement?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You had enough time to
3 discuss these issues with them and go over
4 everything that you feel could potentially be a
5 defense in this case?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. And you're
8 pleading under North Carolina v. Alford to the
9 attempted murder charges, correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you're pleading guilty
12 to the gun charges because you are, in fact,
13 guilty of the gun charges?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right, sir. Do you
16 have any complaints against the Solicitor's
17 Office, the Sheriff's Department, or any other law
18 enforcement agency?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Thank you,
21 sir. You have ten days from today's date to
22 appeal this plea or the sentences I give you; but
23 if you want to appeal, that appeal must be filed
24 in writing with this court. You understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. The solicitor
2 is going to give me the facts in this case and
3 then I'm going to come back to you.

4 Mr. Brown.

5 MR. BROWN: May it please the Court,
6 Your Honor. Your Honor, this arose February 2nd,
7 2020, in the early morning hours over at 1311
8 Peach Orchard Road which is a club known as Melted
9 Whiskey. Your Honor, that morning around 2:40
10 that evening where I believe testimony would have
11 shown at trial was that Jerel Heriot was at that
12 bar with his brother. Your Honor, during the
13 course of being inside of there an altercation
14 occurred, I believe, over -- between his brother
15 and a female in the club at which point Mr. Heriot
16 and his brother were ejected from that nightclub.
17 Your Honor, from there we have video that showed
18 Mr. Heriot around 2:44 and 50 seconds going to his
19 vehicle, opening up the door to the white Chevy
20 Avalanche that's in the parking lot, reaching into
21 the center console and then going back towards the
22 club. A secondary video shot from a different
23 angle shows him leaving his truck carrying in his
24 right hand what appears to be and what later was
25 found to be a pistol. It was a -- it was a

1 9-millimeter pistol.

2 Your Honor, Mr. Heriot, along with his
3 brother, goes back to the back entrance to Melted
4 Whiskey. They attempt to enter the facility
5 which, Your Honor, we believe would constitute the
6 offense about the establishment with alcohol,
7 alcoholic premises. They actually got right to
8 the door. At that particular time, Your Honor, by
9 this point security that included many people here
10 in the courtroom today -- Mr. Andy Stafford, Mr.
11 Mark Meyers, Shaun Green, and Ms. Mott and Dennis
12 were all there. They were looking for Mr. Heriot
13 because they knew he'd been kicked out and that he
14 had not left the premises. We have video of them
15 coming up beside around at the point in time where
16 Mr. Heriot begins pulling his brother back from
17 the door. They are about the distance from Your
18 Honor to the solicitor at which point Mr. Heriot
19 pulling his brother back, removes the firearm from
20 his jacket, and begins firing across the parking
21 lot at them. Your Honor, by our account, watching
22 the video about nine shots were fired. He was
23 fanning the shots going towards the individuals.
24 We believe that would have established specific
25 intent. But, Your Honor, if there were any

1 concerns about specific intent as to the attempted
2 murders in that particular case, Your Honor, after
3 the initial volley of fire occurred, Andy Stafford
4 overhears the defendant saying, and I'm quoting,
5 "Fuck that, I'm going to kill them all, I'm not
6 leaving any witnesses." At that point Andy
7 Stafford goes and he arms himself. He makes sure
8 the gun is loaded. His intent was to go and get
9 into a spot where he'd be safe; and if the
10 defendant came back through, to make sure that he
11 didn't cause harm to anyone else. But before he
12 could get to the location, he was going to, Jerel
13 Heriot comes back around the corner and fires
14 shots directly at Andy Stafford at that point in
15 time. Your Honor, a round -- or actually multiple
16 rounds actually went through Andy's shirt,
17 fortunately did not strike him, but there were
18 bullet holes in his sweater that they ultimately
19 end up cutting off of him. Andy returned fire.
20 Mr. Heriot was shot in the foot. We actually
21 think the gunshot came from Mr. Heriot's gun and
22 shot himself in the foot, at which point we have
23 video of Mr. Heriot getting into the Chevy
24 Avalanche that was mentioned.

25 About 15, 20 minutes later at the

1 corner of Alice Street and Broad Street, Mr.
2 Heriot is pulled over along with his brother by
3 numerous deputies with the Sheriff's Department,
4 including Kristen Gregory. Her body cam did
5 reflect that the defendant acknowledged he had
6 been at that club; and he said to Deputy Gregory
7 at that point in time, I heard gunshots wring out,
8 they'd been shooting at me, we didn't do anything.

9 Your Honor, that would be the basis of
10 what the State would present in this trial. He
11 was ultimately taken by EMS that night, arrested a
12 couple of days later. And the basis for the crime
13 and violence conviction, Your Honor, we have a
14 certified copy of his previous conviction here in
15 Sumter County in 2013. He pled guilty to strong
16 arm robbery as a lesser included to armed robbery.
17 That will be the State's case.

18 The only other thing I'll add, I've
19 already spoken with our victims, my witnesses
20 here. I don't think they wish to address the
21 Court, but they are in agreement with this guilty
22 plea.

23 THE COURT: Thank you, Mr. Brown.

24 Mr. Heriot, you understand that those
25 are the -- is -- those facts as recited by the

1 solicitor are a summary of what will be presented
2 at your trial in this case. You understand that?

3 THE DEFENDANT: I do.

4 THE COURT: And based upon those facts
5 as recited, do you believe that there is a
6 substantial likelihood that you could be found
7 guilty of the attempted murder charges if the
8 evidence was presented to the jury in that
9 fashion?

10 THE DEFENDANT: Yeah.

11 THE COURT: And you agree that with
12 regard to the pistol charges that those facts are
13 substantially correct?

14 THE DEFENDANT: Yeah.

15 THE COURT: All right. I find there's
16 a substantial factual basis for the plea. I find
17 the defendant's decision to plead guilty and plead
18 under North Carolina v. Alford is freely and
19 voluntarily, intelligently made. He's had the
20 advice of counsel, of attorneys with whom he's
21 satisfied. I also find for the record that there
22 is the requisite benefit. Mr. Heriot was facing
23 30 years on each of these attempted murder
24 charges. His lawyers have ably negotiated a 15
25 year sentence in this case so certainly cutting

1 his exposure on the attempted murder charges, if
2 they were to run concurrent in half, certainly
3 meets the threshold established by North Carolina
4 v. Alford so. Before I accept the plea, I would
5 hear from the defense.

6 Mr. Chandler.

7 MR. CHANDLER: I feel compelled to put
8 the other side on the record. My client, his mom
9 passed away when he was three years old, raised
10 by grandmamma and an aunt. He'd been out of jail
11 a couple of years, attending truck driving school,
12 trying to get a real estate license and not had
13 any other problems at all. So these four guys --
14 my client, and his brother, a cousin, and a
15 friend -- go to the Melted Whiskey, two different
16 cars. A cousin and his friend go in. My client
17 and the brother go in. And this is not a big
18 place. This is about 1300-square foot building
19 and it's got an enclosed area in the back where
20 people can come out and smoke, and there's a
21 grill. My client's brother was totally drunk and
22 gets in -- we don't know what -- I promise I have
23 looked all through this to figure out what
24 happened. But what -- what was related, three
25 different versions, is either he had said

1 something to a woman who is in there or he had
2 touched her inadvertently and there were words
3 exchanged and before he could do anything, a man
4 came up and hit him in the face and knocked him to
5 the floor. He was dazed. Security guard comes up
6 and says you guys have got to leave because now my
7 client is pulling his brother up and trying to
8 find out who had snuck punched him. So they go
9 out the back.

10 And Judge, you've probably seen this
11 video of bond hearing, but we put the thing
12 together in a time sequence. So my big
13 lamentation here in support of the 15 years is
14 that the owner of Melted Whiskey did not have a
15 security license, nor did he retain or hire anyone
16 who had a security license, and no one was there
17 who was supposed to have a gun in the furtherance
18 of being security. So what happens? Not having
19 all of that, you can hire under exception to South
20 Carolina law, people we kind of call bouncers.
21 And so these bouncers are restricted to the
22 premises. The landlord gave me the lease that
23 indicated the premises was for 1300 square feet.
24 So if you put the videos together, here's what you
25 see. Out of the back from the smoking area comes

1 my client and his brother. His brother is being
2 held up; he can barely walk. And they walk around
3 the back of the Melted Whiskey. There's another
4 store in the strip mall and there's about a
5 20-foot right of way driveway. They weren't even
6 parked in the back. They were parked next door to
7 the landlord's business which is in front of the
8 landlord's business which is M&M Carpets. So you
9 leave the Melted Whiskey. You go to another
10 building. You cross a driveway and now you're in
11 front of this other place. The video then shows
12 my client get out the gun, his brother approach
13 him. My client puts the gun in his pocket. He
14 does not want a drunk brother who is angry with
15 it. They then go back down the driveway. There's
16 not a camera then to show the driveway, but you
17 see them come out of the driveway and move around
18 to the back door. As the timing shows when they
19 do that, all of a sudden five people come trotting
20 down through the breezeway, driveway, and then in
21 front of M&M. They weren't anywhere close to the
22 Melted Whiskey.

23 Now one report was, oh, we heard there
24 was a fight there so we wanted go check it out.
25 And security, except two of the people in that

1 group, one was the woman, and the other was a
2 person who had been on security another time but
3 was not hired then, both drinking. So you see
4 them running past my client's vehicle and then
5 turn around and the man and the woman converse and
6 they look around. They were looking for my
7 client. They were looking for my client. So my
8 client and his brother go back. The brother goes
9 in the door, starts to go in the door. The
10 security, he says profanely, I want the MFs that
11 hit me, why didn't they get thrown out and I did.
12 Security guard does what he's supposed to. The
13 only one who did what he was supposed to, and he
14 pushes him out. You can then see my client pull
15 this man some 30-feet from the door and keep him
16 from going back and reengaging. He then starts to
17 move my client almost dragging him by the collar
18 back, back, back, back away, no gun showing. He
19 goes about 40-feet. During that time the group
20 that had run down in front, including the woman
21 and this other guy who wasn't on security that
22 night, come around and they line up. They line up
23 in between the cars. And as my client is backing
24 up, they start slowly moving between the cars.
25 Head person is not moving the way the others are.

1 But at the very last, you will see the last man
2 who never heard anything about killing anybody,
3 steps in between the building and the alley, the
4 only way my client can get out. So now the story
5 I've heard is, these people just really wanted him
6 to leave. We were standing there. Except as soon
7 as my client can see the man step behind him, the
8 fifth, the four coming, he pulls out the gun and
9 he shoots it. Overreaction, but that's what he
10 did.

11 Now, you can't see this, but he goes
12 up, back to the vehicle, right, when he started
13 shooting you can't see where the brother went. He
14 comes back to the vehicle. You see him looking
15 around and his brother is not there. And we don't
16 know if he's off the camera or where he is. But
17 my client at that juncture goes back down the
18 alley way which is about 45-feet, right, where the
19 heating and air conditioning units are, to see
20 where his brother is now. Here's the incredible
21 part about this. I got a person who is not
22 licensed to carry a handgun, okay, not licensed to
23 be a security guard, right, runs into the building
24 where he is contracted to secure that premises,
25 stay in the building, gets a pistol from somebody

1 who is not licensed to carry it in the freaking
2 place, right, that is loaded and rather than stand
3 in the building, runs out with the gun out. My
4 client, unfortunately, comes running back
5 overreacting totally with his gun out.

6 And what Mr. Brown said was absolutely
7 correct, we fired first. There's two guys
8 standing in front of each other, right, and both
9 of them could have been killed. Just terrible set
10 of circumstances. My client turns and runs, has a
11 bullet wound, and I think it's probably immaterial
12 who shot him at that point. And everything else
13 that was said is absolutely correct. And so my
14 client has struggled with this, knowing that,
15 first, he got a common law robbery, right,
16 business getting that gun out there, whatever,
17 escalating poor judgment into overreaction that
18 leads to 15 years in the penitentiary. We
19 appreciate your accepting this plea.

20 THE COURT: Mr. Heriot, anything that
21 you'd like to tell me, sir?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. How many -- I
24 know that Mr. Heriot was detained pretrial. How
25 many days does he have in on these charges?

