

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

HENRY PINCKNEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000396

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF BEAUFORT) CASE NO.: 2017-GS-07-01026, 01027
) 2017-GS-07-01123

THE STATE OF SOUTH CAROLINA,)
)
)
 v.) TRANSCRIPT OF RECORD
)
 HENRY EDWARD PINCKNEY,)
)
)
 DEFENDANT.)
)

JULY 24, 2018
COMMENCING AT
BEAUFORT COUNTY COURTHOUSE
BEAUFORT, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, JUDGE.

APPEARANCES:

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EXHIBITS

NONE .

1 THE COURT: Solicitor, call your case at this time.

2 ASST. SOL. STAGGS: Thank you, Your Honor. The State
3 calls Mr. Henry Pinckney. Mr. Pinckney is charged under
4 three indictments and is here to plead as charged to those
5 indictments. 2017-GS-07-01026, possession with intent to
6 distribute marijuana, second offense. 2017-GS-07-01027,
7 that's possession with intent to distribute cocaine base,
8 first offense; that's zero to fifteen, Your Honor. And
9 finally, 2017-GS-07-01123, that is a felony hit and run with
10 death resulting and that is a one to twenty-five. This is a
11 negotiated plea, Your Honor, of a 15 year sentence.

12 THE COURT: So you're recommending a 15-year sentence
13 and you are also recommending on all three charges that the
14 sentences run concurrent?

15 ASST. SOL. STAGGS: Yes, Your Honor.

16 THE COURT: Is that all of the negotiations, Solicitor?

17 ASST. SOL. STAGGS: No, sir, Your Honor. The State has
18 agreed to dismiss a number of indictments as part of this
19 plea.

20 THE COURT: Mr. Stephens, do we need to put those on
21 the record?

22 MR. STEPHENS: Your Honor, I believe they are being
23 handed up. I don't believe that we need to cover them
24 verbally on the record.

25 THE COURT: All right. What I've been handed is the

1 State is nol prossing 2016 at 02071, 2017-01933, 2017-01934,
2 2016 at 02070, and then warrant number 4102A0332091, and
3 Solicitor, you have this direct indictment, but then you
4 wrote underneath it 2016A0720300210, is that a warrant
5 number?

6 ASST. SOL. STAGGS: Yes, sir. The indictment numbers
7 were listed at the top and then the corresponding warrant
8 numbers were listed below in order. Some of them were
9 directly indicted.

10 THE COURT: All right. There was a written record of
11 what she is nol prossing. She is also nol prossing 2017 at
12 01831, which had been true billed by the grand jury. So with
13 that, Solicitor, is that all the conditions of the plea?

14 ASST. SOL. STAGGS: Yes, Your Honor.

15 THE COURT: So he's pleading to possession with intent
16 to distribute cocaine. He's pleading to possession with
17 intent to distribute marijuana, second offense. And he's
18 pleading to hit and run death, on a negotiated plea of 15
19 years. The cocaine carrying up to 15 years. The marijuana,
20 second offense, carrying up to 10 years, and the hit and run
21 death carrying up to 25?

22 ASST. SOL. STAGGS: Yes, Your Honor.

23 THE COURT: You are nol prossing a number of other
24 charges, which you have expressed in writing to the clerk,
25 which I have published on the record, which includes both

1 indictments and warrant numbers?

2 ASST. SOL. STAGGS: Yes, sir.

3 THE COURT: Is that everything?

4 ASST. SOL. STAGGS: I believe it is, Your Honor

5 THE COURT: Mr. Stephens, I understand that you
6 represent Mr. Pinckney; is that correct?

7 MR. STEPHENS: That's correct, Your Honor.

8 THE COURT: Has the solicitor accurately stated for the
9 record any and all conditions of the plea?

10 MR. STEPHENS: I believe she has, Your Honor.

11 THE COURT: Mr. Clerk, would you please swear the
12 defendant?

13 CLERK: Yes, sir. Place your left hand on the Bible and
14 raise your right hand as best you can.

15 (Whereupon, the defendant is duly sworn.)

16 THE COURT: I'm going to ask you some questions. Give
17 me a verbal answer. Say yes or no. Don't shake your head
18 or nod your head so that the court reporter can take it
19 down. Do not say uh-huh (affirmative) or unh-unh, so the
20 court reporter can take it down. Speak up so everybody in
21 this courtroom can hear your answers including me, the court
22 reporter and the people behind you. Do you understand?

23 DEFENDANT: Yes, sir.

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

1 DEFENDANT: Henry Edward Pinckney.

2 THE COURT: Mr. Pinckney, how old are you?

3 DEFENDANT: Thirty-one.

4 THE COURT: How far have you gone in school?

5 DEFENDANT: Twelfth grade, sir.

6 THE COURT: You have your high school diploma?

7 DEFENDANT: No, sir.

8 THE COURT: You do not?

9 DEFENDANT: No, sir.

10 THE COURT: All right. What do you do for a living?

11 DEFENDANT: Landscaping.

12 THE COURT: Landscaping. Are you married?

13 DEFENDANT: No, sir.

14 THE COURT: Do you have any children?

15 DEFENDANT: Yes, sir.

16 THE COURT: How many?

17 DEFENDANT: Two, sir.

18 THE COURT: Do the children live with you?

19 DEFENDANT: Yes, sir.

20 THE COURT: Have you ever been treated in the past for
21 drug abuse, alcohol abuse, or mental illness?

22 DEFENDANT: No, sir.

23 THE COURT: Have you taken any drugs, alcohol, or
24 anything else prescribed or otherwise within the past 24
25 hours that might keep you from understanding what you are

1 doing in court today?

2 DEFENDANT: No, sir.

3 THE COURT: Mr. Stephens, I understand you represent
4 Mr. Pinckney, is that correct?

5 MR. STEPHENS: That's correct, Your Honor. I was
6 appointed from the public defender's office.

7 THE COURT: You were appointed and not retained?

8 MR. STEPHENS: That's correct, Your Honor.

9 THE COURT: Have you advised him of the charges in
10 these three indictments? They are hit and run, death
11 involved; possession with intent to distribute cocaine base,
12 first offense; possession with intent to distribute
13 marijuana, second offense. Have you advised him of the
14 charges within these three indictments? All of which have
15 been true billed by the grand jury. Have you advised him of
16 the maximum penalty or punishment for those charges? And
17 any direct consequences of pleading, as well as his
18 constitutional rights?

19 MR. STEPHENS: Yes, Your Honor.

20 THE COURT: In your opinion, Mr. Stephens, does Mr.
21 Pinckney understand each of the charges in these
22 indictments? Does he understand the maximum penalty or
23 punishment and any direct consequences, as well as his
24 constitutional rights?

25 MR. STEPHENS: I believe he does, Your Honor.

1 THE COURT: And how does he indicate to you that he
2 desires to plead, guilty or not guilty?

3 MR. STEPHENS: He indicates he wishes to plead guilty
4 to those indictments, Your Honor.

5 THE COURT: Mr. Pinckney, you've heard your lawyer tell
6 me that he has advised you of the charges in these three
7 indictments that have been handed to me by the solicitor.
8 He's advised you, and I went over the charges and they are
9 hit and run, death resulting, possession with intent to
10 distribute cocaine base, first offense; possession with
11 intent to distribute marijuana, second offense.

12 Your lawyer tells me you understand each of those
13 charges. You understand the maximum penalty or punishment
14 for those charges. You understand any direct consequences
15 of pleading to those charges, such as, an example might be
16 if you pled to a charge and it resulted in the loss of your
17 drivers license; that would be an example of a direct
18 consequence.

19 He's explained to you any direct consequences and he's
20 explained to you your constitutional rights, and according
21 to your lawyer, Mr. Stephens, do you, Mr. Pinckney,
22 understand each of the charges in these three indictments
23 handed to me by the Solicitor? Do you understand the
24 maximum penalty or punishment and any direct consequences,
25 as well as your constitutional rights?

1 DEFENDANT: Yes, sir.

2 THE COURT: I've been handed by the Solicitor,
3 Indictment 2017-GS-07-01026, the State v. Henry Edward
4 Pinckney. It's an indictment for possession with intent to
5 distribute marijuana, second offense, true billed by the
6 Beaufort County Grand Jury.

7 This indictment alleges that you did, in Beaufort
8 County, South Carolina, on or about June 28th, 2017, that
9 you, Henry Edward Pinckney, did manufacture, distribute,
10 dispense, deliver or purchase or that you did aid, abet,
11 attempt or conspire to do so, or that you did possess with
12 the intent to manufacture, distribute, dispense, deliver or
13 purchase marijuana, which is a controlled substance and
14 classified as a Schedule One, Two or Three. That you have
15 been convicted of possession with intent to distribute
16 marijuana within 10 years of the date of June 28th, 2017.
17 Do you understand that charge in that indictment against
18 you?

19 DEFENDANT: Yes, sir.

20 THE COURT: Do you understand if I accept your plea to
21 that charge that I can sentence you to a of imprisonment for
22 that charge to a term of 10 years and/or a fine of up to
23 \$10,000?

24 DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that you would be

1 required, if I accept your plea to that charge, to give a
2 DNA sample to law enforcement, where your DNA would be kept
3 in a databank by law enforcement, if I accept your plea to
4 possession with intent to distribute marijuana, second
5 offense; do you understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: Do you understand if I accept your plea to
8 possession with intent to distribute marijuana, second
9 offense, you would not be allowed to be a foster parent; do
10 you understand that?

11 DEFENDANT: Yes, sir.

12 THE COURT: Any other direct consequences of the plea
13 in which counsel for the State is aware?

14 ASST. SOL. STAGGS: No, sir, Your Honor.

15 THE COURT: Any other direct consequences of the plea
16 in which counsel for the defendant is aware?

17 MR. STEPHENS: No, sir.

18 THE COURT: Do you understand if I accept your plea to
19 possession with intent to distribute marijuana and you are
20 convicted at a later point in time of a drug offense, you
21 could face greater or more enhanced penalties as a result of
22 my accepting your plea today. Do you understand that?

23 DEFENDANT: Yes, sir.

24 THE COURT: Next, I've been handed indictment 2017-GS-
25 07-01027, the State v. Henry Edward Pinckney. This is an

1 indictment for possession with intent to distribute cocaine
2 base, first offense, true billed by the Beaufort County
3 Grand Jury.

4 This indictment alleges that you did, in Beaufort
5 County, South Carolina on or about June 28th, 2017, that
6 you, Henry Edward Pinckney, did manufacture, distribute,
7 dispense, deliver or purchase, or that you did otherwise
8 aid, abet, attempt or conspire to do so, or that you
9 possessed with the intent to distribute, dispense or deliver
10 cocaine or cocaine base. Do you understand that charge in
11 that indictment?