1 MR. CHANDLER: He's got 22 months.

2 MR. BROWN: Your Honor, let me check.
3 I'll look at the jail's printout this morning.

4 THE COURT: Okay. I want to make sure
5 that we are having an accurate number.

6 MR. CHANDLER: I need to add one other
7 thing.

8 THE COURT: Yes, sir.

9 MR. CHANDLER: The guy that came
10 running out with the gun, left the scene and
11 wasn't there when the police came, took the gun
12 and left the scene. It's a dubious set of facts;
13 but in the middle of this, Judge, I've got a man
14 who went back a second time.

15 THE COURT: Right.

16 MR. CHANDLER: With a gun. That make
17 sense? I mean...

18 THE COURT: I understand.

19 MR. BROWN: Your Honor, the jail
20 printout is 643 days. And respectfully, Your
21 Honor, Andy Stafford, he's just not going to
22 listen to anything other than that.

23 THE COURT: Well, the plea offer has
24 been made. I found there's substantial factual
25 basis for it. I understand that there's some

1 disagreement as to some of the more technical
2 aspects of these offenses, but that doesn't --
3 that doesn't change the fact that Mr. Heriot has
4 accepted responsibility under North Carolina v.
5 Alford for the attempted murders and pled guilty
6 to the weapons charges. You said 643 days?

7 MR. BROWN: Yes, Your Honor.

8 THE COURT: And for the record, I do
9 accept the negotiated sentence on all of these
10 charges and find that there's a substantial
11 factual basis for the pleas and that there is a
12 substantial factual basis under North Carolina v.
13 Alford and the requisite benefit to the client for
14 the negotiations.

15 So, Mr. Heriot, on indictment
16 2020-GS-43-371 as to both counts of attempted
17 murder, the sentence of the Court, you'll be
18 committed to the State Department of Corrections
19 for a determinate term of 15 years. It's
20 concurrent to all pleas in Sumter County on
21 indictment No. 2020-GS-43-371. You get credit for
22 the 643 days you've served. On the weapons
23 charges, the sentence of the Court is you'll be
24 committed to the State Department of Corrections
25 for a determinate term of five years on each

1 weapons charge. They're to run concurrent with
2 each other. And the other pleas on indictment
3 2020-GS-43-371, you're given credit for 643 days
4 on the ---

5 MR. BROWN: Your Honor, one point of
6 clarification. I think the weapon on alcohol
7 premises is only a two year, just for clarity
8 sake.

9 THE COURT: Okay. Let's make sure.
10 Yep, you got that. I can go ahead and amend that.

11 MR. BROWN: I just don't want an issue
12 coming up from SCDC.

13 THE COURT: Thank you, Mr. Brown. All
14 right. On the charge of the weapon's charge on
15 the ABC premises, Mr. Heriot, that's a two year
16 charge. You've essentially done that so that
17 would be a two year sentence. But everything
18 else, the other weapons charges are five. The
19 attempted murders are 15. Good luck, sir. Thank
20 y'all very much.

21
22 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

23
24
25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 4th day of August, 2022.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA

RECORDED

IN THE COURT OF COMMON PLEAS

County of Sumter

2022 MAY 16 PM 2:37

Jerel Marquis Heriot #356193

Full name and prison number (if any) of Applicant

JES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2022-CP-43-776

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

RECEIVED TRUE COPY
OF ORIGINAL FILED
James C Campbell
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

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 Evans Correctional Institution,
610 Highway 9 west, Bennettsville, S.C. 29512
2. Name and location of Court which imposed sentence Sumter County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) "See Attached"
(b) _____

RECEIVED

MAY 24 2022

Referred to PCR
Answered _____

- 4.) The indictment number or numbers (if known) the offenses for which Sentence was imposed:
- (a) 2020-GS-43-0371, Count 1: Murder/Attempted Murder; Count 2: Murder/Attempted Murder; Count 3: weapons/Additional penalty to 16-11-330 & 16-23-460 for gun on premises where alcohol Sold; Count 4: Weapons/Poss. weapon during violent Crime, if not also Sentenced to life without parole or death; Count 5: Weapons/Possession of firearm or ammunition by person Convicted of violent felony.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 15, 2021; 15 years; 85%; Concurrent terms
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My Attorney did not informed me that I've Could've Appealed.
- (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) violation of 14th Amendment
- (c) Stand Your Ground Law and Defense of others
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Erroneous Advice, Lack of preparation, and Coercion
- (b) Denial of equal protection of the laws
- (c) The Claim of Stand Your Ground were never asserted
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. N/A
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. N/A
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

34 16.

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

- (a) _____
- (b) _____ N/A
- (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? No.
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No.

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

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

- i. Ray E. Chandler
8 South Brooks Street
- ii. Manning, S.C. 29102
- iii. _____

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

- i. Ray E. Chandler (Sentencing, arraignment, and Plea.)
- ii. _____
- iii. _____

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

Immunity / Exonerated from all charges and
the restoration of liberty, dismissed with
prejudice

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

No.

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

I, Terrel Marquis Heriot, 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.

Terrel Marquis Heriot

SWORN to and subscribed before me this 11
 day of May, 2022

Saxona Quintan (L.S.)
 Notary Public

My Commission Expires: 2/17/24

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

I, Jerel Marquis Heriot, 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.

Jerel Marquis Heriot
Applicant

SWORN or affirmed to and subscribed before me this
11 day of May, 2022

Sandra Oull
Notary Public

My Commission Expires: 2117124

RECORDED
2022 MAY 16 PM 2:38
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

JEREL MARQUIS HERIOT, # 356193,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2022-CP-43-0776

**RETURN AND MOTION FOR A MORE
DEFINITE STATEMENT TO THE
THE APPLICATION FOR POST-
CONVICTION RELIEF**
(Counsel Already Appointed)

In response to Applicant Jerel Marquis Heriot's post-conviction relief application filed on May 16, 2022 and received by Respondent the State of South Carolina on May 20, 2022, Respondent makes the following return¹ to the application and requests an evidentiary hearing on Applicant's claims of ineffective assistance of counsel once he, through counsel of record, amends his application to provide specific allegations and supporting facts for those specific allegations pursuant to the Uniform Post-Conviction Procedures Act (S. C. Code Ann. § 17-27-10 et seq.) and the South Carolina Rules of Civil Procedure. In support of this return, Respondent offers the following:

¹ Respondent's return was due to be filed within sixty days of receipt. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). However, on the date the return was due to be served, the court reporter had not yet delivered the requested transcript for Applicant's plea and sentencing proceedings to the State. Since receipt and review of this transcript was necessary for the drafting and submission of a return, Respondent requested an extension to file this return once all necessary transcripts were received. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.). Now, having received the transcripts, Respondent submitted this return to the application.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). On February 2, 2020, Applicant, a convicted felon, was at the Melted Whiskey bar in Sumter and, following an altercation, he was ejected from the bar. Applicant then exited the bar, went to his vehicle to retrieve a handgun, and then attempted to regain entry into the bar. Once he was not able to regain entry, he shot his weapon at numerous people in the parking lot while making statements that he intended to kill everyone and leave no witnesses. During the shooting, Applicant shot himself in the foot before fleeing. This incident was captured on surveillance video. Law enforcement sought and obtained an arrest warrant for Applicant, who was taken into custody.

Thereafter, the Sumter County Grand Jury indicted Applicant under a multi-count indictment for five counts of attempted murder, possession of a weapon during a crime of violence, carrying a pistol on premises serving alcohol, and possession of a pistol by a person convicted of a crime of violence (2020-GS-43-00371). Applicant was originally represented by Kenneth R. Young, Jr., Esquire, but eventually retained Ray E. Chandler, Esquire, who was substituted as counsel of record for Applicant in January of 2021. The case was prosecuted by Assistant Solicitor Tyler B. Brown of the Third Circuit Solicitor's Office.

In February of 2021, Applicant, through counsel Chandler, filed a motion for a speedy trial. In April of 2021, Applicant withdrew this motion, citing a need for additional time to prepare the case for trial and on-going discovery. Attached to this motion was a "waiver and acknowledgment" signed by Applicant personally.

On November 15, 2021, Applicant appeared alongside counsel before the Honorable R. Kirk Griffin, circuit court judge, for a plea proceeding pursuant to a plea agreement with the State

to allow Applicant to plead guilty to the two counts of attempted murder² and the three weapons charges as indicted for a determinate fifteen-year sentence and the dismissal of all related charges. Following a thorough plea colloquy, Judge Griffin accepted Applicant's guilty pleas and sentenced Applicant to fifteen years of years of imprisonment for both counts of attempted murder, five years of imprisonment for possession of a weapon during a crime of violence, two years of imprisonment for carrying a pistol on premises serving alcohol, and five years of imprisonment for possession of a pistol by a person convicted of a crime of violence, with all sentences to be served concurrently. Applicant did not appeal his pleas or sentences.

II. Current Action before the Court

In his application for post-conviction relief, Applicant alleges he is entitled to relief based on the following grounds:

10 (a) "Ineffective Assistance of Counsel"

11(a): "Erroneous advice, lack of preparation, and coercion."

10 (b) "Violation of 14th Amendment"

11(b): "Denial of Equal Protection of the laws."

10 (c) "Stand Your Ground Law and Defense of Others"

11(c): "The claim of stand your ground were never asserted."

Based on the way these claims are phrased, Respondent interprets all of these claims as ineffective assistance of counsel for counsel's failures or omissions, but, as will be explained below, Respondent requests that Applicant, though retained counsel, file an amended application with specific allegations and supporting facts in compliance with the Uniform Post-Conviction

² The two counts of attempted murder were pled pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).

Procedures Act (S. C. Code Ann. § 17-27-10 et seq.) and the South Carolina Rules of Civil Procedure. As requested relief, Applicant states he is seeking “immunity/exoneration from all charges and the restoration of liberty, dismissed with prejudice.”

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the underlying general sessions proceedings, the transcripts from Applicant’s plea proceeding, and Applicant’s records from the South Carolina Department of Corrections. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

In his application, Applicant raises numerous generic claims of ineffective assistance of counsel without any specificity or facts to support such allegations, such as “erroneous advice,” “lack of preparation,” and “coercion” without any specific allegations or supporting facts . Accordingly, Respondent addresses this general allegation and Respondent submits the record establishes Applicant will not be able to prove any ineffectiveness of counsel as to these claims, as the record established Applicant entered a knowing, intelligent, and voluntary plea with the advice of competent counsel who was able to secure him a favorable negotiated plea agreement. However, as set forth below, Respondent requests that Applicant, through his counsel, file an amended application with specific grounds for relief so that Respondent may file an amended return specifically addressing all claims.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann.

§ 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair

proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the

facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466

U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decision making” and does not turn on the outcome of a defendant’s

actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Id. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of

the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

In Applicant’s case, the record fully supports that Applicant entered a knowing, voluntary, and intelligent plea with the advice of competent counsel, who was able to secure an extremely favorable plea agreement that allowed Applicant to plead to a reduced number of offenses for a determinate, negotiated sentence and the dismissal of three attempted murder indictments. Applicant also told the court that he was satisfied with counsel’s representation, that they had enough time to discuss the case, that Applicant had understood these conversations, and he wished to proceed forward with counsel. However, as set forth above, it is impossible to discern what specifically Applicant is asserting his counsel should have or should not have done based on his generic claims of ineffectiveness without specific allegations or supporting facts.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test, as the record establishes he was represented by competent counsel who diligently represented him. However, without specific allegations of ineffective assistance of counsel, it is impossible to respond to the claim of ineffective assistance of counsel precisely. Accordingly, Respondent requests Applicant, through his appointed counsel, amend his application to include the specificity required to support an allegation of ineffective assistance of counsel.

IV. Motion for a More Definite Statement

In his application, Applicant fails to list specific allegations or any facts to support such allegations, but, instead, lists generic, vague allegations of ineffectiveness. See PCR Application (question #10 and #11).

The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” S.C. Code Ann. Section 17-27-50. In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). See also Rule 8(a)(2), SCRPC (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRPC (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”). “[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the [applicant] that he was deprived of adequate and effective assistance of counsel is insufficient.” Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Applicant has failed to state with any specificity the allegations he wishes to pursue on post-conviction relief beyond vague allegations. Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant, through his appointed counsel, to provide a more definite statement of his allegations by filing an amended application before the scheduling of any hearing(s) in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V. Any Future Amendments and Invocation of Discovery Process

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

Pursuant to section 17-27-150 of the South Carolina Code, 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. Further, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State 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 the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII. Request for An Amended Application Prior to An evidentiary Hearing

WHEREFORE, Respondent respectfully requests Applicant, through appointed counsel,

file an amended application with specific allegations and supporting facts, prior to the scheduling of any evidentiary hearings in this matter so that Respondent may file an amended return specifically responding to these amended, specific allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: *s/ Megan Harrigan Jameson*
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
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September 8, 2022

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

JEREL MARQUIS HERIOT, #356193

Case No. 2022-CP-43-776

Applicant,

vs

CERTIFICATE OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

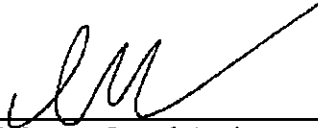
Respondent,

RECORDED
2022 SEP 12 P 2:05
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, SC

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

Timothy Lee Griffith, Esquire
2338 Mount Vernon Drive
Sumter, South Carolina 29154

DATED this 8th day of September, 2022.


Joshua Osborne, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER }

COURT OF COMMON PLEAS

JEREL M. HERIOT
356193 }

PETITIONER,)

v.)

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

TRANSCRIPT OF RECORD
22-CP-43-776
20-CP-43-371

November 01, 2022
Sumter, South Carolina

B E F O R E :

THE HONORABLE EDWARD W. MILLER, JUDGE

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

TIMOTHY L. GRIFFITH, ESQ.
Attorney for the Petitioner

DANIELLE E. DIXON, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

I N D E X

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E X H I B I T S

PLAINTIFF'S:

No. Description I.D./EVD

1 Forensic interview report 17

1 MS. DIXON: May it please the Court.

2 THE COURT: Yeah.

3 MS. DIXON: Danielle Dixon for the State
4 of South Carolina. This is the case of Jerel Heriot
5 v. South Carolina, docket number 2022-CP-43-776.
6 Mr. Heriot is serving a 15-year sentence. He was
7 indicted by the Sumter County grand jury in November
8 of 2021 for five counts of attended murder,
9 possession, and then single counts of possession of
10 a weapon during a violent crime, possession of a
11 weapon by a convicted felon, and possession of a
12 weapon on premises serving alcohol. That's
13 indictment number 2020-GS-43-371. These charges
14 arose after a February 2nd, 2020, shooting outside
15 of a bar called Melted Whiskey.

16 Mr. Heriot pled guilty before the
17 Honorable R. Kirk Griffin on November 15th, 2021.
18 He was represented by Ray Chandler, and Scott
19 Robinson was also retained to represent him had they
20 proceeded to trial. Tyler Brown represented the
21 State. This was a negotiated plea of a total
22 15-year sentence. He pled to two counts of
23 attempted murder and those were under Alford; and
24 then he also pled to the three gun charges and so
25 the sentence was, the negotiated sentence concurrent,

1 15 years each for attempted murder, two years for
2 the possession of a gun on premises serving alcohol
3 and five years each on the remaining weapons
4 charges.

5 He did not file a direct appeal. He filed
6 this PCR application timely on May 16th, 2022. The
7 State filed a return requesting an evidentiary
8 hearing, and our understanding at this time is that
9 the claims he is going forward on are ineffective
10 assistance of counsel: That's erroneous advice,
11 lack of preparation, coercion, did not assert stand
12 your ground/defense of others. He's also raised a
13 violation of 14th Amendment/denial of equal
14 protection. And that's what we have at this time.
15 Your Honor.

16 THE COURT: Okay. Negotiated guilty plea;
17 is that right?

18 MR. GRIFFITH: If it please the Court, his
19 claims, actually, we have talked over them
20 extensively on the phone is that he was coerced into
21 making his plea. His attorney failed to investigate
22 and failed to present certain evidence, Your Honor.
23 So if it please the Court.

24 THE COURT: Yeah, go ahead.

25 MR. GRIFFITH: I would call Mr. Jerel

PW - J. HERIOT - DIRECT

1 Heriot to the stand.

2 THE CLERK: Place your left hand on the
3 Bible. Your left hand.

4 THE WITNESS: No. Do, do I ma---

5 THE CLERK: Okay. I tell you what ---

6 THE WITNESS: My religion.

7 THE CLERK: Okay. Do you affirm ---

8 THE WITNESS: Yeah.

9 THE CLERK: ---to tell the truth, the
10 whole truth ---

11 THE WITNESS: Yeah.

12 THE CLERK: ---nothing but the truth, so
13 help you God?

14 THE WITNESS: Yeah.

15 THE CLERK: State your name now.

16 THE WITNESS: Jerel Heriot.

17 THE CLERK: For the record, and spell your
18 last name.

19 THE WITNESS: Jerel Heriot, J-E-R-E-L
20 H-E-R-I-O-T.

21 THE CLERK: Have a seat.

22 MR. GRIFFITH: Thank you. Please the
23 Court, Your Honor.

24 **DIRECT EXAMINATION**

25 BY MR. GRIFFITH:

PW - J. HERIOT - DIRECT

1 Q Mr. Heriot, could you -- you pronounce
2 your name Heriot?

3 A Heriot.

4 Q Heriot. And where are you currently
5 housed?

6 A Like, what prison?

7 Q What prison, yes, sir?

8 A At Evans Correctional.

9 Q Evans Correctional. And how long have you
10 been there?

11 A About eight months now.

12 Q Okay.

13 A Since March.

14 Q And you recall, Mr. Heriot, that back when
15 you were arrested before you were sent to prison, do
16 you recall how many charges you had prior to that?

17 A I had about 15 -- I mean, about 12.

18 Q Okay. That would include five counts of
19 attempted murder; is that correct?

20 A That's correct.

21 Q And then a weapons charge and -- but what
22 did you actually plead guilty to?

23 A I pled guilty to two attempted murders and
24 three, three of the weapon charges.

25 Q Okay. And how many years were convicted

PW - J. HERIOT - DIRECT

1 to?

2 A Fifteen.

3 Q All right. So you remember me explaining
4 to you over the phone -- and just to make sure that
5 we all understand -- if you win your PCR, then it
6 goes back to you still have five counts of attempted
7 murder?

8 A That's correct.

9 Q And you have the charges all come back.
10 You understand that, right?

11 A Yes, sir.

12 Q Okay. And you want to proceed with your
13 PCR?

14 A Yes, sir.

15 Q Okay. So, first let's talk about one of
16 the issues you and I talked about that you had; and
17 you told me that you wanted to appeal your case, but
18 you were unable to appeal the case. Can you explain
19 to us how that came about?

20 A I mean, it was never informed to me that I
21 could appeal anything like that.

22 Q Okay. Now do you remember when the judge
23 was talking to you and on when you were pleading
24 guilty, that he said you have ten days ---

25 A I ---

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1 Q ---to issue appeal?

2 A I must have missed it. I, I didn't -- I
3 wasn't aware of that. But even though, when I went
4 back to the county jail nobody never told me that I
5 could appeal or anything. I mean, even if I did
6 knew how to appeal, I'm -- how could I do it from
7 the county. I didn't knew.

8 Q Okay. And so how long were you in County
9 before you got sent to the prison?

10 A Twenty-two months.

11 Q In the County?

12 A Yeah.

13 Q Oh, that -- I mean, after you did your
14 plea?

15 A A week.

16 Q Okay. And had you talked to your attorney
17 about whether or not you wanted to appeal your case?

18 A No, we never had that discussion.

19 Q Okay. So did he ever mention to you that
20 you could appeal?

21 A No, sir.

22 Q Did he ever ask you if you wanted to
23 appeal?

24 A No, sir.

25 Q Is there anything else about the fact that

PW - J. HERIOT - DIRECT

1 you did not get to appeal that you wanted to tell
2 the Court here?

3 A No, sir. I mean, if I had the opportunity
4 to, I would have, but it wasn't presented.

5 Q Okay. And so let's talk about how your
6 state of mind was at that time. Were you -- were
7 you pretty clear in your mind as to what was going
8 on so that you would understand when the judge said
9 you have a right to an appeal?

10 A No, sir. Like I said, I really didn't
11 even heard him. I thought he didn't even say it,
12 you know.

13 Q Okay.

14 A Nobody never came to me afterwards and
15 asked me did I wanna appeal or nuttin.

16 Q Okay. All right now, one of the other
17 things you and I talked about is you felt like you
18 were coerced or pushed or forced into your plea, and
19 one of the things you told me that your attorney
20 kept telling you that you were gonna go to jail for
21 life. Why don't you tell us about that.

22 A I mean, all the way up until the trial or
23 the jury selection, we was kind of bumping heads
24 and, you know, he kept -- I could tell he was
25 getting angry. You know, he kept telling me stuff

PW - J. HERIOT - DIRECT

1 like I'm gonna catch 30 years, I'm gonna catch 40
2 years, I'm gonna walk out of there with life
3 sentence, stuff like that prior to trial.

4 Q Okay. And how did that ---

5 A But on -- on November 15th, that's when
6 he -- when we went -- jurors -- when we went on
7 break for jury selection, that's when he told me
8 that the judge say if I go to trial then I'm gonna
9 get 20 years. Yep.

10 Q He told you that the judge told him that
11 or?

12 A Yeah.

13 Q Or he just told you that?

14 A No. He been, like, we don't have no
15 defense and if we go to trial, the judge say he
16 gonna give me 20 years.

17 Q Were you -- did you hear the judge say
18 that?

19 A No. They -- they went behind in the
20 chambers or something like that he said.

21 Q Did he -- did it have any kind of context
22 like the judge said that if you were to lose he
23 would -- he would allow you to plead for 20 years
24 ---

25 A No.

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1 Q ---or something like that?

2 A No, sir, not -- I don't relay it like
3 that. He didn't say it like that.

4 Q I mean, you're aware ---

5 A He said that ---

6 Q Go ahead.

7 A Well, the 15 years is on the table. He
8 said if you go to trial and you lose, you're gonna
9 get, you know what I'm saying, 20 years.

10 Q Okay. So then ---

11 A The more -- he said he not gonna give you
12 no more than 20 years. I mean, it was spoken about
13 as if it was already decided so I was looking at it
14 like why Imma just go to trial, it seem like I'm
15 being set up for failure.

16 Q And so did your attorney discuss with you
17 whether or not he thought you would win your case or
18 lose your case?

19 A I mean, he never really discussed actual
20 trial strategy or nothing like that. I mean, he --
21 to me, I feel like he was totally against me. He
22 just kept saying, you know, we don't got no defense,
23 we don't got no case, you know what I'm saying.
24 But, I mean, he never really came and sat down and
25 we actually looking over the case together going by

PW - J. HERIOT - DIRECT

1 piece by piece. I mean, it was just, it wasn't
2 there, the connec-- the lawyer and client relation
3 wasn't there.

4 Q Well, do you feel like your attorney spent
5 enough time with you talking over and going over
6 your evidence with you?

7 A We -- we watched the video a good bit of
8 time, you know, and we pull up some good conclusion
9 behind it. But it was -- it was -- it was on April,
10 about April 21st, 2021, when it was brought about
11 the videotape that was missing, you know; but that's
12 why we even withdraw from the speedy trial from the
13 beginning 'cause we were missing tapes and then we
14 been missing a whole 'nother tape from the rear
15 patio. That's when he brought it up again; he did
16 did that. He brought up again on or about June,
17 June, June 8th, 2021, on my last bond hearing before
18 I went to jury selection. But he brought the video
19 up again and then the Judge Curtis, she looked into
20 it more but the decision was still undecided. They
21 never grant me a bond; they never denied it. But
22 when November came, I went to trial.

23 Q Okay. You talk about you don't feel like
24 your attorney did any investigation into your case.
25 Tell us about that.

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1 A No, because I have another attorney before
2 him and majority of what he already had, the other
3 attorney already did it, you know. For the most
4 part, we started discovering extra things like the
5 lack of certification and the missing videotape, and
6 I really had wanted him to get that because it would
7 have support my portion of defense significantly.