12 DEFENDANT: Yes, sir.

13 THE COURT: Do you understand if I accept your plea to
14 possession with intent to distribute cocaine base, first
15 offense, that I can sentence you to a term of imprisonment
16 for that charge to a term of 15 years and/or a fine of up to
17 \$25,000?

18 DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that if I accept your
20 plea to possession with intent to distribute cocaine, that
21 you would be required to give a DNA sample to law
22 enforcement where your DNA would be kept in a databank by
23 law enforcement?

24 DEFENDANT: Yes, sir.

25 THE COURT: Do you understand if I accept your plea to

1 possession with intent to distribute cocaine and you're
2 convicted at a later point in time of a drug offense, that
3 you could face greater or more enhanced penalties as a
4 result of my accepting your plea today?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you understand if I accept your plea to
7 possession with intent to distribute cocaine that you would
8 not be allowed to be a foster parent or have a child in
9 foster care?

10 DEFENDANT: Yes, sir.

11 THE COURT: Any other direct consequences of the plea
12 in which counsel for the defendant is aware?

13 ASST. SOL. STAGGS: No, Your Honor.

14 THE COURT: Any other direct consequences of the plea
15 in which counsel for the defendant is aware?

16 MR. STEPHENS: No, Your Honor, thank you.

17 THE COURT: Next, I've been handed indictment number
18 2017-GS-07-01123, the State v. Henry Edward Pinckney, an
19 indictment for hit and run, duties of a driver involved in
20 an accident with death. This indictment has been true
21 billed by the Beaufort County Grand Jury.

22 This indictment alleges that you did in Beaufort
23 County, on or about July 15th, 2017, that you did while as a
24 driver of a vehicle, involved in an accident, resulting in
25 Serina Gayle Hardee's death, failed to stop the vehicle

1 immediately at the scene of the accident, or as close as
2 possible, or that you failed to return to or remain at the
3 scene of the accident until you complied with the
4 requirements of South Carolina Law. Do you understand that
5 charge in that indictment for the offense of hit and run,
6 duties of a driver involved in an accident with death?

7 DEFENDANT: Yes, sir.

8 THE COURT: Do you understand if I accept your plea to
9 that indictment that I can sentence you to a maximum term of
10 imprisonment of up to 25 years and a fine of not less than
11 \$10,000 up to \$25,000 dollars?

12 DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that hit and run, death
14 involved, is a violent offense? Because it is a violent
15 offense, you would have to assume that any sentence of
16 imprisonment I impose, you would have to serve day for day.
17 If I say 10 years, you would have to serve 10 years. Do you
18 understand that?

19 DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that if I accept your
21 plea to hit and run, death resulting, your drivers license
22 would be revoked by the South Carolina Department of Public
23 Safety? Do you understand that?

24 DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that this is a no parole

1 offense? Is it also --- counsel approach.

2 (Whereupon, a bench conference is held off the record.)

3 ASST. SOL. STAGGS: Judge, if I may? It is violent and
4 is not considered a serious offense.

5 THE COURT: Have you shown it to your client, Mr.
6 Stephens?

7 MR. STEPHENS: I have, Your Honor.

8 THE COURT: All right. You understand that this is a
9 violent offense, hit and run, death resulting, and that if I
10 accept your plea to this offense, you would have to assume
11 that you would have to serve every day of any sentence of
12 imprisonment I might impose if I accept your plea; do you
13 understand that?

14 DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that this is also an
16 offense that you would be required to give a DNA sample to
17 law enforcement where your DNA would be kept in a databank
18 by law enforcement; Do you understand that?

19 DEFENDANT: Yes, sir.

20 THE COURT: Any other direct consequences of the plea
21 in which counsel for the State is aware?

22 ASST. SOL.: No, Your Honor.

23 THE COURT: Any other direct consequences of the plea
24 in which counsel for the defendant is aware?

25 MR. STEPHENS: No, Your Honor.

1 THE COURT: All right. Mr. Pinckney, understanding the
2 charges against you, understanding the maximum possible
3 penalty or punishment for each of the charges, and any
4 direct consequences for each of the charges, I ask you now,
5 how do you wish to plead, guilty or not guilty?

6 DEFENDANT: Guilty, sir.

7 THE COURT: Do you understand by pleading guilty that
8 you're giving up your constitutional right to remain silent?

9 DEFENDANT: Yes, sir.

10 THE COURT: Do you understand by pleading guilty that
11 you're giving up your constitutional right to a trial by
12 jury?

13 DEFENDANT: Yes, sir.

14 THE COURT: Do you understand if you had a jury trial
15 that you would have the right to confront any witnesses or
16 evidence which the State may have against you, and if you
17 had a jury trial, the State would be required and have the
18 burden of proving your guilt beyond a reasonable doubt, and
19 if you had a jury trial, you could put up any witnesses or
20 evidence in your defense, if you so chose. Do you
21 understand you have each of those rights as to a jury trial?

22 DEFENDANT: Yes, sir.

23 THE COURT: Understanding your rights as to a jury
24 trial, do you now want a jury trial or do you wish to plead
25 guilty?

1 DEFENDANT: I wish to plead guilty, sir.

2 THE COURT: Now, you heard the Solicitor tell me at the
3 outset of this hearing and it was confirmed to me by your
4 attorney, Mr. Stephens, that there are negotiations in
5 regards to your plea. You've signed the plea sheets where
6 all three of them indicate negotiated plea. Do you
7 understand that negotiations were published to me as a
8 sentence of 15 years imprisonment and sentences are to run
9 concurrent to each other. Is that your understanding of the
10 negotiations?

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that negotiations are a
13 contract between the solicitor and your attorney. I can't
14 change those negotiations, but I do not have to accept your
15 plea of guilty; do you understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: Other than the negotiations which I've
18 placed on the record of this hearing, has anybody promised
19 you anything in order to get you to plead guilty?

20 DEFENDANT: No, sir.

21 THE COURT: Has anybody threatened you in any manner in
22 order to try to get you to plead guilty?

23 DEFENDANT: No, sir.

24 THE COURT: Are you fully satisfied with the services
25 of your attorney?

1 DEFENDANT: Yes, sir.

2 THE COURT: Has he done everything on your behalf that
3 you feel like he could or should have done?

4 DEFENDANT: Yes, sir.

5 THE COURT: Are you completely satisfied with your
6 lawyer?

7 DEFENDANT: Yes, sir.

8 THE COURT: You don't have any complaints about your
9 lawyer?

10 DEFENDANT: No, sir.

11 THE COURT: Have you had enough time to talk with your
12 lawyer?

13 DEFENDANT: Yes, sir.

14 THE COURT: Have you understood all of your talks with
15 your lawyer?

16 DEFENDANT: Yes, sir.

17 THE COURT: And you are completely satisfied with your
18 lawyer?

19 DEFENDANT: Yes, sir.

20 THE COURT: Do you have any complaints against any law
21 enforcement officers, court officials, or members of the
22 Solicitor's Office?

23 DEFENDANT: No, sir.

24 THE COURT: Are you pleading guilty to each of these
25 offenses of your own free will and your own accord?

1 DEFENDANT: Yes, sir.

2 THE COURT: Do you understand as to any sentence of
3 imprisonment that I might impose if I accept your plea of
4 guilty, that you could file an appeal from my sentence and
5 this plea, but you must do so within 10 days of today by
6 filing a notice of intention to appeal; do you understand
7 that?

8 DEFENDANT: Yes, sir.

9 THE COURT: Have you understood each of my questions?

10 DEFENDANT: Yes, sir.

11 THE COURT: Have your answers to my questions been
12 truthful answers?

13 DEFENDANT: Yes, sir.

14 THE COURT: Have they been your own answers and not
15 suggested to you by anyone else?

16 DEFENDANT: Yes, sir.

17 THE COURT: Are you, in fact, guilty of the offense of
18 hit and run in Beaufort County on or about July 15th, 2017,
19 that resulted in the death of Serina Gayle Hardee?

20 DEFENDANT: Yes, sir.

21 THE COURT: Are you, in fact, guilty of the offense of
22 possession with intent to distribute cocaine base in
23 Beaufort County, South Carolina, on or about June 28th,
24 2017?

25 DEFENDANT: Yes, sir.

1 THE COURT: Are you, in fact, guilty of the offense of
2 possession with intent to distribute marijuana, second
3 offense, in Beaufort County, South Carolina, on or about
4 June 28th, 2017?

5 DEFENDANT: Yes, sir.

6 THE COURT: Solicitor?

7 ASST. SOL. STAGGS: Thank you, Your Honor. May it
8 please the court? These indictments stem from two separate
9 incidents. The first of which occurred on June 28th of 2017
10 at [REDACTED] Southwood Park Drive, which is in Hilton Head Garden
11 Apartments, Judge, in Hilton Head, which is here in Beaufort
12 County. On that day, law enforcement responded to that
13 location to serve lower court arrest warrants. They were
14 allowed into that residence by someone who lived there; I
15 believe it was the defendant's girlfriend.

16 During the interview, law enforcement observed a
17 handgun on top of the refrigerator in plain view and they
18 also saw drugs and other contraband on top of the microwave
19 in plain view. So after serving those arrest warrants, they
20 got a search warrant from the resident judge, and so after
21 serving the search warrant and going through the apartment,
22 they found marijuana packaged for distribution, as well as a
23 cell phone, a gun, crack cocaine, for which he is charged,
24 and two other controlled substances that were dismissed as
25 part of the plea; those were two of the warrants, Judge.

1 The second incident happened on July 15th, 2017, on
2 Highway 278, which is on Hilton Head here in Beaufort
3 County. On that day, Your Honor, the defendant was leaving
4 a place called Mickey's Pub on Hilton Head and driving down
5 278, which is also known as William Hilton Parkway towards
6 Bluffton. As he was driving, Serina Hardee, the victim, was
7 crossing the road in the crosswalk and he struck the victim
8 with his car and she was killed. He did not stop. He left
9 the scene. He had a passenger in his car at that time who
10 confirmed that. He dropped the passenger off at the
11 apartment complex where he lived. That passenger is the one
12 who, in fact, went back and found the victim and called 9-1-
13 1 and provided a statement to law enforcement about that. A
14 short time later after a BOLO was put out for the
15 defendant's vehicle, he was located in Bluffton just across
16 the bridge to Hilton Head ---

17 THE COURT: On the same date?

18 ASST. SOL. STAGGS: Yes, sir, shortly after -- just a
19 few minutes after the incident. His car was smashed in on
20 the side where he hit the victim in this case. He did not
21 have a drivers license at this time and after collecting
22 evidence from the scene, Judge, pieces of the vehicle found
23 at the scene do match perfectly to the car that the
24 defendant was driving when he was pulled over and arrested
25 in the town of Bluffton. As we told you, he was originally

1 charged with Felony DUI, death resulting. That warrant was
2 dismissed. I dismissed it because the State could not go
3 forward on that charge, but he did leave the scene and he
4 did not have a driver's license at that time.

5 THE COURT: Why was the felony DUI dismissed?

6 ASST. SOL. STAGGS: Your Honor, he had a blood alcohol
7 level of just .01, and there were two different MAIT
8 recreations done in this case. One, the first of which that
9 said the victim was at fault in the collision.

10 THE COURT: Was a blood alcohol done on the victim as
11 well?

12 ASST. SOL. STAGGS: Yes, Your Honor.

13 THE COURT: What was it?

14 ASST. SOL. STAGGS: I believe it was a .3. She was
15 intoxicated at the time and she was in the crosswalk. So
16 that's why a second MAIT recreation was done wherein the
17 defendant was determined to be at fault because the victim
18 was in the crosswalk, but because he was not over the legal
19 limit with alcohol, he did have marijuana in his system, but
20 due to the conflicting MAIT reports the State did not feel
21 we could prove a felony DUI beyond a reasonable doubt, and
22 that charge was dismissed a number of months ago; it was
23 never indicted.

24 THE COURT: The penalty for hit and run is the same as
25 felony DUI?

1 ASST. SOL. STAGGS: Yes, Your Honor, it is.

2 THE COURT: So you decided to proceed on the hit and
3 run rather than the felony DUI because of those
4 circumstances?

5 ASST. SOL. STAGGS: Yes, Your Honor.

6 THE COURT: I see.

7 ASST. SOL. STAGGS: And he does have a prior record,
8 Your Honor.

9 THE COURT: Wait a minute, you had told me about the
10 events of June the 28th, 2017, both the cocaine base and the
11 marijuana were the same date, June 28th, 2017?

12 ASST. SOL. STAGGS: Yes, Your Honor.

13 THE COURT: But the hit and run was on July 15th, 2017?

14 ASST. SOL. STAGGS: Correct, Your Honor.

15 THE COURT: All of those events occurred in Beaufort
16 County?

17 ASST. SOL. STAGGS: Yes, sir, on Hilton Head.

18 THE COURT: All right. And his prior record?

19 ASST. SOL. STAGGS: Judge, he has a 2011 a use of
20 license plate other than the vehicle, failure to maintain
21 insurance. 2013, driving under suspension, first offense.
22 2013, a DUI first, and then another DUS second. A simple
23 possession of marijuana and an open container. In 2015, he
24 got a driving under suspension, third offense. In 2016, a
25 simple possession of marijuana and failure to obey traffic

1 control devices, and then another driving under suspension,
2 third offense, and he has been designated as a habitual
3 traffic offender by the Department of Motor Vehicles.

4 THE COURT: He understands his license will be revoked
5 as a result of this plea; I asked him about that.

6 ASST. SOL. STAGGS: Yes, sir.

7 THE COURT: All right. Now, Solicitor, do I have any
8 members of the victim's family who wish to address the Court
9 so I can make a determination as to whether I'm going to
10 accept this plea?

11 ASST. SOL. STAGGS: Thank you, Your Honor. You
12 certainly do. The victim's mother and step-father are here
13 on behalf of the entire family.

14 THE COURT: Please come forward. Happy to hear from
15 you. Would you start by speaking up for me. In this
16 courtroom, it's hard to hear ---

17 MS. COFFEY: Oh no, it's not hard for me, Your Honor.

18 THE COURT: All right. Would you state your full name
19 for me?

20 MS. COFFEY: It's Ginifer Maynard Coffey, G-I-N-I-F-E-R
21 M-A-Y-N-A-R-D C-O-F-F-E-Y.

22 THE COURT: All right. Ms. Coffey, I understand you're
23 the mother of Serina Hardee; is that correct?

24 MS. COFFEY: Yes, I am.

25 THE COURT: I'll be happy to hear from you now.

1 MS. COFFEY: Thank you, Your Honor. First, I want to
2 say thank you for allowing me to speak on behalf of my
3 daughter, Serina, and her daughter, my granddaughter, who
4 was left behind due to her death. I have accepted the role
5 as mother in her life by adopting her. Accepting this role
6 as her mother was not a second thought for me as I also have
7 to take into consideration that I survive day to day with a
8 terminal illness. (Becomes emotional.) Excuse me, I'm
9 sorry.

10 THE COURT: Take your time.

11 MS. COFFEY: Knowing that there will come a time when
12 the death of Serina will have to be explained to her
13 daughter frightens me because we may also have to explain
14 where I am also. No one said that life is fair. There's a
15 lot of questions we have as to this case that I won't get
16 into. I am speaking for myself, her two sisters, her
17 daughter and another, my ex-husband, who was also her dad
18 for many, many years.

19 We all miss her sorely. My granddaughter will never
20 know the love, the touch, the smell or anything of her own
21 mother. She will never have a memory of her mother. I will
22 never have a "Hello, my beautiful mommy!" That's what I got
23 every morning.

24 THE COURT: How old is your granddaughter?

25 MS. COFFEY: She was 14 days away from turning 24, Your

1 Honor. Her birthday is July [REDACTED], so she was 23.

2 THE COURT: Your granddaughter?

3 MS. COFFEY: She was nine and a half months at the
4 time; she is 21 and a half months now.

5 THE COURT: Okay.

6 MS. COFFEY: You know, Mr. Pinckney knew he shouldn't
7 have been driving. It was within walking distance of where
8 he lived. In fact, he knew my daughter. The person that was
9 passenger with him knew my daughter and lied for four months
10 about being in that car with him. So I've been through this
11 for a year now with nobody giving me calls, nobody informing
12 me. We had a plea bargain that was pled out that nobody
13 told us about that we found out that we snitched, that we
14 got away from, because we were not happy. And at this
15 point, we want it to be done so we can get on with our
16 lives.

17 THE COURT: You feel like you need closure at this
18 point?

19 MS. COFFEY: I do, because every week we have to talk
20 about it and I'm done.

21 THE COURT: Are you in the process of adopting this
22 child?

23 MS. COFFEY: We are within two weeks of having her
24 completely adopted, yes.

25 THE COURT: I admire you very much for that. I

1 understand.

2 MS. COFFEY: And I said before in one of his bond
3 hearings, as a parent, I wouldn't want any parent to go
4 through what I've had to go through; not even him, and he's
5 the one that killed my daughter. But I wouldn't want him to
6 go through the pain I've had to go through.

7 But I also have to thank Mr. Pinckney because now I
8 know how resilient and how strong I am and how I am when I
9 am resolved I am when I am trying to find an ending to
10 something. So I can thank him for that. He showed me what
11 strength I have. He showed me what character I have,
12 because I can be vindictive and everything else, but I
13 choose not to be because what good is that going to do? I
14 have a little girl that I've gotta raise that I love very
15 much. And I don't want anything like this to ever happen to
16 any other one of my children. I can also thank him for
17 taking away my greatest fear and that is losing a child. He
18 took -- I have no fears now. He took care of that for me.
19 I have no fears. That was my greatest fear.

20 THE COURT: I understand, Ms. Coffey. Thank you very
21 much for sharing your feelings with me. Yes, sir, would you
22 like to address the Court as well?

23 MR. COFFEY: Yes, I would. My name is Christopher
24 Coffey.

25 THE COURT: You're the step-father of Serina?

1 MR. COFFEY: Yes, I am the step-father of Serina. Your
2 Honor, I just feel that the whole experience of the court
3 process has traumatized my family continuously. I am just
4 hoping that the next time that in a state that generates \$20
5 billion dollars of revenue for tourism does a better job in
6 investigating from the get-go.

7 There were a lot of things that were missed over that
8 they could have taken a year away of suffering away from my
9 family and brought this to a lot quicker closure. And
10 because it didn't, we have a lot of bad feelings and a lot
11 of stuff we're going to have to fix for ourselves.

12 As a result, I used to be a social worker. I am no
13 longer doing that job. I cannot go into a school and tell
14 kids to be respectful of authority and you're going to get
15 what you want and they're going to be treating you equally,
16 you know. That's what this process has done. It's left me
17 a little unlike myself. I'm jaded. I'm angry. And I can no
18 longer do the job that I went to college for. So presently,
19 I am my wife's nurse until I can get it back to a point
20 where I can believe in the system that is going to protect
21 the kids, adults, and everybody else who comes to this, I
22 feel like it's an entire process.

23 THE COURT: Thank you for taking the time to express
24 your feelings. Thank you both.

25 MS. COFFEY: Thank you.

1 THE COURT: Anything else from the Solicitor?

2 ASST. SOL. STAGGS: Nothing from the State.

3 THE COURT: I find that there is a sufficient factual
4 basis for the plea. Mr. Pinckney, I find that your decision
5 to plead guilty has been freely, voluntarily, knowingly and
6 intelligently made and that you've had the advice and
7 counsel of a confident lawyer with whom you tell this Court
8 you are totally and completely satisfied and I will accept
9 your plea of guilty. Mr. Stephens?

10 MR. STEPHENS: Thank you, Your Honor. May it please
11 the Court?

12 THE COURT: It's negotiated, Mr. Stephens.

13 MR. STEPHENS: I understand, Your Honor. I don't want
14 to take up too much of the Court's time. I just want to
15 state on behalf of Mr. Pinckney and myself, our heart's go
16 out to Mr. and Mrs. Coffey. I'm the father of two and we
17 can only imagine what they must be going through and thank
18 God that it wasn't one of our children. I believe from my
19 conversations with Mr. Pinckney, that if he had a time
20 machine to go back and undo this, he would. He is doing all
21 that he can do by admitting his responsibility here for not
22 following his duties as a driver. The crux of the offense
23 isn't the actual injury that resulted in death; it's not
24 stopping to try to render first aid and to stay present
25 until he gave his information. He didn't do that. He was

1 driving without a license. He is here accepting
2 responsibility for that. He agreed to a negotiation to
3 accept his responsibility and the sentence the Court will
4 impose. That's all he can do to make it right. He was
5 employed as a landscaper before. Hopefully, when he is
6 released, he will be able to be reunited with his family and
7 go back to being a landscaper and pursue other employment.

8 THE COURT: Mr. Pinckney, is there anything you would
9 like to tell the Court prior to sentencing? I'll be happy
10 to hear from you.

11 DEFENDANT: No, sir.

12 THE COURT: This is a tragic case. There is nothing
13 that the Court can do to restore the loss of a family when
14 they lose a loved one. We don't have the power to restore
15 life, which God knows I wish I could. On the other side of
16 that fence, Mr. Pinckney, you ought to be in jail. You
17 ought to have your license revoked. You ought to serve the
18 penalties I'm about to impose on you because you deserve
19 them.

20 Because justice needs to be done for what occurred.
21 Now, I realize not every aspect, from listening to the
22 family, not everyone feels like there is justice from what
23 is tragic circumstances. But to the extent that the Court
24 has the power to impose some prison time, you deserve it.

25 On Indictment 2017-GS-07-01123, hit and run, death

1 involved, the defendant is committed to the State Department
2 of Corrections for a term of 15 years.