8 Q So do you think he, your attorney, your --
9 did a -- did an investigation?

10 A Not a thorough one, no. He ain't -- not
11 nothing new, you know what I'm saying. Like, like I
12 say, I had another lawyer before him so everything
13 that he had in his possession the other lawyer
14 already had, you know. I was trying to get him to
15 get the evidence that we needed, the one that we was
16 missing, and that was the one of that rear patio.
17 We never received that. It was spoke about since
18 April 21st, ---

19 Q Did you have ---

20 A ---2021.

21 Q ---any proof that that video existed?

22 A I actually do. I brought with me a couple
23 of exhibits that I want -- I don't know how to
24 present it, but I want it to be on record because I
25 have -- I spoke about it so it should be in the

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1 transcript on the rough draft for speedy trial in
2 April and also it spoke about on June at the bond
3 hearing. But also, you have -- you have one of the
4 security guards letting you know that one of the
5 tapes exists because he claim that he saw the tape,
6 you know.

7 Q Well, was this information -- this
8 information was presented at your -- a couple of
9 times at bond hearing and another place you just
10 mentioned; is that correct?

11 A Excuse me?

12 MR. GRIFFITH: May I approach, Your Honor?

13 THE COURT: Yeah, sure.

14 THE WITNESS: At the back on the end he
15 mentioned about the tape, and that was the tape I
16 was trying to get the whole time.

17 (Documents were handed to Mr. Griffith by the
18 witness.)

19 MR. GRIFFITH: May it please the Court, I
20 only have this one copy. I'd like to have you look
21 at this same page.

22 (Attorneys confer.)

23 MS. DIXON: May I ask my witness a
24 question, if he's seen this before?

25 MR. GRIFFITH: You can ask him a question

PW - J. HERIOT - DIRECT

1 when he gets up on the stand.

2 MS. DIXON: Well, I mean ---

3 THE COURT: You don't get to tell her
4 that.

5 MR. GRIFFITH: Oh, I'm sorry, Your Honor.

6 THE COURT: You confer with your -- yeah,
7 you can confer with your witness.

8 MS. DIXON: Okay.

9 MR. GRIFFITH: I thought she meant on the
10 record.

11 THE COURT: No.

12 (Pause.)

13 MR. GRIFFITH: If it please the Court,
14 Your Honor, I'd like to have the Court look at this.

15 THE COURT: Sam, y'all have a copy machine
16 around?

17 THE CLERK: Yes, sir, we do, Your Honor.

18 THE COURT: Let's make -- how many copies
19 you want of that?

20 MR. GRIFFITH: Two copies.

21 THE COURT: Well, we'll ---

22 MS. DIXON: I'd like a copy.

23 MR. GRIFFITH: One for her and one for
24 more for me.

25 THE COURT: One, two, two.

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1 MR. GRIFFITH: Okay, three copies.

2 THE CLERK: Three copies. Yes, Your
3 Honor.

4 THE COURT: Yeah, just in case. Thank
5 you.

6 MR. GRIFFITH: That will be his exhibit 1,
7 Your Honor.

8 THE COURT: Well, you didn't offer it.

9 MR. GRIFFITH: I want to offer it.

10 THE COURT: I didn't let it in yet.

11 MR. GRIFFITH: I want to offer it,
12 correct.

13 (Pause while copies are produced.)

14 MR. GRIFFITH: Your Honor, if it please
15 the Court, I would ask that this be entered into
16 evidence.

17 THE COURT: Introduce that as Plaintiff's
18 Exhibit 1. What do y'all say? They're looking at
19 it. Give them a minute.

20 MS. DIXON: I would like, I guess, a
21 little bit of information in terms of how he
22 obtained this and what it is.

23 MR. GRIFFITH: I couldn't hear you, I'm
24 sorry.

25 MS. DIXON: Authenticate it.

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1 MR. GRIFFITH: Okay.

2 MS. DIXON: Lay a foundation.

3 THE COURT: Well, you can mark it. Mark
4 one for identification so we know what we're talking
5 about.

6 MR. GRIFFITH: Okay.

7 THE COURT: Okay.

8 MR. GRIFFITH: Mark this as exhibit 1
9 please.

10 THE COURT: For identification only at
11 this point.

12 (WHEREUPON, Plaintiff Exhibit No. 1
13 was marked for identification only.)

14 MR. GRIFFITH: If it please the Court,
15 since it does have Mr. Chandler's name, as the
16 investigator said, or Mr. Chandler may be able to
17 authenticate it or identify that he'd seen it.

18 THE COURT: I don't know. What...

19 (Attorneys confer.)

20 THE COURT: He's not on the witness stand
21 yet. You're gonna get a chance to call him. Go
22 ahead and lay your foundation, let's ---

23 BY MR. GRIFFITH:

24 Q Mr. Heriot, where did you get this?

25 A My lady friend had printed it out and gave

PW - J. HERIOT - CROSS

1 it to me, but it was -- it was done from
2 Mr. Chandler and the investigator Ray Nash, and
3 that's who -- she -- he sent it to her email, her
4 Gmail, you know what I'm saying, and that's who he
5 been mainly communicating with through me because in
6 the County jail you can't call them straight through
7 phone so I had to call my, my old lady, my lady
8 friend, to call him and get information back and
9 forth on when I need him to see me or things I need.

10 Q Okay. So she identified this as having
11 come from Mr. Chandler and Mr. Nash?

12 A Yeah.

13 Q Is that correct?

14 A Yeah.

15 Q Okay. And how did it come into your
16 possession, your ---

17 A She mailed it to me ----

18 Q She mailed it to you.

19 A ---to Evans.

20 Q Okay. And did she say that Mr. Chandler
21 gave this to her?

22 A Yeah, sent it to her Gmail.

23 Q Okay. Sent it to her via email?

24 A Yeah.

25 Q Okay.

PW - J. HERIOT - CROSS

1 MR. GRIFFITH: I have no further questions
2 for this witness, Your Honor, other than -- than
3 when Mr. Chandler comes up I'll ---

4 THE COURT: Okay. Well, okay, you
5 wouldn't be asking him questions when Mr. Chandler
6 comes up. All right, so cross.

7 MR. GRIFFITH: No, I mean when Mr.
8 Chandler comes up I'll ask him about this particular
9 document.

10 THE COURT: Yeah, okay. All right.

11 MR. GRIFFITH: Please answer the questions
12 that the State has.

13 **CROSS-EXAMINATION**

14 BY MS. DIXON:

15 Q How are you today, Mr. Heriot?

16 A I'm doing good.

17 Q Good. I just want to make sure and I know
18 your lawyer has talked you about the type of relief
19 that the Court could grant, and I just want to make
20 sure before we go forward that you -- that you do
21 have an understanding of what type of relief you
22 could potentially get today if the Court grants your
23 application. Do you recall how many attempted
24 murder charges you had?

25 A Originally I started off with five.

PW - J. HERIOT - CROSS

1 Q Five, okay. And do you know what the
2 maximum sentence for attempted murder is?

3 A Yeah. I think 30 years.

4 Q Thirty years, okay. So if -- if you were
5 convicted of all five of those attempted murder
6 charges and if the judge ran them consecutive,
7 meaning one after the other, do you know how many
8 years that could ---

9 A Yeah, that's 150.

10 Q 150. That is -- that is what I calculated
11 as well. Now in terms of the possession charges, do
12 you know the maximum sentences for those?

13 A No.

14 MR. GRIFFITH: Your Honor, ---

15 THE WITNESS: I don't.

16 MR. GRIFFITH: ---I object. I have been
17 over this with Mr. Heriot and ---

18 THE COURT: Okay. Well, that's in your
19 conversation. It's cross-examination. She --
20 that's ---

21 MR. GRIFFITH: My objection, Your Honor,
22 goes to an attempt possibly to intimidate
23 Mr. Heriot.

24 THE COURT: Well, I won't allow that to
25 happen.

PW - J. HERIOT - CROSS

1 You intimidated?

2 THE WITNESS: No, sir.

3 THE COURT: Okay. All right, go ahead.

4 BY MS. DIXON:

5 Q Just wanted to make sure that you
6 understood that if you were granted a new trial and
7 subsequently convicted of all of your charges, that
8 you could face a 162 years?

9 A That's understood.

10 Q Okay. And then so just wanted to make
11 sure you want to proceed ---

12 A Yeah.

13 Q ---and that's all.

14 A Yeah.

15 Q Okay. And in terms of you -- okay, an
16 allegation regarding your lawyer did not tell you
17 about an appeal; is that correct?

18 A That's correct.

19 Q Did you ever ask him about an appeal?

20 A I never had the chance to.

21 Q Okay. Did you tell him you wanted an
22 appeal?

23 A I never had the chance to.

24 Q Okay.

25 A He never came and see me afterwards; he

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1 just left.

2 Q Gotcha. And what issue would you have
3 wanted to raise had you filed an appeal?

4 A What else?

5 Q What issue would you have wanted to raise
6 if you had filed an appeal?

7 A It's a couple ---

8 MR. GRIFFITH: Objection, Your Honor.

9 THE WITNESS: It's a couple of issues that
10 I want to raise.

11 THE COURT: Whoa, whoa, whoa, whoa.
12 What's your objection?

13 MR. GRIFFITH: That would call for
14 speculation and knowledge on his part of the law and
15 appeals, Your Honor.

16 THE COURT: Well ---

17 MS. DIXON: Your Honor, I ---

18 THE COURT: That's all right. I'm gonna
19 let -- noted for the record. Denied. Go ahead.

20 THE WITNESS: I would have filed -- I
21 would have tried to do something about, I guess,
22 ineffective.

23 BY MS. DIXON:

24 Q Okay.

25 A I mean, that was gonna be my aim 'cause he

PW - J. HERIOT - CROSS

1 wasn't with me the whole time.

2 Q Gotcha. So you got that today then, I
3 guess, ---

4 A Yeah.

5 Q ---for ineffective, right? Okay. Okay.
6 Do you recall telling the court that no one had
7 threatened or forced you to plead guilty?

8 A I said that.

9 Q You did say that, okay.

10 A Uh-huh.

11 Q Do you recall telling the court you were
12 satisfied with Mr. Chandler?

13 A I said that too.

14 Q Okay. And you admitted you watched a
15 video, the video? You said -- I think you said
16 during your direct testimony, but do you recall also
17 telling the court you had seen this video?

18 A The video of?

19 Q That was related to your criminal trial?

20 A Yeah, I seen four of 'em.

21 Q Four of 'em. Okay, tell me about those
22 videos. What do they show?

23 A I mean, it showed the incident, you know.
24 It can -- it can go two ways, but it only been one
25 sided this whole time. My side of the story never

PW - J. HERIOT - CROSS

1 was revealed. That's only because it was still a
2 missing tape that -- that had really explains how I
3 was not at fault in bringing on the altercation. So
4 it was only one sided. My side of the story never
5 came out.

6 Q Do you recall telling the court that you
7 had adequate time to discuss this video with your
8 lawyer?

9 A We discussed -- we discussed the video a
10 couple, a good bit of time, but I was also asking
11 about this ---

12 Q Okay.

13 A ---missing video as well. It's not all
14 about the video that was shown. It was about the
15 video that was not shown.

16 Q Gotcha, okay. Do you recall telling the
17 court you had adequate time to discuss defenses?

18 A Yeah.

19 Q You do, okay. And you did understand this
20 was a negotiated plea, correct?

21 A Yeah.

22 Q Did you know what that meant? Did you
23 understand what that meant?

24 A All this deal was talked about between the
25 judge and the solicitor and my lawyer so that,

PW - J. HERIOT - CROSS

1 that's as far as negotiated I understand.

2 Q And so you understood. You knew when you
3 pled guilty your sentence was going to be 15 years,
4 correct?

5 A That's correct.

6 Q Okay.

7 A That's correct.

8 Q And let's see.

9 A But the only reason why I didn't raise any
10 objection is because I, I had lacked the proper
11 knowledge to even raise any challenges so that was
12 the only reason why I pled guilty.

13 Q Okay. And what ---

14 A Yeah.

15 Q What challenge would you have raised, I
16 guess, if you knew then what you know now?

17 A I mean, certainly that we definitely had a
18 defense, you know. I would have -- I would have
19 challenged the court on that; but also, during my
20 research I would have challenged on other grounds
21 too. But during that time I don't know what to
22 properly challenge then, you know what I'm saying.
23 So after me going to the law library and learning a
24 little bit more, now I got a better understanding on
25 what I could challenge so I lacked the proper

PW - J. HERIOT - CROSS

1 knowledge then to challenge it. But now, I feel
2 like I'm, I'm ready enough to challenge, you know
3 what I'm saying, my case on, on, on better grounds.