3 On Indictment 2017-GS-07-01027, possession with intent
4 to distribute cocaine base, first offense. The sentence of
5 the Court is the defendant is committed to the state
6 department of corrections for a term of 15 years.

7 On Indictment 2017-GS-07-01026, possession with intent
8 to distribute marijuana, second offense, the sentence of the
9 Court is the defendant is committed to the State Department
10 of Corrections for a term of 10 years. Sentences are to
11 run concurrent to each other. Thank you very much.

12

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1

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of General Sessions for Beaufort County, South Carolina, on the 24th day of July 2018.

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

March 5, 2019

Rebecca H. Hill
Rebecca H. Hill,
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Beaufort)
)
Henry Edward Pinckney, 377144)
 Full name and prison number (if any) of Applicant)

v.)
)
)
)

State of South Carolina)
 Its Departments and Agents,)
 Alan Wilson, Attorney)
 General For South Carolina)

IN THE COURT OF COMMON PLEAS

2019-C.P. 07-173

APPLICATION FOR

POST-CONVICTION RELIEF

2019 JAN 28 PM 12:12
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

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 Broad River Correctional Institution
4460 Broad River Rd. Columbia, SC 29210
2. Name and location of Court which imposed sentence Beaufort County Court Of
General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (2017-GS-0701123) Hit and run, involved in accident Death
 - (b) (2017-GS-0701026) Possession WITD Marijuana - 2nd offense

(c) (2017-GS-0701027) Possession WITD Cocaine Base - 1st Offense

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

(a) July 24, 2018

(b) terms of sentence Fifteen (15) Years.

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes Plead

(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?

Trial counsel failed to appeal on defendant behalf.

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

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

i. None

ii. None

iii. None

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

i. None

ii. None

iii. None

(c) the date of each such result:

i. None

ii. None

iii. None

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

i. None

ii. None

iii. None

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

(a) Trial counsel failed to appeal on defendant behalf

(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, Search Warrant invalid,
- (b) Subject Matter Jurisdiction,
- (c) Due Process Violation, Search and Seizure Violation,
- (c) Plead Bargain invalid, Chain Of Custody
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment (61) Pages.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? None
- (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. None
- ii. None
- iii. None
- iv. None
- (b) the name and location of the Court in which each was filed:
- i. None
- ii. None
- iii. None
- iv. _____

(c) the disposition thereof:

- i. None
- ii. None
- iii. None
- iv. None

(d) the date of each such disposition:

- i. None
- ii. None
- iii. None
- iv. None

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

- i. None
- ii. None
- iii. None
- iv. None

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. None
- ii. None
- iii. None

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

- i. None
- ii. None
- iii. None

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

(a) Because this is the only challenge to the conviction.
 (b) _____
 (c) _____

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? My counsel abandoned me after the plea
 (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. Mr. Jeffrey S. Stephens, Esquire office of the Public
Defender, Human Services Building 1905 Duke Street, Room 210
Beaufort, South Carolina 29901
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Plea trial: Mr. Jeffrey S. Stephens, Esquire
Sentencing: Mr. Jeffrey S. Stephens, Esquire
 ii. _____
 iii. _____

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

The sentence vacated

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

No

STATE OF SOUTH CAROLINA)

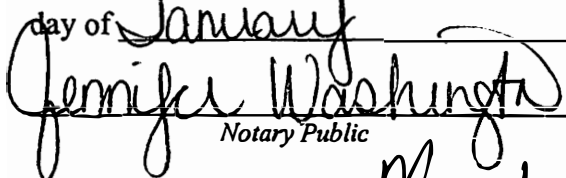
County of Beaufort)

VERIFICATION

I, Henry Edward Pinckney, # 377144, 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.



SWORN to and subscribed before me this 22nd
day of January, 2019.

 (L.S.)
Notary Public

My Commission Expires: March 8, 2020

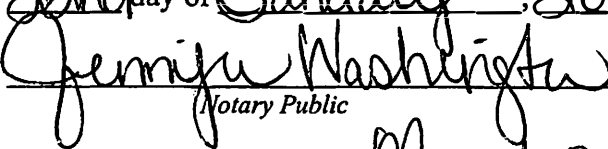
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Henry Edward Pinckney, # 377144, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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


Applicant

SWORN or affirmed to and subscribed before me this

22nd day of January, 2019

Notary Public

My Commission Expires: March 8, 2020

INEFFECTIVE ASSISTANCE OF COUNSEL

The defendant have suffered a miscarriage of Justice and his conviction only stands due to denial of due process and equal protection in the State court, in multiple and gross violations of the United States supreme court precedents and United States constitution, that constitutes an outrage of mockery of Justice that the federal courts sworn to uphold the United States constitution should not tolerate.

The defendant was unconstitutionally deprived of a full and fair trial, and denied due process of Law, by the acts and omissions appointed counsel, that deprived the defendant of effective assistance of counsel in violation of the fourteenth and sixth Amendment of the United States constitution; and Article 1, § 3 & 14 of the South Carolina constitution.

The counsel's ineffectiveness caused the defendant to be prejudiced by such shoddy defense. Curtis v. State, 407 S.E. 2d 643 (1991); also, Daniel v. State, 317 S.E. 2d 746 (1984). Applicant asserts trial counsel's representation fell below an objective standard of reasonableness, and had it not been for trial counsel's error the applicant would not have suffered prejudice and there is a reasonable probability the result would have been different. Martinez v. State, Supra, and Strickland, Supra.

The primary question is whether counsel's performance fell below an objective standard of reasonableness, and the performance prejudiced defendant to the extent that "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different.

Strickland v. Washington, 460 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed. 2d 674, 674, 698 (1984). A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial. "Cherry v. State, 300 S.C. 115, 117-18 386 S.E. 2d 624, 625 (1989).

Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation "Ard v. Catoe, 372 S.C. 318, 642 S.E. 2d 590 (2007) (quoting Thompson v. Wainwright, 787 F. 2d 1447, 1450 (4th cir. 1986)).

"[w]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.

"State v. Lounds, 380 S.C. 454 460, 670 S.C. 646, 649 (2008) (quoting Ard, 372 at 331-32, 642 S.E. 2d at 597); see also Sneed v. Smith, 670 F. 2d 1348, 1353 (1982)("to meet this standard an attorney must at minimum conduct appropriate investigation, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial.")(quoting Coles v. Peyton, 389 F. 2d 224, 226 (1968)).

Defense counsel was ineffective for failing to properly advise the applicant of the full scope of appellate review from an appeal of a guilty plea.

In this case, this court should find that the applicant was apprised of the constitutional right he was waiving including his right to remain silent, right to a jury trial and right to confront his accuser. However, the court overlooked the applicant's argument that defense counsel did not properly advise him of the full scope of appellate review of an appeal from a guilty plea. As defense counsel was required to do so, but failed in this duty, the applicant was entitled to relief on this ground.

Under the Law of this state a trial court may not accept a conditional guilty plea. Inre Johnny Lee W., 371 S.C. 217, 638 S.E. 2d (2006); see also State v. Peppers, 346 S.C. 502, 552 S.E. 2d 288 (2001). In other words, since a guilty plea constitutes a waiver of all alleged constitutional or other violations a criminal defendant cannot enter a plea in which he reserves the right to plead not guilty up appellate review and reversal of those issues.

State v. Truesdale, 278 S.C. 368 S.E. 2d 528 (1982).

The cardinal rule when evaluating the voluntariness of guilty pleas is to determine whether or not they were knowingly and intelligently entered. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). Defense counsel for a criminal defendant must advise his client of the right to appeal following a guilty plea only when there are exceptional circumstances present. Weathers v. State, 319 S.C. 59, 459 S.E. 2d 838 (1995).

Petitioner's case is one of clear and plain manifest injustice not only of his plea trial but there after to a gross degree. Petitioner's plea trial was extremely unfair.

An attorney's performance is deficient if it is not reasonable under prevailing professional norms. Id. When a defendant pleads guilty in exchange for trial counsel's promise of certain sentence and does not receive that sentence, his guilty plea is invalid. Craddock v. State, 327 S.C. 303, 499 S.E. 2d 251 (1997). This is true even where the defendant has admitted factual guilt. Id. Petitioner reasonable believed based on counsel representation, that he would receive a sentence not exceeding over ten (10) years in exchange for his guilty pleas.

In *Rodriguez-Penton vs. United States*, No. 15-6306 (6th cir. 2018), the United States court of Appeals for the sixth circuit held the petitioner had to meet the Strickland standard in order to prevail on a claim of ineffective assistance of counsel, a standard tailored to the guilty plea context in *Lefler v. Cooper*, 566 U.S. 156, 162-63 (2012). The court held that the first prong of the test was met because counsel had been objectively unreasonable.

Here, the court discussed the second prong within the context of guilty pleas, first citing *Hill v. Lockhart*, 474 U.S. 52 (1985); "Hill extended sixth Amendment in effective assistance of counsel claims to the guilty plea context, but held that Strickland prejudice requires a showing of a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial.

The court notes that *Missouri v. Frye*, expanded this holding "Frye thus clarified that individuals who allege ineffective assistance of counsel during the plea process may satisfy the prejudice prong even without a showing that they would have gone to trial were it not for counsel's deficient performance.

Noting that there is no constitutional right to engage in plea bargaining, the court notes that if plea negotiations take place, the defendant has a right to effective assistance of counsel in that process. If that assistance is ineffective, the question then becomes "whether the defendant can show a reasonable probability that, with proper advice, the outcome of those negotiations would have been different.

Applicant contends his trial counsel failed to investigate both factual and legal matter to determine if defense can be developed. It is a definitive objective demanded of counsel in certain aspects of their service. And with this discretion the courts should admonish that if the right to counsel guaranteed by the constitution is to serve its purpose, defendant can not be left to the mercies of incompetent counsel. Judge should strive to maintain proper standards of performance by attorney cases in their courts McMann v. Richardson, 377 U.S. 759 90 S.Ct. 1441 25 6, Ed. 2d 736 (1970), Marzillo v. State, of M.D. 561 F. R. 2d S. 565 544 Example.

Trial counsel coerced applicant into entering a guilty plea through deceptive tactics when applicant wished to stand trial by jury when counsel employs an unreasonable trial strategy and make that decision without a full assessment of the facts and evidence at issue counsel's performance is considered ineffective. Cave v. Singletary, 971 F. 2d 1513 (4th cir. 1992). Based of the aforementioned matter, counsel has provided ineffective assistance.

The applicant was unconstitutionally deprived of Law, by the acts and omissions of defense counsel' that deprived the applicant of effective assistance of counsel in violation of the fourteenth and sixth Amendments of the United States constitution; and Article 1, § 3 & 14 of the South Carolina constitution.

[T]he United States supreme court has held that the defendant must have a fair opportunity to present his defense, there be requiring the State to provide the basic tools for an adequate defense to an indigent defendant. Bailey v. State, 309 S.C. 455, 459, 426 S.E. 2d 503, 506 (1992)(quoting Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed. 2d 53 (1985)).

LETTER FROM ATTORNEY

On June 6, 2018, Defendant received a letter from his attorney Mr. Jeffrey S. Stephens, Esquire, I quote the letter I apologize that my investigator could not bring you the enclosed report we discussed a few weeks ago. My office was unexpectedly closed for most of two weeks due to air conditioning and electrical issues. I attempted to meet with you this afternoon to discuss your plea further, but delays at the Detention Center prevented me from meeting with you during the time allowed. I am therefore sending you this letter and I will discuss your plea with you further tomorrow.

As we discussed, the prosecutor in your case is asking you to plead guilty to some minor drug offenses and the charged leaving the scene of an accident with death charge in return for her recommendation of a ten (10) year jail sentence. I would be arguing for the judge to sentence you to a much lower jail sentence. This week, we have two visiting female judges who are also brand new to General Sessions court. I believe that they may offer the best chance to get a sentence of less than 10 years. Towards this end, it would help to have any friends and family members who can speak on your behalf present during your plea.

I understand that your fiance has been very involved in your case and may want to be heard if you plead guilty. I believe that your case will be called sometime on Thursday afternoon if you are willing to plead. If you are in touch with your family, I would let them know that they should plan on being present at the court of General Sessions the county courthouse around 2:00 p.m. or shortly thereafter on Thursday, July 19, If your plea gets continued, I should be able to contact family members to let them know about the continuance that morning.

Office of the Public Defender
Fourteenth Judicial Circuit
Stephanie Smart-Gittings, Circuit Defender

BEAUFORT COUNTY

Human Services Building
 1905 Duke Street, Room 210
 Post Office Box 525
 Beaufort, SC 29902
 (843) 255-5805 (Phone)
 (843) 255-9494 (Fax)

ALLENDALE, HAMPTON & JASPER COUNTIES
COLLETON COUNTY

1 Courthouse Square
 80 Elm Street, Room 133
 Post Office Box 506
 Hampton, SC 29924
 (803) 914-2240 (Phone)

319 N. Lucas Street
 Walterboro, SC 29488
 (843) 549-1633 (Phone)
 (843) 549-9543 (Fax)

June 6, 2018

Henry Pinckney
 Beaufort County Detention Center
Via hand delivery

Last One I reviewed

Re: CASE UPDATE

Dear Mr. Pinckney:

I apologize that my investigator could not bring you the enclosed report we discussed a few weeks ago. My office was unexpectedly closed for most of two weeks due to air conditioning and electrical issues. I attempted to meet with you this afternoon to discuss your plea further, but delays at the detention center prevented me from meeting with you during the time allowed. I am therefore sending you this letter and I will discuss your plea with you further tomorrow.

As we discussed, the prosecutor in your case is asking you to plead guilty to some minor drug offenses and the charged leaving the scene of an accident with death charge in return for her recommendation of a 10 year jail sentence. I would be arguing for the judge to sentence you to a much lower jail sentence. This week, we have two visiting female judges who are also brand new to General Sessions Court. I believe that they may offer the best chance to get a sentence of less than 10 years. Towards this end, it would help to have any friends and family members who can speak on your behalf present during your plea. I understand that your fiancé has been very involved in your case and may want to be heard if you plead guilty. I believe that your case will be called sometime on Thursday afternoon if you are willing to plead. If you are in touch with your family, I would let them know that they should plan on being present at the Court of General Sessions (the County Courthouse) around 2:00 p.m. or shortly thereafter on Thursday, July 19. If your plea gets continued, I should be able to contact family members to let them know about the continuance that morning.

Office of the Public Defender
Fourteenth Judicial Circuit
Stephanie Smart-Gittings, Circuit Defender



BEAUFORT COUNTY

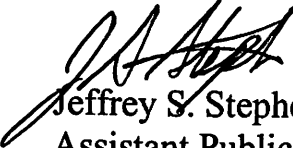
Human Services Building
1905 Duke Street, Room 210
Post Office Box 525
Beaufort, SC 29902
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**ALLENDALE HAMPTON & JASPER COUNTIES
COLLETON COUNTY**

1 Courthouse Square
80 Elm Street, Room 133
Post Office Box 506
Hampton, SC 29924
(803) 914-2240 (Phone)

319 N. Lucas Street
Walterboro, SC 29488
(843) 549-1633 (Phone)
(843) 549-9543 (Fax)

Respectfully,


Jeffrey S. Stephens
Assistant Public Defender

The court has ruled that a plea induced by the misrepresentation of defense counsel may be involuntary, Blackledge v. Allison, 431 U.S. 63 (1977). In Blackledge, Supra. FN. 8 the court indicated that the question of whether or not the defense attorney misinformed his client concerning the sentence promised had constitutional implications, see Santobello v. New York, 404 U.S. 257, 30 L.Ed. 2d 427, 92 S.Ct. 495; Brady v. United States, 397 U.S. 742, 25 L.Ed. 2d 74, 90 S.Ct. 1463.

(A PLEA AGREEMENT REST)

- plea agreement rest on contractual principles and each should Clark v. State, 468 S.E. 2d 653, receive the benefit of their plea bargain. Thrift v. State, 312 S.C. 282, 440 S.E. 2d 341 (1994). When an accused pleads guilty upon a promise of the prosecutor, the agreement must be fulfilled. State v. Torrence, 305 S.C. 45, 406 S.E. 2d 315 (1991). When the State's attorney has given his word in the form of a plea agreement or plea bargain and that bargain is accepted by the trial court, it behaves the State's attorney to make every reasonable effort to correct any deviation from the plea bargain when the deviation is called to his attention. Alston v. State, 38 MD. App. 611, 379 A 2d 754, 757. Once a court accepts a plea agreement, it is bound to honor its promise to perform the agreement, in so far as the terms of the agreement are within the power of the court to order. State v. Rhinehart, 312 S.C. 36, 430 S.E. 2d 536.

The defendant have suffered a miscarriage of justice and his conviction only stands due to severed denial of due process and equal protection in State court, in multiple and gross violation of the United States supreme court precedents and the United States constitution, that constitutes an outrage of justice that the federal courts who sworn to uphold the United States constitution should not tolerats.

The court has held that due process requires that a criminal defendant be entitled to present a complete defense. State v. Harris, S.C.427 S.E. 2d 909 (1993) citing California v. Trombetta 467 U.S. 479, 104 S.Ct. 2528 (1984); State v. Mabe, S.C. 412 S.E. 2d 386, (1991).

When it is clear that where even single error on the part of defense counsel which affected the rights of defendant is shown to be the product of neglect or ignorance, a denial of effective assistance of counsel has been established. Sallie v. North Carolina, 587 F. 2d 636 (4th cir. 1978). The exercise of the utmost skill during the trial is enough if counsel has neglected the necessary investigation and preparation of the case.

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that when the defendant entered his plea of guilty he did not understand the ramifications of pleading guilty moreover, there is no evidence defendant knowingly voluntarily and intelligently waived his right to a direct appeal of the trial proceedings. see e. g., Wilson v. State, 348 S.C. 215, 559 S.E. 2d 518 (2002).

A "defendant has the procedure right to one fair bite at the apple that is every defendant has a right to file a direct appeal and one post-conviction relief application. Applying these principles of Law it is clear counsel's performance was deficient because defendant did not understand his rights including the right to a direct appeal.

Criminal defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. Pittman v. State, 337 S.C. 597, 524 S.E. 2d 623 (1999).

A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea must be established by a complete record, and may be accomplished by colloquy between the court and the accused, between the court and the accused's counsel, or both. Robby v. State, 339 S.C. 29, 528 S.E. 2d 418 (2000).

Misrepresentation of counsel.

The court has ruled that a plea induced by the misrepresentation of defense counsel may be involuntary, Blackledge v. Allison, 431 U.S. 63 (1977). In Blackledge, supra. FN. 8 the court indicated that the question of whether or not the defense attorney misinformed his client concerning the sentence promised had constitutional implications, see Santobello v. New York, 404 U.S. 257, 30 L.Ed. 2d 427, 92 S.Ct. 495; Brady v. United States, 397 U.S. 742, 25 L.Ed. 2d 74, 90 S.Ct. 1463.

(A PLEA AGREEMENT REST)

A plea agreement rests on contractual principles and each should, Clark v. State, 468 S.E. 2d 653, receive the benefit of their plea bargain. Thrift v. State, 312 S.C. 282, 440 S.E. 2d 341 (1994). When an accused pleads guilty upon a promise of the prosecutor, the agreement must be fulfilled. State v. Torrence, 305 S.C. 45, 406 S.E. 2d 315 (1991). When the State's attorney has given his word in the form of a plea agreement or plea bargain is accepted by the trial court, it behooves the State's attorney to make every reasonable effort to correct any deviation from the plea bargain when the deviation is called to his attention. Alston v. State, 38 MD. App. 611, 379 A 2d 754, 757, once a court accepts a plea agreement, it is bound to honor

its promise to perform the agreement, in so far as the terms of the agreement are within the power of the court to order. State v. Rhinehart, 312 S.C. 36, 430 S.E. 2d 536.

NEGOTIATED GUILTY PLEA

The applicant received ineffective assistance of counsel prior to and at the time of enter of his plea of guilt in that trial counsel failed to (1) timely object to the trial court imposed sentence which exceeded the duration of sentence of the plea negotiated sentence of ten (10) years to which the applicant agreed; (2) timely seek leave of court to withdraw applicant's guilty plea on the basis that the court imposed sentence exceeded the duration of sentence of a plea bargain to which the applicant had agreed. In support thereof, applicant submits that at the time of entering into a guilty plea he was advised by trial counsel that a plea bargain had been "worked out" where by applicant would receive a concurrent sentence on the indicted charges not to exceed (ten years) in duration. Based on this understanding applicant proceeded to plead guilty when the court imposed a sentence of (15) fifteen years on the Possession of cocaine-1st offense, Possession with intent to Distribute cocaine Base, Possession with intent to Distribute Marijuana-2nd offense. Two charges were Noll prosse (in custody), applicant's trial counsel provided ineffective assistance of counsel by failing to timely object to the sentence as not comporting with the requirement of applicant's promised plea bargain and trial counsel further exacerbated his ineffective assistance of counsel when he failed to timely seek leave of court to withdraw applicant's plea of guilty as not being conformity with the substance of applicant's plea bargain.

The U.S. supreme court in Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed. 2d 427 (1971). Hold that where a guilty plea rests on a promise or agreement which can be said to be a part of the indictments or consideration then the agreement must be fulfilled. United-States-v.-Ringling, 986 F. 2d 504 (4th cir. 1993), the court held that a plea bargain rests on contractual principles, and that each party should receive the benefit. Id. The court further stated that a plea agreement analysis must be more stringent than a contract because the rights involved are fundamental and constitutionally based.