4 Q Okay. And so what would those challenges
5 be specifically?

6 A Well, starting with erroneous advice which
7 my lawyer haven't been up here 'cause I want to
8 speak more. I have more to elaborate on. The
9 failure to investigate, the coercion, Brady
10 violation, due process clause violation, and failure
11 to assert defense. And I also would have, have
12 challenged the jurisdiction, I mean, the juris-- the
13 subject matter jurisdiction on the indictment that
14 was -- that was obtained by the grand jury because
15 if -- if we was missing a whole videotape from the
16 rear patio, how did the jury come to a conclusion of
17 an indictment. So the only things now I would have
18 challenged, you know, then I didn't know about it.
19 I mean, he probably knew about it, but he didn't
20 told me.

21 Q Okay. But you do remember telling the
22 court you had adequate time ---

23 A Yeah, I did.

24 Q ---to discuss everything with your lawyer?

25 A I remember.

PW - J. HERIOT - REDIRECT

1 Q Ultimately ---

2 A I lacked the proper way to challenge it.
3 I, I ain't know no court proceeding. I'm a truck
4 driver. I don't know how to properly raise any
5 challenges in court. Y'all went to school for it,
6 not me.

7 Q Ultimately, whose decision was it to plead
8 guilty?

9 A It wasn't mines.

10 Q It wasn't?

11 A I went -- I just went with it because that
12 what he told me that I would have got 20 years. He
13 said that behind that glass door.

14 Q So you decided to plead guilty because you
15 were afraid that if you didn't get plead guilty and
16 you were convicted that you would get a 20-year
17 sentence?

18 A No. I felt like I had no choice. I was
19 left with no other alternative.

20 Q Uh-huh. Uh-huh.

21 A I mean, my back against the wall. He tell
22 me you need the 15 or 20. I -- of course, anybody
23 choose the 15.

24 Q So you made that choice ultimately to
25 choose the 15?

1 A Unwillingly, yes.

2 Q Unwillingly, okay, but, but ultimately it
3 was your decision?

4 A Yeah, it was.

5 Q Okay. No further questions.

6 THE COURT: All right, any, any redirect?

7 MR. GRIFFITH: Yes, Your Honor, just a
8 little bit. May it please the Court.

9 **REDIRECT EXAMINATION**

10 BY MR. GRIFFITH:

11 Q Mr. Heriot, I've explained to you and it
12 was pointed out, again, by the assistant attorney
13 general that if you win your PCR you could possibly
14 be facing 150 years.

15 A I understand that.

16 Q I just want to be sure because, you ---

17 A I understand that.

18 Q ---know, you and I talked about it. Okay.

19 MR. GRIFFITH: Nothing else at this time,
20 Your Honor.

21 THE COURT: Okay. You can step down.

22 Thanks.

23 THE WITNESS: Your Honor, I have -- I have
24 a question. I have other issues that I had want to
25 raise and other things that I had want to put on the

1 record. I have other facts about the case that I
2 need to be on the record. I don't -- I don't want
3 to miss out because I -- as far as my understanding
4 ---

5 THE COURT: All right, go ahead.

6 THE WITNESS: I know that I am -- the
7 burden of proof is on the applicant.

8 THE COURT: Yeah.

9 THE WITNESS: Me.

10 THE COURT: Good. Yeah. Tell us what it
11 is.

12 THE WITNESS: We spoke about the erroneous
13 advice that, I mean, these are the things I needed
14 amended. But we spoke about the erroneous advice,
15 the failure to investigate, the coercion. I want to
16 amend the Brady violation and the violation of my
17 due process and also the failure to -- the failure
18 to assert defense. I have -- I have exhibits for
19 the erroneous advice. I don't know how to properly
20 submit it, but I do have proof that he -- he -- way
21 beyond what, what we just been talking about, you
22 know, where in letters where he told me that I am
23 very, very likely gonna -- gonna appear in front of
24 a judge that gonna give me consecutive sentences.
25 And he stated that ---

1 THE COURT: Well, I tell you what let's
2 do.

3 THE WITNESS: I mean, that, that's what
4 I'm saying. I had, I had other stuff -- before the
5 cross-examination I had other stuff that I had, had
6 needed to put on record.

7 THE COURT: Okay. I tell you what let's
8 do. I'm gonna ask you to step down.

9 THE WITNESS: Yes, sir.

10 THE COURT: And go talk to your lawyer,
11 show him whatever it is that you think you have not
12 put in, okay.

13 THE WITNESS: All right.

14 THE COURT: And I'll give you an
15 opportunity to come back if there's something that
16 needs to be put in. You let him get it organized.
17 I'm gonna give you every opportunity. You -- I'm
18 gonna get you to go ahead and organize your stuff.

19 THE WITNESS: You say go back, sir?

20 THE COURT: Yeah.

21 THE WITNESS: All right.

22 THE COURT: Go show him.

23 THE WITNESS: All right.

24 THE COURT: Let's take about five minutes,
25 see what, see what he says. He's, like you said, he

1 went to school to do it so he knows what's...

2 (WHEREUPON, a recess was taken from the
3 proceedings.)

4 MR. GRIFFITH: Your Honor, he's gone over
5 a few things that he would like to present, have --
6 given to the court so that the court can use them in
7 consideration before they make a decision. And we
8 would ask if we could get copies made of these.

9 THE COURT: Sam, can you ---

10 MR. HERIOT: Hey, excuse me.

11 THE COURT: What?

12 MR. HERIOT: That, that's not all. I
13 mean, I wish we had more time. I only talked -- I
14 only talked to him once. I wish we had more time to
15 go over what I ---

16 MS. DIXON: Your Honor, I feel like at
17 this point we ---

18 THE COURT: Wait, wait. Just one at a
19 time. Let him finish what he's saying.

20 MR. HERIOT: But I only talked to him once
21 so now we just kind of rumbling and rushing through
22 things. I wish he had talked to me more, but I
23 know -- I know, understand that the burden of proof
24 is on me.

25 THE COURT: Okay.

1 All right, yes, ma'am.

2 MS. DIXON: I just want to object to this.
3 It seems it's getting closer and closer to hybrid
4 representation here. I mean, I ---

5 THE COURT: Yes, it is.

6 MS. DIXON: ---do think that the lawyer
7 needs to making the legal decisions.

8 THE COURT: Yes.

9 MR. GRIFFITH: Your Honor, he and I did
10 speak more than once, but ---

11 MR. HERIOT: No, one time.

12 MR. GRIFFITH: But we went over the
13 information that he is asking McKnight's (ph) gave
14 him. My opinion ---

15 THE COURT: Well, is it relevant?

16 MR. GRIFFITH: My opinion ---

17 THE COURT: Is it competent and is it
18 relevant to this hearing?

19 MR. GRIFFITH: That's -- I gave him the
20 opinion that it was not relevant to this particular
21 hearing, that some of the things could have gotten
22 on appeal had he appealed; and if the Court decides
23 to allow him to appeal, then he could use some of
24 those, but they were not relevant to this ---

25 MR. HERIOT: It's definitely relevant,

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1 sir.

2 MR. GRIFFITH: He -- I asked him, of
3 course, to explain why he felt like his lawyer
4 was -- had coerced him, and he didn't just -- he
5 would like these to support his argument, but I
6 don't think that they really do.

7 THE COURT: Well, I'll tell you what you
8 got.

9 MR. GRIFFITH: I looked at them and don't
10 think they would support.

11 THE COURT: Okay. I'm gonna -- are you
12 gonna call the other witness? You have another
13 witness to call?

14 MR. GRIFFITH: Only Mr. Chandler.

15 THE COURT: Well, that would be the other
16 witness.

17 MR. GRIFFITH: Yes.

18 THE COURT: And I don't know what those
19 documents are, but perhaps you can use them for
20 impeachment purposes.

21 MR. GRIFFITH: Yes, sir.

22 THE COURT: Right now call your next
23 witness.

24 MR. GRIFFITH: Okay. I would call Mr. Ray
25 Chandler.

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1 THE CLERK: Sir, place your left Wand on
2 the Bible, raise your right hand. State your name.

3 THE WITNESS: Ray E. Chandler.
4 mWHEREUPON,

5 **RAY E. CHANDLER,**
6 having been duly sworn by the clerk, testified
7 as follows:

8 THE CLERK: Thank you much, sir. Step
9 around please. State your name for the record and
10 spell your last name.

11 THE WITNESS: Ray, R-A-Y, E. Chandler,
12 C-H-A-N-D-L-E-R.

13 MR. GRIFFITH: May it please the Court,
14 Your Honor.

15 THE COURT: Yeah.

16 **DIRECT EXAMINATION**

17 BY MR. GRIFFITH:

18 Q Mr. Chandler, how long you been practicing
19 law?

20 A Fifty-two years.

21 Q I'm sorry?

22 A Fifty-two years.

23 Q That's, that's a lot of time practicing
24 law. Mr. Chandler, do you recall representing
25 Mr. Heriot?

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1 A Very clearly.

2 Q Okay. Mr. Chandler, ---

3 MR. GRIFFITH: May I approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. GRIFFITH:

6 Q Could you look this over. That I'm
7 referring to Plaintiff's Exhibit 1.

8 A You want me to identify it?

9 Q And identify it.

10 A Okay. This is a summary report from my
11 investigator, retired sheriff, Ray Nash, who works
12 for me and also does polygraph examinations.

13 Q Okay. Thank you.

14 A This was a report that we began when after
15 Ken Young who had represented Mr. Heriot who'd been
16 practicing a year longer than I have, I took over
17 the case. Mr. Heriot --- I'm going to explain why
18 it's there. Mr. Heriot told me that Mr. Young had
19 not done what he had asked him to and that he wanted
20 him --- wanted to interview the people who are the
21 witnesses. But his specific thing then, because he
22 would come in with a pad of paper and all the law
23 that he had gotten in the case, case cites, and
24 things, that he wanted me to find out whether any of
25 the security guards there that night were not

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1 registered or licensed with the South Carolina Law
2 Enforcement Division, and therefore, we needed to
3 determine whether the people in the crowd in the
4 video, right -- this is really important, okay. The
5 people in the crowd in the video were or were not
6 security people, okay. So, in the event that if you
7 see, we put -- when we put this video together,
8 okay, so it told a story. In the first phase of it
9 there were people there and you can see the lady's
10 name Monica that's in the report. When we went out
11 and interviewed, the purpose was to figure out if
12 Monica was a security person; she was not. She was
13 employed there. She's the nephew -- she's the niece
14 of our sheriff and she was a bartender, but that
15 night she was off. And the boyfriend with her that
16 is identified, was a security officer who was
17 licensed with SLED; but that night he was not
18 working, he was off. And so what we were attempting
19 to do was figure out the names of the people, you
20 know, who are actually working security so that we
21 could go back to SLED, which we did at his request.
22 We filed a FOIA, you know, and we then got the list
23 of everybody who was licensed. And I tried to
24 explain to him that there were certain things about
25 licensing with private clubs, right, and so then we

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1 went to see whether or not the club owner had a
2 license that would umbrella these people in. The
3 reason I was doing that is because somebody in that
4 crowd had a gun; and the issue was, if you were
5 licensed to carry a gun you had to have a certain
6 criteria, right? And nobody there had that
7 criteria, and we explained that to the client and
8 identified the guy who had the gun. That was the
9 only reason for all of those people's names coming
10 back. And we discussed those with him.

11 Q And how many videos did you secure from
12 this club?

13 A Okay. Can I explain that for you?

14 Q Please.

15 A Okay. When I got in the case all the
16 videos that you saw had no audio, okay. And so the
17 first thing I thought was, let me go see this place.
18 So Mr. Nash and I went out there, you know, to see
19 it, and we checked and found out who the licensed
20 owner was so that we could then make a request for
21 the interior video, okay. And so you go in this
22 club and it's the tiniest place that you can ever
23 imagine, and you know there's a problem 'cause they
24 got five security guards for, you know, a place that
25 probably only holds 50 or 60 people. So you know

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1 something's up, you know, at that juncture. So
2 going through it we determined that there was no
3 interior video, right, because for whatever reason,
4 the police did not request the interior video and it
5 had been overrun, you know, every 30 days.
6 Credibly, though, what we were looking for and
7 discussed with him in detail -- when he told you
8 that we had not investigated or done anything new,
9 he's lying. We went to the exterior place -- and I
10 might tell you how this works. The Melted Whiskey
11 is part of a strip mall, okay, and the owner of the
12 strip mall had all the exterior cameras, okay. We
13 found that there were two other camera locations so
14 there were six, and we had four videos. We
15 discussed this with him, okay. We found the two
16 camera locations didn't have -- they were not
17 operating, you know, during that time. And a third
18 one had been added subsequent to this event, which
19 had been, you know, a period of time later. So we
20 matched the locations of the cameras with the angles
21 of the video we had to see if something was left
22 out, but it wasn't. What we were missing was the
23 video of the exterior closed-in place where people
24 would go out and smoke, right, and people -- there
25 was a little kind of a bar area there where they

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1 would congregate, and this is where this incident
2 started, right.