Id. The court also noted that the government had to be held to a higher degree or responsibility than the defendant for imprecision or ambiguities. Id. Another important holding in ringling is that where one district attorney states that the government will not prosecute, it encombers all other districts. Id. At 507. The court also stated: [I]T is the government at large not specific United States attorney or United States districts that are bound by plea agreements negotiated by agents of the government when a defendant's fundamental right are at stake, the right hand should know what the left is doing. Id. At 507 ciriminal Law. 982, 3 (3), 1280, 2 1210 (2) D.C.S.C. 1984. When government has entered into a plea agreement, Federal courts must enforce the agreement and not allow the government to retract its promise and when defendant has relied on government representation and has upheld his obligations an agreement the government will also be required to honor its promises U.S. v. CFU const. Co. Inc. 583 F. Supp. 197 affirmed 749 F. 2d 33. When accused pleas guilty upon a promise of proscuter agreement must be fulfilled. State v. Thompson, 292 S.E. 2d 581 278 S.C.

The counsel's deficiencies prejudiced the applicant in that applicant would otherwise have proceeded to trial and not have entered into any plea of guilty if he had known the sentence would or could have exceeded the ten (10) years cap that was promised as part of his plea bargain. As a result of the deficiencies of trial counsel as set out in enclosed letter from trial counsel on June 6, 2018, where defendant was informed of the (10) ten years sentence. Applicant's plea of guilty to the indicted charges was involuntary as that plea of guilty was induced by an unfulfilled plea bargain promise that the applicant would not be sentence concurrently to more than ten (10) years imprisonment.

Under Boykin v. Alabama, 395 U.S. 238 (1969), a guilty plea must be voluntarily and intelligently made. A defendant must be advised of his constitutional right on the record. A guilty plea may only be accepted where the defendant voluntarily and intelligently waives the privilege against self-incrimination, the right to a trial by jury and right to confront one's accusers. *Id.* Moreover, a guilty plea cannot be truly voluntary unless the defendant possesses an understanding of the Law in relation to the facts. McCaethy v. United States, 394 U.S. 459, 466 (1969). The trial counsel failed to timely seek leave of court to withdraw applicant's plea of guilty under Alford as not being in conformity with the substance of applicant's promised plea agreement from counsel. Applicant's trial counsel disavowed ineffective assistance of trial counsel. Jordan v. State, 374 S.E. 2d 683 (1988).

Applicant's trial deficiencies deprived the applicant in that applicant would have otherwise proceeded to trial as originally insisted upon and no circumstances would not have plea guilty under Alford or otherwise, had it not been for trial counsel's advice of ten (10) years plea agreement trial counsel was ineffective. Santobello v. New York, 404 U.S. 257 (1971).

The allegation of the applicant not having plea guilty knowingly, voluntarily and intelligently probably raises questions of fact which may be conclusively refuted by the record presently before this court. There really is no material difference between not having counsel and having one appointed who does not present the claims and issues at all or fails to substantially present them. If appointed counsel does not interview and ascertain grounds for relief from applicant, investigate, review the records research applicable Law or refuses to raise grounds at, then an applicant has not been provided with counsel. The South Carolina supreme court established Rule 71. 1 (d) (former S.C. Sup. Ct. Rule 50. 5) to effective the purpose of the uniform (PCR) counsel ascertain all grounds available for relief and present them. Not that the applicant do so, to mandate counsel to do so, and then excuse counsel for not doing so makes the rule friction. Especially, when the unskilled applicant is held liable for such and when raising claim of ineffective assistance of counsel an array of constitutional right are denied the applicant, because trial counsel first failed to be effective and ensure the trial was fair.

The court has ruled that a plea induced by the misrepresentation of defense counsel may be involuntary, Blackledge v. Allison, 431 U.S. 63 (1977). In Blackledge, supra. FN. 8 the court indicted that the question of whether or not the defense attorney misinformed his client concerning the sentence promised had constitutional implications, see Santobello v. New York, 404 U.S. 257, 30 L. Ed. 2d 427, 92 S.Ct. 495; Brady v. United States, 397 U.S. 742, 25 L Ed. 2d 74, 90 S.Ct. 1463.

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When the State's attorney has given his word in the form of a plea agreement or plea bargain and that bargain is accepted by the trial court, it believes the state's attorney to make every reasonable effort to correct any deviation from the plea bargain when the deviation is called to his attention. Alston v. State, 38 Md. App. 611, 379 A 2d 754, 757. Once a court accepts a plea agreement, it is bound to honor its promise to perform the agreement, in so far as the terms of the agreement are within the power of the court to order. State v. Rhinehart, 312 S.C. 36, 430 S.E. 2d 536.

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A "defendant has the procedure right to one fair bite at the apple that is every defendany has a right to file a direct appeal and one post-conviction relief application. Applying these principles of Law it is clear counsel's performance was deficient because defendant did not understand his rights including the right to a direct appeal.

Defense counsel was ineffective for failing to properly adviseing the defendant of the full scope of appellate review from an appeal of a guilty plea. In this case, the court should find that the defendant was apprised of the constitutional rights he was waiving including his right to remain silent, right to a jury trial and right to confront his accuser. However, the court overlooked the defendant's argument that defense counsel did not properly advise defendant of the full scope of appellate review of an appeal from a guilty plea. As defense counsel was required to do so, but failed in this duty, the defendant was entitled to relief on this ground.

Under the Law of this State a trial court may not accept a conditional guilty plea. In re Johnny Lee W., 371 S.C. 217, 638 S.E. 2d (2006); see also State v. Peppers, 346 S.C. 502, 552 S.E. 2d 288 (2001). In other words, since a guilty plea constitutes a waiver of alleged constitutional or other violations a criminal defendant cannot enter a plea in which he reserves the right to plead not guilty up appellate review and reveral of those issues. State v. Truesdale, 278 S.C. 368, 296 S.E. 2d 528 (1982). The cardinal rule whenevaluating the voluntariness of guilty pleas is to determine whether or not they were knowingly and intelligently entered. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). Defense counsel for a criminal defendant must advise his client of the right to appeal following a guilty plea only when there are exceptional circumstances present. Weathers v. State, 319 S.C. 59, 459 S.E. 2d 838 (1995).

INEFFECTIVE ASSISTANCE OF COUNSEL

The applicant suffered prejudice at the hands of trial counsel and the trial court, and the applicant's plead of guilty under North Carolina v. Alford, was entered involuntarily, unknowingly, unwillingly, and unintelligently, Hill v. Lockhart, 106 S.Ct. 366 (1995). See also Jordan v. State, 374 S.E. 2d 683 (1988).

Applicant's trial counsel's deficiencies prejudiced the applicant in that applicant would have otherwise proceeded to trial as original insisted upon and under no circumstances would not have plea guilty under Alford otherwise had it not been for trial counsel's advise. Nevertheless, the allegation of the applicant not having plea guilty knowingly, voluntarily, and intelligently probably raises questions of fact which may not be conclusively refuted by the PCR record presently before this court.

The trial counsel coerced applicant into entering a guilty plea through deceptive tactics when applicant wished to stand trial by jury. When counsel employs an unreasonable trial strategy and make that decision without a full assessment of the facts and evidence at issue counsel's performance is considered ineffective. Cave v. Singletary, 971 F. 2d 1513 (11th cir. 1992) Based of the aforementioned matters, counsel has provided ineffective assistance.

Petitioner's guilty plea failed to comply with the mandates set forth in Boykin v. Alabama. Due process of Law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers.

Applicant contends Due to his illiteracy to the Law he was entitled to rely upon his counsel to make reasonable decision. Pursuant to U.S. v. Dewalt, 92 F. 30 1209 without some authortative guidance, the defendant did not know whether he understood anything correctly at his plea trial. The trial counsel coerced applicant into entering a guilty plea through deceptive tactics when applicant wished to stand trial by jury when counsel employes and unreasonable trial strategy and make that decision without a full assessment of the facts and evidence at issue, counsel's performance is considered ineffective.

A valid waiver of these rights cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In State v. Armstrong, 263 S.C. 594, 211 S.E. 2d 889 (1975), this court held that the "essence" of Boykin, was to make the requirement of rule 11 of the federal rules of criminal procedure applicable to the statute. In State v. Patterson, 278 S.C. 319, 295 S.E. 2d 264 (1982), this court held that for there to be a valid waiver under the due process clause of the three constitutional right list in Boykin, the record must clearly establish it.

In Boykin, Suprs, the U.S. supreme court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of right occurring with the guilty plea.

Ineffective assistance of counsel, in violation of the fourth and sixth Amendments of the United States constitution and Article 1, section 13 & 14 of the South Carolina constitution.

Counsel should be afforded reasonable opportunity to prepare to defend the applicant and to confer as often without undue delay to advise him of his rights and to elicit matters of defense or to ascertain that potential defense are available. Applicant contends that his trial counsel failed to investigate both factual and legal matter to determine if defense can be developed. It is a definitive objective description of the competency normally demanded of counsel in certain aspects of their services. And with this discretion the courts should admonish that if the right to counsel guaranteed by the constitution is to serve its purpose, the defendant cannot be left to the mercies of incompetent counsel. Judge should strive to maintain proper standards of performance by attorney who are representing defendant's in criminal cases in their courts. McMann v. Richardson, 397 U.S. 759, 90 S.Ct. 1441 25 L.Ed. 2d 736 (1970), Marzullo v. State, of M.D. 561 F. R. 2d S.56 544 Example Coles v. Peyton, 389 F. 2d 224 226 (4th cir. 1968).

SEARCH AND SEIZURE

On 06/28/17 BCSO cpl. merrill and Sgt. Garst responded to 11 southwood Park Drive Apartment 46, (Hilton Head Gardens) in reference to serving arrest warrants upon Macheri Bryan, and Henry Pinckney. Quantities of suspected crack cocaine, Marijuana paper currency and a firearm were located within the kitchen of the residence during the investigation.

Officer's Actions:

Cpl. Merrill and sgt. Garst made contact with Macheri Bryan, upon knocking on the door of the apartment. Macheri Bryan, advised that Henry Pinckney was not present and only she and her two minor children were home. Cpl. Merrill and sgt. Garst entered the residence upon having and arrest warrants for both Macheri Bryan, and Henry Pinckney. Sgt. Garst advised Ms. Bryan that there was an active warrant for her arrest and that the

Beaufort County Sheriff's office (BCSO) was there to arrest her and serve it Bryan advised the officer's that she had been interviewed by the BCSO investigator sgt. Adams and that she had agreed to surrender to the BCSO when she was able to secure placement for her children while incarcerated. Cpl.

Merrill exited the residence to obtain sgt. Adams cellular telephone number. Bryan advised him that she had sgt. Adams telephone number in the kitchen and she and officer Merrill entered the kitchen to retrieve the number.

Officer's Actions:

upon entering the kitchen I observed a semiautomatic handgun on top of the refrigerator. Sgt. Garst immediately ordered Ms. Bryan to exit the kitchen. As Ms. Bryan and I exited the kitchen I noted a clear glass mason jar on top a shelf above a kitchen counter. I noted the jar contained green plant like material suspected to be marijuana contained within clear plastic I informed Cpl. Merrill of the location of the firearm and confimed with Sgt. Adams that Ms. Bryan was surrendering herself to the BCSO at a later time. I returned to the kitchen and removed the firearm from the top of the refrigerator. The firearm from the top of the refrigerator. The firearm was a ruger model P89 (9mm), serial number # 30762021. I removed the ammunition magazine from the firearm and noted an unknown number of live ammunition (hollow point) in the magazine I noted one live round of live ammunition (hollow point) was in the chamber. I removed the live ammunition from the firearm chamber and separated the magazine from the firearm. I made contact with BCSO Dispatch and upon NCIC inquiry on the firearm I was advised that the handgun had not been entered into NCIC as stolen. Upon exiting the kitchen I noted a clear plastic bag on top of a shelf above a kitchen counter located between the refrigerator and the exit of the kitchen. I noted that the plastic bag contained an unknown valve of paper currency. I further noted an unknown number of smaller clear plastic baggies within the larger bag which contained suspected marijuana.

I noted a small black cloth bag beside the large clear plastic bag. I noted that inside of a pocket on the front of the bag was a prescription bottle which contained an unknown number of various sized white rock like substances suspected to be crack cocaine. I also noted a metallic "marijuana grinder" beside the black cloth bag. I exited the kitchen and secured Ms. Bryan in handcuffs without incident.

There are some discrepancy in the deputies incident reports narrative from the Beaufort county Sheriff's office on 06/28/2017 as these individuals entered the apartment illegal without a search warrant. I have enclosed copies of the incident reports. The records indication the individuals that retrieve the evidence from the apartment was Sgt. Garst after he found the evidence he contacted Msgt. calhoun in reference to several findings inside the apartment.

Now we have Cpl. Merrill from the Beaufort county Sheriff's office. Cpl. Merrill entering the apartment as he indicated that he made contact with Macheri Bryan, upon knocking on the door of the apartment. Macheri advised that Henry Pinckney was not present and only she and her two minor children were home. Cpl. Merrill along with Sgt. Adams entered the residence with no search warrant in their hand.

I left all suspected drugs, money and paraphernalia as I found them. The handgun was rendered safe and placed on the kitchen counter. I exited the kitchen and secured Ms. Bryan in handcuffs I again asked Ms. Bryan if there were any other individuals in the residence and she advised that Henry Pinckney and her two children were in a bedroom adjacent to the living room.

The defendant contends there were no search warrant issue during the time deputies entered the apartment. Because Judge Coffey did not signed the search warrant until 4:00 p.m. on the day in question 06/28/2017, after the search had already occurred on 06/28/2017, at 11:40 a.m. at approximately 4:00 p.m. some four hours and 20 mintues later Judge Coffey signed the warrant for the location at 11 Southwood Park Drive apartment 46, (Hilton

Head Gardens). Deputies who were performing arrest warrants was not authorized to search the apartment as they did without a search warrant in their hand when they went in and search the location without the proper search warrant. The evidence found upon the deputies entering the kitchen was illegally obtained.

In Katz v. United States, the supreme court stated the basic constitutional rule that warrantless searches are per se unreasonable under the fourth Amendment subject only to a few specifically established and well delineated exceptions. To satisfy the warrant requirement, an impartial judicial officer must assess whether the police have probable cause to make an arrest, to conduct a search, or to seize evidence instrumentalities, fruits of a crime, or contraband. In Johnson v. United States, the supreme court stated;

[T]he point of the fourth Amendment is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officers engaged in the often competitive enterprise of ferreting out crime.

The magistrate must consider the facts and circumstances in a practical, common sense manner and make an independent assessment regarding probable cause. The evidence must prove the magistrate with a substantial basis for this determination. A judicial officer may issue an anticipatory search warrant in the absence of probable cause if there is a reason to believe probable cause will exist in the future. A search warrant is valid if the information in the affidavit supporting the probable cause determination is State. Appellate courts should accord great deference when reviewing a magistrate's decision to issue a warrant. Arrest warrant and search warrants protect different fourth Amendment interests; thus, each requires a different factual showing. An arrest warrant protects an individual from an unreasonable seizure and may be issued upon a showing of probable cause to believe a suspect is committing or committed an offense. A search warrant protects an individual

privacy interest in his or her home and possessions against unjustified police intrusions, one may issue upon a showing of probable cause to believe the Legitimate object of a search is located in a particular place.

When a search violates your fourth Amendment rights warrantless search and seizures are reasonable within the meaning of the fourth Amendment when conducted under the authority of voluntary consent. State-v.-Provet, 391 S.C. 494, 507, 706 S.E. 2d 513, 220 (Ct. App. 2011). Undoubtedly, a Law enforcement officer may request permission to search at any time. Id. Nevertheless, the State "bears the burden of establishing the voluntariness of the consent. Id. Determining the voluntariness of consent to search is a question of fact to be determined from the totality of the circumstances Id.

The fourth Amendment violation, however, occurred at the moment the police seized the handgun, drugs, and all contraband in petitioner's apartment without his consent and without a search warrant. Everything that followed after that was the fruit of the poisonous tree. Wong-Sun-v.-United-States, 371 U.S. 471, 83 S.Ct. 407 (1981). The lower court is then asked to determine if the error is harmless. But a trial judge is not to sit in judgment of his own decision. State-v.-Floyd, 303 S.C. 298, 400 S.E. 2d 145 (1991). It is the job of the reviewing court to determine if an error is harmless. State-v.-Black, 400 S.C. 10, 732 S.E. 2d 880 (2012); State-v.-Salley, 398 S.C. 160 727 S.E. 2d 740 (2012); Ex-partecrymes, 630 so. 2d 125 (Ala. 1993); Driven-v.-Com, 361 S.W. 3d 877 (Ky. 2012).

The defendant contends there were no search warrant issue during the time the officers entered the apartment in their hands. Because Judge Coffey did not signed the search warrant until approximately 4:00 p.m. on 06/28/2017, after the search had already occurred at 11:40 a.m. after four hours and 20 mintues had pass. For the location at 11 Southwood Park Drive Apartment 46, (Hilton Head Gardens). Police officers who were performing an arrest warrants was not authorized to search the apartment as they did without a search warrant in hand when they went in and search without a proper search warrant. The evidence found on top of the refrigerator a handgun upon entering the kitchen. You can see the police collected all the evidence before the search warrant were issue on the premises at 11 South wood Park Drive Apartment 46, Hilton Head Gardens. This incident report do not have a time on it face when this incident occurred.

Therefore, a warrant is not issued by an appropriate magistrate, municipal judicial officer, or judge of a court of record. See 77-370 S.C. OP. Atty Gen. 295 (1977) stating a warrant is properly issued only when signed by the magistrate and only upon a sworn affidavit). Thus, the warrant in this case was defective because the deputies collected the evidence before the search warrant could be issued. The search occurred on 06/28/2017, at approximately 11:40 a.m. in the morning four hours and 20 mintues at 4:40 p.m. Judge Coffey Signed the search warrant on 06/28/2017. This is all part of the record in this case. Look at Cpl. T. Mattox supplemental reports on 07/05/2017, @ 1000 hour from Beaufort county Sheriff's office supplemental narrative report. Service and execation of search warrant: On 06/28/2017, at approximately 1530 hours, Investigators with the Beaufort county Sheriff's office executed a search warrant at 11 Southwood Park Drive (Apartment 46,) Hilton Head, South Carolina. At the time of the search warrant no residents were present at the apartment.

Prior to any search of the location the exterior and interior of the location was videotaped by deputy Cpl. Mattox. Investigators with the Beaufort county Sheriff's office. The warrant were then assigned and divided into search teams by Cpl. Mattox, and designated specific areas of the location to search.

The fourth Amendment guarantees "[t]he right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures. State-v.-Spears, 393 S.C. 466, 482, 713 S.E. 2d 324, 332 (Ct. App. 2011).

The state, like a defendant, gets only one bite. To allow otherwise would be to violate due process of Law and the equal Administration of Justice. Wardius-v.-Oregon, 412 U.S. 470, 93 S.Ct. 2208 (1973); State-v.-Hart, 306 S.C. 344, 412 S.E. 2d 380 (1991).

Warrantless searches and seizures are reasonable within the meaning of the fourth Amendment when conducted under the authority of voluntary consent. "State-v.-Provet, 391 S.C. 494, 507, 706 S.E. 2d 513, 520 (Ct. App. 2011). Undoubtedly, a Law enforcement officer may request permission to search at any time. "Id. nevertheless, the state "bears the burden of establishing the voluntariness of the consent. Id. Determining the voluntariness of consent to search is a question of fact to be determined from the totality of the circumstances.

In State-v.-Forrester, 343 S.C. 637, 541 S.E. 2d 837 (2001) the supreme court of South Carolina explained that pursuant to the South Carolina Constitution, "suspects are free to limit the scope of the searches to which they consent. "343 S.C. at 648, 541 S.E. 2d at 843, continuing the Forrester court stated, "[w]hen relying on the consent of a suspect, a police officer's search must not exceed the scope of the consent granted or the search becomes unreasonable what would the typical reasonable person have understood by the exchange between the officer and the suspect? State-v.-Mattison, 352 S.C. 577, 585-86, 575 S.E. 2d 852, 856 (Ct. App. 2003)(citation omitted).

The inevitable discovery doctrine applies to alleviate "formalistic" and "pointless applications of the exclusionary rule, Nix, 467 U.S. at 445, 104 S. Ct. 2501, but it does not and cannot eliminate Fourth Amendment protections, 159 F. 3d at 841. Where "no exception to the warrant requirement applies, and no warrant had been obtained, and nothing demonstrates that the police would have obtained a warrant absent the illegal search, the inevitable discovery doctrine has no place. Id. at 941 (emphasis in original).

To permit the presence of evidence establishing probable cause to white wash the unlawful search would eviscerate the warrant requirement. AS Judge Posner has noted, " a warrant is a condition precedent to a Lawful search or seizure, other then in exceptional circumstances of which super fluity is not one. United States -v.- Cordona --Rivers, 904 F. 2d 1149, 1155 (7th cir. 1990).

All of the evidence obtained as a result of the illegal seizure of the Drugs, Handgun, and Money, was the fruit of the poisonous tree and should not have been admitted. Wong-Sun-v.-U.S., 371 U.S. 471, 83 S.Ct. 407 (1963); State v.-Brown, 389 U.S. 473, 698 S.E. 2d 811 (Ct. App. 2010; Commonwealth-v.-Benoit, 382 Mass. 210 415 N.E. 2d 818 (1981).