3 So what we were hoping to get were two
4 things, two things. One, was how the incident or
5 the fight started, not particularly relevant to who
6 got shot, but very relevant to why five people went
7 out toward his car looking for him and his brother
8 out the front door, right, when all of the video
9 stuff in this case happened in the back, right? So,
10 the first theory was that there were people who --
11 there was a mob, right. These people weren't on
12 security. Their security ended when they left when
13 they were at the Melted Whiskey. They had
14 absolutely no authority to operate outside that
15 premises. So our first situation was, these people
16 were going to go whip his tail, right, and if it was
17 four or five people and the two of them, we could
18 make some hay out of that. You know, there was an
19 argument that this is no security at all, this was a
20 fight. Does that make sense?

21 Q Yes.

22 A But there was no video camera for that
23 area in the back. So it wasn't that we didn't get
24 it, right, that it was there and didn't have it; it
25 wasn't there, okay. There just was no camera in it.

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1 Q I see. So Mr. Heriot claims that you
2 failed to get a video and a video was not turned
3 over that was from the back patio -- he calls it the
4 inside the rear patio of the bar that showed the
5 altercation with Monica. And you said that that
6 video did not exist. Is that what you're telling
7 me?

8 A Yeah. We thought they hadn't turned it
9 over, okay. We were pretty aggressive with him and
10 I -- we were aggressive with the prosecutor on it,
11 okay. We said, show it to me, all right. And this
12 is kind of my mind a Kyles v. Whitley situation,
13 which I explained to him. He went back and
14 researched it. Then I said if this is something
15 that can help you, right, the prosecution can't say
16 the cops have it, I didn't get it. So we -- I
17 called out and interviewed the cop, okay. And the
18 reason I did that is that police officer had been
19 relieved of his job as a result of some marital
20 misconduct and was no longer a sheriff's deputy and
21 was not going to be the case agent, so I had to have
22 him called in from another position in the
23 solicitor's office and made him let me interview
24 him. Mr. Heriot knew all that.

25 Q Okay. Thank you. I'm gonna show you

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1 another -- first this one.

2 MS. DIXON: May I see that?

3 MR. GRIFFITH: Sure.

4 MS. DIXON: I don't know what this is.

5 (Attorneys confer.)

6 BY MR. GRIFFITH:

7 Q Could you identify this for us,
8 Mr. Chandler?

9 A Mr. Griffith, I'm glad to if I can. This
10 is a letter dated September 23rd, 2021, from my firm
11 to him.

12 Q Okay. And that is a letter that you
13 authorized?

14 A It's a letter that I wrote and there
15 was -- there were probably a couple of three because
16 no matter what you told him about how -- what his
17 exposure was, he would come up with another reason,
18 right, for that he knew that he was gonna walk,
19 okay. And so I wrote a letter to him -- I think I
20 wrote him more than one, he can tell you that.

21 Q I have them.

22 A And I just can't recall. But I did that.
23 And I will tell you what happened, the reason for
24 this. My former law partner was Judge Tommy Cooper,
25 you know, who is an esteemed retired judge, okay.

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1 Tommy and I have been friends for 40 some years.
2 And I got the video up and Tommy and I met. I told
3 him I was going do this by the way, all right. He
4 was happy. So Tommy and I met. We went through
5 this video. And I said, Tommy, am I wrong about
6 this, am I missing, you know, something, you know,
7 going through it. And Judge Cooper said, Ray, you
8 get this guy to plead, this is not going to be good.
9 Now Judge Cooper is one of the -- and as I told
10 Mr. Heriot, Judge Cooper is one of the most
11 reasonable sentencing judges on the planet, and I
12 had an offer of 12 years which Mr. Heriot thumbed
13 his nose at. And I said, Tommy, where am I going on
14 this thing; and he said, Ray, this guy could get 20,
15 22, right. You know, there's -- he said I know a
16 bunch of judges who'd look at this video and hear
17 these facts, and he says, he's not gonna get a, you
18 know he's not gonna get 150 years, come on, guys.
19 But, I mean, he's looking at 20, 25, right. He's
20 looking at five years consecutive on the pistol,
21 right.

22 And the reason I couldn't get it under the
23 12 was because he had just gotten out of prison, and
24 the prosecutor in the case, in this case, was angry
25 because he had a -- an armed robbery charge that was

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1 pled down to a common law robbery, right, and he'd
2 just gotten out of -- he'd been out of prison; the
3 prosecutor lied about it. Didn't lie, he
4 misunderstood it and told the bond court that he'd
5 been out only two or three months and he'd been out
6 a year or so, you know, on that charge. That was
7 the reason that we made -- that we got another bond
8 hearing because they represented that he got out of
9 jail and a weekend after that, you know, he did
10 this. But that was the reason I wrote the letter.
11 I wanted him to be very clear, you know, what he was
12 looking at.

13 Q Is this another letter that you wrote your
14 honor -- or, Mr. Chandler?

15 A Did you just hand me one here?

16 Q This one.

17 A Yeah, yeah.

18 Q Okay.

19 A That one. And this is -- his lady friend
20 who is a delight, Sharmayne. This is more than one.
21 I communicated with her on the telephone. I bet I
22 talked to her -- she's from Lumberton, right, and
23 worked in I think in a real estate company; but she
24 fully understood what was going on, you know, as I
25 went through it and -- anyway, that's where we are.

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1 I didn't mean to over answer.

2 Q No problem. Mr. Chandler, did you ever
3 tell Mr. Heriot that if he got charged with a
4 weapons charge he would definitely get five more
5 years?

6 A No. What I told him was that there was --
7 just what I said. There was an exposure here,
8 right, for consecutive time. I didn't think that
9 that would happen, but I had to tell him that there
10 was an exposure. And as I said, given -- given how
11 the facts of this occurred, right, I have to tell
12 you, that 12 years he -- he wanted less. He wanted
13 eight or so. And he said, go, go get me eight and
14 I'll do it. And I said, I can't get you eight,
15 right; but I went back and I said but you're my
16 client, I'll go back and I'll ask for it. What he
17 wanted was an eight. And I may be wrong about that.
18 Eight or seven or eight for AB first degree, and I
19 couldn't do it.

20 Q Okay. Well, in your letter, isn't it true
21 that you told him -- and you looked at this
22 letter -- that a sitting judge is very, very, very
23 likely to give you a consecutive sentence?

24 A Yes. I said a judge could very easily
25 give you a consecutive sentence because you had two

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1 incidents of shooting. And I was very concerned
2 about it, but I told him that that's something that
3 could happen. But what we needed to do was look at
4 his exposure, his exposure could be 25.

5 Q And isn't it true that you had gotten
6 angry with him and at one point and left after being
7 angrily, angry with him?

8 A I was angry with him because, yes. Two or
9 three times we both got angry at each other. That's
10 one of the reasons I brought Mr. Robinson in to sit
11 down and talk with him separately with me so that
12 Mr. Robinson could put new eyes on this case because
13 I did not want a thought that there was arm twisting
14 going on. You know, I would have begged him to take
15 the 12. I mean, honest to God I did. I mean, he's
16 a great kid and he just -- you know what the real
17 tragedy of this is, is he goes in a bar at 2:00 with
18 his brother and his brother is drunk as a lord and
19 gets in a freaking fight and gets thrown out of the
20 place and my guy is trying to get the brother to
21 leave, okay. And that would have looked real good
22 had my guy not gone to the brother's car, gotten his
23 gun, armed himself, and then returned ---

24 MR. HERIOT: I can't object to none of
25 that, sir? Because that's inaccurate.

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1 THE COURT: No, no, you cannot ---

2 MR. HERIOT: That's not accurate at all.

3 THE COURT: No. No, no. You got a
4 lawyer. He's handling it.

5 MR. HERIOT: You ain't gonna. You...

6 THE WITNESS: That was the issue I was
7 telling you.

8 MR. HERIOT: Man...

9 THE WITNESS: It just didn't look good.

10 BY MR. GRIFFITH:

11 Q Okay. Thank you, Mr. Chandler.

12 MR. GRIFFITH: Your Honor, I have no
13 further questions.

14 THE COURT: Okay. Cross-examination.

15 **CROSS-EXAMINATION**

16 BY MS. DIXON:

17 Q Mr. Chandler, how are you today?

18 A Fine, thank you, ma'am. How are you?

19 Q I am good, thank you. And I'll try to
20 keep this brief. So we've talked a little bit about
21 a video today. Can you tell us your impression
22 having viewed the video in terms of, like, the
23 likelihood that he would have been successful had he
24 proceeded to trial. I may not have asked that very
25 well.

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1 A You asked it ---

2 Q Let me try again.

3 A You asked it correctly. My hesitation was
4 there are two parts of this, okay. The first part
5 shed -- and I gave it to you, I think, whether you
6 want to introduce it in evidence. The first part
7 and the thing that is missing that there was not a
8 camera was the alley. It's about a 20-foot alley in
9 between the places. We did the dimensions of it so.
10 The first one, what you see is my client trying to
11 go get his drunk brother from trying to go back in
12 the club in that little smoking area ---

13 Q Uh-huh.

14 A ---and my client pulling his drunk brother
15 away, okay. And so then you see these people -- and
16 you have to put the videos together. You see this
17 crowd, only two of whom are security guards working
18 that night. This crowd go to where their car was
19 out the front door, which is crazy, right, and then
20 the crowd comes back down the alley and now they're
21 on the premises of the place, right; and my guy, my
22 client is backing away with his brother and that
23 group is standing there and they're walking slowly
24 toward him almost like a phalanx, right. And that
25 looks good for the defense, right.

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1 Q Uh-huh.

2 A It's defense of another, etc. But my guy
3 pulls a pistol.

4 Q Uh-huh.

5 A At that point he goes bam, bam, bam, bam,
6 and you see all these people duck and then we took
7 the video and freeze-framed it and highlighted it to
8 see if one of those people had a pistol ---

9 Q Uh-huh.

10 A ---right, because we thought the guy that
11 you see in the thing actually was armed.

12 MR. GRIFFITH: Objection, Your Honor. I
13 just can't see why we need to go through all the
14 evidence in the case that he's ---

15 THE WITNESS: I guess -- I'm sorry.

16 THE COURT: Whoa, whoa.

17 MS. DIXON: I would respond this is part
18 of his trial strategy. It's relevant to the advice
19 he gave his client in terms of whether or not he
20 should accept a guilty plea.

21 THE COURT: Yes, this is -- I'm gonna
22 allow it. Go ahead.

23 THE WITNESS: And so that part of it,
24 right, is a very reasonable thing to talk about, if
25 it were not alone. You know, if it were alone and

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1 not segregated into the fact that after the gun fire

2 ---

3 BY MS. DIXON:

4 Q Uh-huh.

5 A ---these people duck down, they go back
6 into the building, okay. My client with his brother
7 goes back through the alley, right. He's gone.

8 Q Toward the building or ---

9 A Right.

10 Q Okay.

11 A So then back to his car.

12 Q Uh-huh.

13 A Right. He then turns around with the gun
14 drawn.

15 Q Uh-huh.

16 A Right. And runs back down the alley and
17 he can't see, right. One of the security guards
18 unlawfully has a pistol in there.

19 Q Uh-huh.

20 A He's then running out of the building,
21 right.

22 Q Uh-huh.

23 A And he's got the pistol. When my client
24 turns the corner he opens fire, the security guard
25 opens fire, and my client's bullets pass about an

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1 eight of an inch from the security person ---

2 Q Uh-huh.

3 A ---who is an idiot, okay, you know, with
4 the gun. And so my issue was, as I tried to explain
5 to him, the jury is gonna see you leaving.

6 Q Uh-huh.

7 A You had already done what you did, the
8 defense of another, we can really mitigate that ---

9 Q Uh-huh.

10 A ---but you didn't leave, right.

11 Q Uh-huh.

12 A You came back. And we could never find
13 his brother in the video.

14 Q Uh-huh.

15 A Now I believe the brother was there.

16 Q Uh-huh.

17 A Right. But you couldn't see it in the
18 alley and you couldn't see him anywhere else and
19 definitely didn't have his brother cuffed with the
20 jacket ---

21 Q Uh-huh.

22 A ---you know, like he had before. He was
23 alone; he was armed.

24 Q Uh-huh.

25 A Right. And you see these two guys like

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1 the gun fight at the OK Coral blasting on each
2 other. So that's -- that was why I didn't think we
3 were gonna do any stand your ground, ---

4 Q Uh-huh.

5 A ---right?

6 Q Uh-huh.

7 A Does that make -- and we went through that
8 in detail.

9 Q Uh-huh. So you did discuss that with him?

10 A Oh, yes, ma'am.

11 Q Okay. And in terms of the two, I guess,
12 sounds like there were two shooting incidents ---

13 A Yes, ma'am.

14 Q ---which one concerned you the most in
15 terms of defending him at trial?

16 A The second one because he went back ---

17 Q Uh-huh.

18 A ---armed.

19 Q Uh-huh.

20 A Does that make sense?

21 Q Absolutely.

22 A The first one was alarming.

23 Q Uh-huh.

24 A Right.

25 Q Right.

PW - R. CHANDLER - CROSS

1 A You know, it just -- the whole thing was
2 just an unfortunate vision or defense.

3 Q Right. Did you share this video? I know
4 you talked about sharing it with Judge Cooper. Did
5 you share it with anyone else to try to get a, you
6 know, maybe other people's opinions about the video
7 ---

8 A Ms. Dixon, ---

9 Q ---and how you can read ---

10 A ---when I do these things I try to find
11 every juror I can.

12 Q Uh-huh.

13 A All of my friends hate to see me coming
14 and so I -- I probably ran it past 20, 25 people ---

15 Q Uh-huh.

16 A ---just as a comment, this is what you
17 got, what do you think? Would not -- would not have
18 wanted a single one of them on a jury so.

19 Q Okay. So of everyone that viewed it they
20 all thought it was pretty damaging?

21 A They did.

22 Q Okay. And in terms of your -- you talked
23 a lot about your investigation. Did you hire any
24 experts?

25 A I did.

PW - R. CHANDLER - CROSS

1 Q Okay.

2 A I, as a backdrop of having this situation
3 with the unlicensed person who -- and I might add,
4 that helped him, that guy left the scene, so when
5 the police came the shooter was never there to be
6 interviewed.

7 Q Uh-huh.

8 A Right? He'd gone, he'd beat the feet. So
9 we thought that was meat, you know, for us. But we
10 -- we didn't leave a thing unturned in my mind.

11 Q Okay.

12 A Did I answer that?

13 Q Yes, absolutely.

14 A Is that responsive to that? I'm sorry.

15 Q And prior to the guilty plea just real
16 quickly, did you explain to Mr. Heriot the
17 constitutional rights he was waiving?

18 A Yes, ma'am. He had fancied himself a
19 constitutional lawyer at that point.

20 Q Uh-huh.

21 A We kind of had to explain the difference
22 in AB first and the common law and what is not a
23 lesser included, does that, you know.

24 Q Uh-huh.

25 A So we went through all that. And then we

PW - R. CHANDLER - CROSS

1 made probably 10, 12, computations of different
2 times where we called up to SCDC, right, and got the
3 time done, you know, for him to appreciate what was
4 going on at the different levels.

5 Q And in your opinion did he understand ---

6 A Absolutely.

7 Q ---what you were telling him? And whose
8 decision was it to plead guilty?

9 A If ---

10 Q Say -- I'm sorry.

11 A Ma'am?

12 Q Say that again, I didn't hear it.

13 A I didn't -- you have to say it again.

14 Q Oh. Whose decision was it to plead
15 guilty?

16 A It was his.

17 Q His, okay.

18 A There is no question that I was insistent
19 that I really wanted him to do it; but ultimately,
20 he saw the light on that.

21 Q Okay.

22 A And had he done it, had he taken the 12

23 ---

24 Q Right.

25 A ---that he said he wasn't gonna take

1 because it wasn't checked negotiated on Friday, no,
2 I'm not taking this plea 'cause it wasn't checked
3 negotiated, they're gonna screw me. I said -- so
4 ---

5 Q If he had wanted a trial, were you ready?
6 Were you prepared?

7 A Yes.

8 Q Okay. No further questions.

9 A I had everybody subpoenaed ready to go.

10 MS. DIXON: Thank you, Your Honor.

11 THE COURT: All right. And that is
12 retired Judge Cooper, correct? Retired ---

13 THE WITNESS: Retired, I'm sorry.

14 THE COURT: ---Judge Cooper.

15 THE WITNESS: From Manning.

16 THE COURT: Yes, okay. I just wanted to
17 emphasize that he is retired.

18 THE WITNESS: Oh, yes, sir, long retired.

19 THE COURT: Okay. All right. Thank you,
20 sir.

21 THE WITNESS: Yes, sir.

22 MR. GRIFFITH: No further witnesses, Your
23 Honor.

24 THE COURT: All right.

25 MS. DIXON: Nothing further from the

1 State.

2 THE COURT: Okay, Mr. Heriot. I'm gonna
3 find that you have not met your burden of proof.
4 This was a negotiated sentence and a guilty plea.
5 And I don't find coercion and I don't find any -- in
6 any fashion that your attorney was -- fell below
7 objective standard of reasonableness, and so I'm
8 gonna -- and you were informed on the record about
9 your right to appeal and you acknowledge that and so
10 I'm gonna deny your application. Okay.

11 MR. HERIOT: I mean, I can't say nothing
12 else?

13 THE COURT: What is it you want to say?

14 MR. HERIOT: The burden of proof was on
15 me, and I still felt like my burden of proof hadn't
16 been proven. Y'all cut me off in the middle of it.

17 THE COURT: No, you got ----

18 MR. HERIOT: And I still got more to show
19 and prove how he was definitely ineffective. Only
20 he asked me was for money, that's it. Got it all
21 right here. You ain't give me a chance to show it
22 though.

23 THE COURT: Well, before he leaves -- we
24 took a break for you to discuss it with your
25 attorney. Is there any other relevant and competent

1 evidence that he is asserting?

2 MR. GRIFFITH: No, Your Honor.

3 THE COURT: Okay. All right. Best of
4 luck. Thank you.

5

6 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

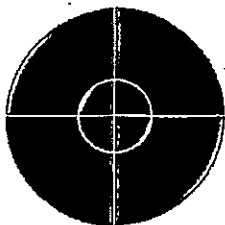
I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 21st day of May, 2023.

Frances B. Ray

FRANCES B. RAY, RPR



Focal Point Investigations, LLC

3236 Landmark Dr. - Suite 114

North Charleston, SC 29418

Ray@FocalPointInvestigations.com

FORENSIC INTERVIEW REPORT

CONFIDENTIAL and PRIVELEGED

INTERVIEW INFORMATION	
Interviewee: Mark Myers	Interview Date: 06/02/21
Investigator: R. Nash	Client: Ray Chandler, Esq.

INTERVIEW SYNOPSIS

Ray Nash conducted a forensic interview of Mark Myers, a witness to the shooting incident at the Melted Whiskey. During the course of the interviews, Myers disclosed the following:

- He was working security at the Melted Whiskey the night of the shooting.
- He learned of an altercation involving his girlfriend, Monica Dennis, and that the individuals involved had left through the back door.
- His understanding is that a security team member known to him as Sponge evicted the individuals from the bar.
- He was informed by Jake Dennis, another member of the security team, that the individuals were in the front of the club.
- Based on this information, he, members of the security team, and Monica went out of the front door to find them.
- They were unable to make contact in the front of the club.
- He was informed on his radio that the individuals had returned to the rear parking lot.
- He, Monica, and the team went down the alley to the rear parking lot.
- The individuals were in a verbal exchange with Sponge near the back door of the bar.
- They moved toward the individuals to make sure they left the property.
- **NOTE:** His understanding is that Jerel's brother was the initiator of the altercation with Monica inside the bar.
- Jerel was trying to get the brother to leave.
- When Jerel started shooting, Myers took cover and made his way to his truck to retrieve his firearm, but he had misplaced his keys and could not get in.
- Andy, a member of the security team, acquired a pistol from somewhere.
- He does not know for sure, but he thinks he got the pistol from Sponge, who was known to carry.
- Sponge is no longer employed by Melted Whiskey due his response to the shooting.
- After the shooting, Sponge retreated into the bar for cover and curled up on the floor.

FORENSIC INTERVIEW REPORT

CONFIDENTIAL and PRIVELEGED

- He tried to get Andy's attention before Andy went after Jerel so that he would not go alone, but was unsuccessful.
- Andy told him that Jerel said he was going to be sure there were no witnesses to the shooting.
- He viewed security footage from a camera inside the rear patio of the bar that showed the altercation with Monica.
- On the video, he saw Jerel's brother pull back his fist toward Monica and get punched by the other person.
- Jake Dennis, Shawn Green, and Sharon (unknown last name) were members of the security team that night.
- Jake works at an affiliate club called Hwy 378.
- Shawn is employed by the Sumter County Sheriff's Office.
- He and Shawn are authorized by SLED to carry firearms but were not working in the capacity of armed security at the Melted Whiskey.

DISCLAIMER

Regardless of the results of the target issues during this interview, it does not preclude the possibility of additional information pertaining to issues outside the scope of this interview and any specific allegations or concerns should be investigated further until satisfactorily resolved. Information in this report should only be employed in a decision-support capacity in furtherance of other assessment and investigative activities.

Respectfully submitted,



Ray Nash

President – Focal Point Investigations, LLC

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
2022 DEC 7 9 PM 2:02

JEREL MARQUIS HERIOT, # 356193
Applicant, CLERK OF COURT Case No.: 2022-CP-43-0776
SUMTER COUNTY, S.C.

v.)
STATE OF SOUTH CAROLINA,) **ORDER OF DISMISSAL**
)
Respondent.)
)

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Jerel Marquis Heriot on May 16, 2022. On November 1, 2022, an evidentiary hearing convened before the Honorable Edward W. Miller. Applicant was present and represented by Timothy L. Griffith, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a fifteen-year sentence. In November 2021, the Sumter County Grand Jury indicted Applicant for five counts of attempted murder, possession of a weapon during a violent crime, possession of a weapon by a convicted felon, and possession of a weapon on premises serving alcohol (2020-GS-430371). These charges arose after a February 2, 2020 shooting outside of the Melted Whisky bar in Sumter. Applicant was originally represented by Kenneth R. Young, Jr., Esquire, but eventually retained Ray E. Chandler, Esquire, who was substituted as counsel of record for Applicant in January of 2021. Assistant Solicitor Tyler B. Brown of the Third Circuit Solicitor's Office represented the State.

On November 15, 2021, Applicant pled guilty before the Honorable R. Kirk Griffin. Pursuant to the negotiated plea, Applicant pled guilty to two counts of attempted murder¹ and the three weapons charges for a determinate fifteen-year sentence; in exchange, the State dismissed the remaining charges. Judge Griffin sentenced Applicant concurrently to fifteen years' imprisonment for each count of attempted murder, five years' imprisonment for possession of a weapon during a violent crime, two years' imprisonment for carrying a pistol on premises serving alcohol, and five years' imprisonment for possession of a pistol by a person convicted of a crime of violence. Applicant did not file a direct appeal.

Current Application

Applicant timely commenced this PCR application on May 16, 2022. In his application Applicant alleged he was entitled to relief based on the following grounds:

- 10 (a) "Ineffective Assistance of Counsel"
 - 11(a): "Erroneous advice, lack of preparation, and coercion."
- 10 (b) "Violation of 14th Amendment"
 - 11(b): "Denial of Equal Protection of the laws."
- 10 (c) "Stand Your Ground Law and Defense of Others"
 - 11(c): "The claim of stand your ground were never asserted."

At the hearing, Applicant proceeded only on claims that he was coerced to plead guilty; counsel was ineffective for failing to investigate and/or present evidence; and he did not voluntarily waive his right to a direct appeal. Before this Court are the records of the Sumter County Clerk of Court regarding the underlying convictions, the plea transcript, and Applicant's records from the South Carolina Department of Corrections.

Testimony Presented at the Evidentiary Hearing

At the evidentiary hearing, Applicant testified he wanted to appeal but was never told he

¹ Applicant pled guilty to the two counts of attempted murder pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).

could appeal. He stated he never spoke with plea counsel about an appeal. Applicant did not recall the plea judge informing him he could appeal. On cross-examination, he testified that if he had appealed, he would have raised the issue of ineffective assistance of counsel. He also averred the prosecution violated Brady.

Applicant testified he was coerced to plead guilty. He stated plea counsel kept getting angry and telling him he'd get thirty years to life if convicted of the charges. Applicant testified plea counsel spoke to the judge in chambers and then told Applicant the judge would sentence him to twenty years if he was convicted. On cross-examination, he acknowledged telling the plea court he understood the proceedings. He testified he felt like he had no choice; if given the option between fifteen and twenty years, anyone would choose fifteen. Applicant ultimately agreed it was his decision to plead guilty.

Applicant testified plea counsel never discussed a strategy because counsel was "totally against" Applicant. He likewise testified plea counsel never reviewed the case with him, although Applicant recalled watching a video. Applicant testified his prior attorney had discovered that the video—which was a compilation of surveillance footage from the Melted Whiskey on the night of the shooting—was missing surveillance video from the rear patio. He testified he wanted plea counsel to obtain the missing video because it would have supported his story, but plea counsel never found it. Applicant averred plea counsel's investigation was not thorough and did not uncover any new evidence from his prior attorney's investigation.

Plea counsel testified he investigated whether the security guards were licensed to carry weapons and explained that issue to Applicant. Additionally, plea counsel and a private investigator reviewed the surveillance videos produced by the prosecution to see if anything was left out. Plea counsel stated they did not receive any interior videos from the bar; law enforcement

did not request them and plea counsel learned the video footage was deleted every thirty days. Plea counsel acknowledged the videos from the prosecution did not contain footage from the patio where the incident started. He stated footage from the patio, had it existed, would not have been relevant to the shooting itself but may have been relevant to show the events that precipitated the shooting. Specifically, if the video existed, it may have shown why five people initially followed Applicant from the bar.² Plea counsel testified he visited the Melted Whisky to investigate the placement of cameras; as to exterior cameras, he found two cameras that were not operable and a third camera that was added after the shooting. Plea counsel testified he did not see any cameras in the patio area. He testified he initially believed the prosecution had not turned over videos from the patio, but he ultimately concluded no video existed from that area.

In addition to investigating the video and whether the security guards were licensed to carry weapons, plea counsel interviewed a police officer who had been relieved of his job due to marital misconduct. He testified defendant was aware of all his investigations. Plea counsel averred that based on the surveillance video, Applicant would likely not get an acquittal at trial. Although he believed the entire video was disturbing, plea counsel stated the second shooting incident would have been the most difficult to defend, and a stand-your-ground defense would not have worked due to the video. Plea counsel stated he showed the video to several individuals, including a retired judge, to get their input as to what a jury might think; the responses were not favorable. He stated the retired judge thought a reasonable sentence, if Applicant was convicted, would be 20, 22 years, maybe 25. Plea counsel stated Applicant previously had a twelve-year offer that he turned down.

² According to the State's recitation of facts, Applicant and his brother were ejected from the bar, and surveillance videos showed Applicant retrieve a gun from his car and attempt to re-enter the bar. At that point five individuals approached Applicant, and Applicant fired at them nine times. After the initial round of shots, one of the five men armed himself. Applicant came around a corner and began firing directly at that individual. (Tr. 15-17).

He stated the solicitor was difficult to work with in this case because Applicant had just been released from prison on a different crime. Plea counsel testified he explained to Applicant the constitutional rights he waived by pleading guilty. He stated it was ultimately Applicant's decision to plead, but plea counsel was prepared to proceed to trial.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. "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). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to received relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Strickland, 466 U.S. at 687–88; Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. To prove prejudice following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Coerced to plead guilty / Involuntary Plea

Applicant contends he was coerced to plead guilty when plea counsel became angry with him and told him he would get thirty years to life if convicted of the charges. Applicant testified that after plea counsel spoke to the judge in chambers, plea counsel told Applicant the judge would sentence him to twenty years if he was convicted. He testified he felt like he had no choice; if given the option between fifteen and twenty years, anyone would choose fifteen. Applicant ultimately agreed it was his decision to plead guilty.

This court finds Applicant has not shown plea counsel was ineffective in this regard. Initially, it was plea counsel's duty as Applicant's attorney to advise him of the potential sentence he would face if convicted at trial, and plea counsel was not deficient in informing Applicant of the sentence he faced. Although Applicant found himself in a situation he did not want to be in—choosing between a fifteen-year negotiated plea or choosing a trial where he risked up to 162 years' imprisonment if convicted—this Court finds the choice Applicant faced was not the result of any deficiency by plea counsel. This Court further finds it was ultimately Applicant's decision to plead guilty. Based on the testimony, Applicant chose to plead guilty because he feared a greater sentence if he was convicted at trial; thus, he has failed to prove counsel was ineffective.

Further, this Court finds Applicant's decision to plead guilty was knowing and voluntary.

Plea counsel credibly testified he explained to Applicant the constitutional rights he was waiving by pleading guilty. Additionally, because this was a negotiated plea, Applicant knew the sentence he faced. Finally, the plea court reviewed with Applicant the constitutional rights he waived and the sentence he faced. (Tr. 6-8, 11). This Court thus concludes Applicant knowingly and voluntarily pled guilty, and he failed to prove counsel coerced him into pleading guilty. Thus, this claim is denied and dismissed with prejudice.

Failure to Investigate

At the PCR hearing, Applicant testified extensively about a purported missing video. Plea counsel testified regarding his investigation of that video and his conclusion that the video did not exist. This Court finds credible plea counsel's testimony regarding his investigation of this case and his investigation of the video. This Court further finds plea counsel's investigation was reasonable and did not fall below prevailing professional norms. Thus, Applicant has not shown plea counsel was deficient. Finally, Applicant did not produce this alleged missing video at the PCR hearing and thus failed to prove prejudice. Cf. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (providing an applicant must produce witnesses at a PCR hearing to support a claim that counsel was ineffective for failing to interview or call potential witnesses). Thus, this claim is denied and dismissed with prejudice.

Failure to Advise of Direct Appeal

Applicant alleges he wanted to appeal but was never advised of his right to appeal. However, absent exceptional circumstances, counsel does not have a duty to inform a defendant of his right to appeal following a guilty plea. See Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) ("Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for

appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.”). Here, Applicant did not allege he asked plea counsel to file an appeal but counsel neglected to do so; in fact, Applicant acknowledged he never discussed an appeal with plea counsel. Likewise, Applicant did not assert any viable issues for a direct appeal or any other exceptional circumstances that would require him to be advised of his right to appeal his guilty plea. See id. (“Without evidence of extraordinary circumstances, the PCR judge erred in finding petitioner was entitled to a belated appellate review of his guilty plea.”). Because this was a guilty plea and Applicant has not alleged exceptional circumstances, this Court finds counsel was not deficient for allegedly not informing Applicant of his right to appeal. Further, because Applicant did not allege any exceptional circumstances, he has failed to show he is entitled to a belated review of his guilty plea. Thus, this allegation is denied and dismissed with prejudice.

Conclusion

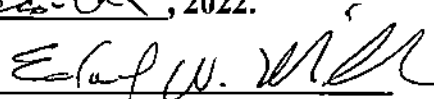
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 1 **day of** December, 2022.


EDWARD B. MILLER
Presiding Judge
Third Judicial Circuit

Gills, South Carolina

WITNESSES

Gwen Herod
Sumter County Sheriff

AMENDED INDICTMENT
DOCKET NO. 2020-GS-43-0371

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2021

THE STATE

vs.

JEREL MARQUIS HERIOT

ARREST WARRANT NUMBER

2020A4310100122	2020A4310100133
2020A4310100134	2020A4310100135
2020A4310100123	2020A4310200076
2020A4310100151	2020A4310100136

Indictment for

Attempted Murder (x5)

Possession of a Weapon During a Violent Crime;
Possession of a Firearm by a Person Convicted of a
Crime of Violence;
Possession of a Firearm on Premises where Alcohol
is Sold

ACTION OF GRAND JURY

Heather Devine
Foreperson of Grand Jury
Date: 11/4/21

VERDICT

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

AMENDED INDICTMENT FOR
 Attempted Murder (x5)
 Possession of a Weapon During a Violent Crime;
 Possession of a Firearm by a Person Convicted of a Crime
 of Violence;
 Possession of a Firearm on Premises where Alcohol is Sold

At a Court of General Sessions, convened on November 4, 2021, the Grand Jurors of SUMTER County present upon their oath:

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
James C. Campbell
 CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

COUNT ONE – ATTEMPTED MURDER

That **Jerel Marquis Heriot** did in **Sumter** on or about February 2, 2020, violate §16-3-29, South Carolina Code of Laws, 1976, as amended, in that the said **Jerel Marquis Heriot** did with intent to kill, attempt to kill another person, **Anthony Safrit**, with malice aforethought, either express or implied, by firing a pistol multiple times in the direction of the victim.

COUNT TWO – ATTEMPTED MURDER

That **Jerel Marquis Heriot** did in **Sumter** on or about February 2, 2020, violate §16-3-29, South Carolina Code of Laws, 1976, as amended, in that the said **Jerel Marquis Heriot** did with intent to kill, attempt to kill another person, **Derrick Wade**, with malice aforethought, either express or implied, by firing a pistol multiple times in the direction of the victim.

COUNT THREE – ATTEMPTED MURDER

That **Jerel Marquis Heriot** did in **Sumter** on or about February 2, 2020, violate §16-3-29, South Carolina Code of Laws, 1976, as amended, in that the said **Jerel Marquis Heriot** did with intent to kill, attempt to kill another person, **Mark Myers**, with malice aforethought, either express or implied, by firing a pistol multiple times in the direction of the victim.

COUNT FOUR – ATTEMPTED MURDER

That **Jerel Marquis Heriot** did in **Sumter** on or about February 2, 2020, violate §16-3-29, South Carolina Code of Laws, 1976, as amended, in that the said **Jerel Marquis Heriot** did with intent to kill, attempt to kill another person, **Monica Dennis**, with malice aforethought, either express or implied, by firing a pistol multiple times in the direction of the victim.

COUNT FIVE – ATTEMPTED MURDER

That **Jerel Marquis Heriot** did in **Sumter** on or about February 2, 2020, violate §16-3-29, South Carolina Code of Laws, 1976, as amended, in that the said **Jerel Marquis Heriot** did with intent to kill, attempt to kill another person, **Leshawn Green**, with malice aforethought, either express or implied, by firing a pistol multiple times in the direction of the victim.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR 2020-GS-43-371 WITH THE AFORESAID NAME OF JEREL MAQUIS HERIOT SHOWN THEREON:

COUNT SIX - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That **Jerel Marquis Heriot** did in **Sumter County**, on or about **February 2, 2020**, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of §16-23-0490, South Carolina Code of Laws, 1976, as amended.

COUNT SEVEN - CARRYING PISTOL ON PREMISES SERVING ALCOHOL

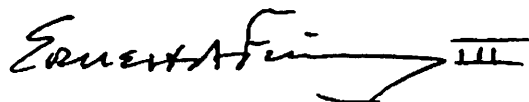
That **Jerel Marquis Heriot** did in **Sumter County** on or about **February 2, 2020**, carry a pistol or firearm onto the premises of a business selling alcoholic liquor, beer or wine for on-premises consumption; said business being **Melted Whiskey**, a violation of §16-23-0465, South Carolina Code of Laws, 1976, as amended.

COUNT EIGHT - POSSESSION OF A PISTOL BY A PERSON CONVICTED OF A CRIME OF VIOLENCE

That **Jerel Marquis Heriot** did in **Sumter County** on or about **February 2, 2020** knowingly possess a pistol, after having been convicted of a crime of violence as defined in §16-23-10 (3), South Carolina Code of Laws, 1976, as amended, in violation of §16-23-30, 50(A)(1), South Carolina Code of Laws, 1976, as amended.

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

Solicitor

A handwritten signature in black ink, appearing to read "Ernest A. Finley III". The signature is stylized with a long horizontal stroke extending to the right.