In admitting the evidence of the discovery of the drugs, Handgun, and money, in the kitchen of the residence the trial would appears that this is inevitable discovery. "The court's statement suggests it admitted the evidence under the inevitable discovery doctrine, which is an exception to the exclusionary Rule. State v.-Jenkins, 398 S.C. 215, 227, 727 S.E. 2d 761, 767 (Ct. App. 2012). However a trial court has no need to consider whether the exclusionary rule applies until it has first determined the police violated the defendant's fourth Amendment rights. The record does not indicate the trial court ever made that determination.

CHAIN OF CUSTODY

The defendant contends that the chain of custody proof of chain of custody need not negate all possibility of tampering but must establish a complete chain of evidence as far as practicable. State v. Williams, 297 S.C. 290, 376, S.E. 2d 181 (1990), the defendant contends that in applying this Rule, we have found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the evidence was not established at least as far as practicable. State v. Cribb, Supra; Raino v. Goodyear, Supra; State v. Williams, Supra; Benton v. Pellam, see also State v. Joseph, 328 S.C. 352, 491 S.E. 2d 275 Ct. App. 1997. Chain of custody 460 S.E. 2d 573, 319 S.C. 312 S.C. 1995. Party offering evidence must trace possession of evidence and what was done with it from time it was taken until final analysis. State v. Singleton S.C. 1992, chain of custody requires that where analysed evidence has passed through several hands, evidence must not leave it to conjecture as to who had evidence and what was done with it between taking and analysis, State v. Cribb, 426 S.E. 2d 306, 310 S.C. 518. Party offering evidence is required to establish complete chain of evidence, tracing possession from time evidence is taken to final analysis, identity of persons who had handled the evidence must be established Id. S.C. 2001. Proof of chain of custody need not be negate all possibility of tampering so long as the chain of possession is complete. State v. Carter, 544 S.E. 2d 835, 344 S.C. 419. Where there is a weak link in the chain of custody, as opposed to missing link, the question is only one of credibility and not of admissibility. State v. Johnson, 456 S.E. 2d 442, 318 S.C. 1994. Because evidence involving drugs may easily be tampered with party offering drugs into evidence must establish that chain of custody as far as practicable but need not negate all possibility of tampering Id. There are some discrepancy in there incident reports who entered the apartment first concerning the drugs, and all the material they found in the kitchen. The report state that Cpl. Merrill and Sgt. Garst made first contact with Ms. Macheri Bryan,. There is also a deputy report

for the same incident on 06/28/2017, made by Cpl. T. Mattox on 07/05/2017, state that he is also from the Beaufort county Sheriff's office. supplement number 17S136947. He made statements that he was the first one who made contact with Ms. Bryan. The record will show the truth.

Who received the evidence that was turn over to evidence custodian reflected upon credibility of the evidence rather than its admissibility 568 elements of offenses in general. State v. Fennel, 531 S.E. 2d 512, 346 S.C. 266 S.C. App. 2003. To sustain a conviction the State must prove every element of the offense charged. State v. Parris, 578 S.E. 2d 736, 353 S.C. 582 S.C. App. 2000. The State is required to prove every element of a charged offense to obtain a conviction. State v. Jackson, 527 S.E. 2d 367, 338 S.C. 565 S.C. APP. 1997. State bears the burden of proving all element of criminal offense beyond a reasonable doubt.

DUE PROCESS

Due process as guaranteed by the fourteenth Amendment requires that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof defined as evidence necessary to convince a trier of facts beyond a reasonable doubt of the existence of every element of the offense. Jackson v. Virginia, 443 U.S. 307, 316, 99 S. Ct. 2781. 2781, 2787 (1979). A strong case of ineffective representation of counsel must appear to warrant the intervention by the trial judge since such intervention it self may invade the accused's constitutional rights. State v. Lewis, 179 S.E. 2d 616, 255 S.C. 466. Where an accused's representation is patently inadequate and incompetent, trial judge is under a duty to interfere to extent of insuring that rights of accused are afforded adequate protection State v. Lewis, 179 S.E. 2d 616, 255 S.C. 466.

THE STATUTE CITING

One of our South Carolina court's primary functions in the interpreting of a statute is to ascertain the direct intention of the Legislative intent and apply the statute according to its literal meaning. In construing such a statute, the words or its language must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Statutes 24(1). The literal meaning and Legislative intent of our common Law statute, section 17-19-30 (1976) is quite clear cut by it's language. The common Law requirements in South Carolina remain the same on every particular as they stood at common Law of older times State v. Judges, 208 S.C. 497, 38 S.E. 2d 715, 7119 (1946).

Determining the proper interpretation of a statute is a question of Law, and the court reviews questions of Law de novo, Town of summerville v. City Of N. Charleston, 378 S.C. 107, 110, 662 S.E. 2d 40, 41 (2008). "Statutory construction must begin with the language of the statute. Kofe v. U.S., immigration & Naturalization serv. 60 F. 3d 1084, 1088 (4th cir. 1995). In interpreting statute language, words are generally given their common and ordinary meaning. Notilcal, for students with ** 244 Disabilities Educ. & Legal Def. Fund v. Allen, 152 F. 3d 283, 288 (4th cir. 1998). Where the language of the statute is unambiguous, the court's inquiry is over and the statute must be applied according to its plain meaning. Hall v. McCoy, 89 F. Supp. 2d 742, 745 (M.D. Va. 2000).

INDICTMENT VIOLATION

Did the trial court have subject matter jurisdiction to enter a conviction or impose a sentence upon indictment numbers (2017-GS-0701123) Hit and run involved in accident with Death, (2017-GS-0701026), Possession with intent to distribute marijuana - 2nd offense, (2017-GS-0701027) Possession with intent to distribute cocaine base - 1st offense. The amount of drugs is not in the body of the indictments there was a variance between the essential elements alleged in the indictments numbers (2017-GS-0701123), (2017-GS-0701026), and (2017-GS-0701027). And the state's failure to establish those elements by the evidence presented?

SUBJECT MATTER JURISDICTION

Defendant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 342 S.C. 342, 540 S.E. 846 (2001), overrule in part by Gentry, 610 S.E. 494. However, [c]ircuit courts obviously have subject matter jurisdiction to try criminal matter. "Gentry, 610 S.E. 2d 494; See also S.C. const. Art. v § 7. Thus, the defendant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The defendant's conviction involved a criminal charge in General Session court. Thus, the circuit court had subject matter jurisdiction.

One of our South Carolina courts primary functions in the interpreting of a statute is to ascertain the direct intention of the Legislative intent and apply the statute according to it's literal meaning. In construing such a statute, the words or it's language must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Statutes 24(1). The literal meaning and Legislative intent of our common Law statute section. 17-19-30 (1976), is quite clear cut by its language. The common Law requirement in South Carolina remain the same in every particular, as they stood at common Law of older times. State v. Judge, 208 S.C. 497, 38 S.E. 2d 715 7119 (1946), and

Under the South Carolina constitution, no person may be tried for any crime in circuit court except on a presentment of an indictment of a grand jury of the county where the crime has been committed or unless he waives presentment or is tried for an offense whose elements are included within a properly indicted S.C. const. Art. I§11. Joseph v. State, 351 S.C. 571 S.E. 2d 280 (2002). Additionally, a person may not be convicted with irrelevant, prejudicial evidence of uncharged had act. Rule 404(b) SCRE. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

Without a proper indictment, the court lack subject matter jurisdiction to enter conviction or impose sentence for a crime. S. C. code of Laws Ann. 17-19-10, S.C. const. Art. I§11. An indictment is proper if it is sufficient in charging the elements of the offense and is returned true bill by the grant jury, or presentment is waived. State v. Beacham, 342 S.E. 2d 597 (1986).

Example: If a prosecutor simply drew up an "indictment" had a grand jury foreperson sign it and then used it to charge the defendant with a criminal offense, it would clearly be dismissed, as a vilation of the fifth Amendment. This is because the indictment would in no sense be the product of a constitutionally required grand jury proceeding. So, would an indictment issued by a kangaroo grand jury one whose deliberations were so overbarne by a prosecutor or judge that the indictment was, in effect, the prosecutor's or judge's handi work, and not the result of a considered judgment by an independently functioning grand jury. See United States v. McKenzie, 678 F. 2d 629, 631 (5th cir. 1982), holding that an indictment may be dismissed when prosecutorial misconduct amounts to overbearing the will of the grand jury so that the indictment is in effect, that of the prosecutor rather than the grand jury; see also Stirone v. U.S., S.Ct. 270, 273 (1960).

The very purpose of the requirement that a man be indicted by a grand jury is to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge. Subsequent supreme court cases have⁴ reaffirmed the importance of the fifth Amendment's grand jury clause, implying that courts have the authority to dismiss an indictment that is the product of a grand jury process so flawed that the grand jury's independence has been infringed. In Bank of Novascotial, 108 S.Ct. 2369 (1988), prejudice is one of the key factors that must also be found in a non-constitutional error claim in the grand jury.

The fifth Amendment requires that an indictment issue from an independent grand jury. Where a grand jury proceeding is so corrupted by the conduct of a prosecutor or judge that it substantially influenced the grand jury's decision to indict was free from substantial influence. Bank-of-Novascotia, 108 S.Ct. at 2374, courts should not hesitate to remedy the violation because the indictment not in relity, of a grand jury. U.S. const. Amend. v.

The Bank of novascotia, inquiry is written in the disjunctive meaning the indictment may be dismissed if it is found either that the grand jury was substantially influenced or if there is grave doubt that the decision was not free from substantial influence. The disjunctive test is deprived from the harmless error analysis found in Koteako v. U.S., 328 U.S. 750, 66 S.Ct. 1239, 9 L.Ed. 1557 (1946), and U.S. v. Lane, 106 S.Ct. 725 (1986). Under this test, "grave doubt" means that in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise. O'Neal v. McAninch, 115 S.Ct. 992, 994, (1995). Due to defendant's illiteracy to the Law he was entitled to rely upon his trial counsel to make a reasonable decision. Pursuant to U.S. v. Dewalt, 92 F. 301209 without some authortative guidance, the defendant cannot know whether he understood anything correctly at his plea trial. In this case the question before the court was whether or not there was prejudice to the defendant as a result of insufficient factual allegations contained in the indictment.

The defendant was unconstitutionally deprived of a full and fair trial, and denied due process of Law, by the acts and omissions of counsel, that deprived the fourteenth and sixth Amendments of the United States constitution, and Article 1 § 3 & 14 of the South Carolina constitution. As stated in State v. Smalls, 364 S.C. 343, 613 S.E. 2d 754 (2005). Although, an indictment does not confer subject matter jurisdiction, due process requires that a criminal defendant be properly served with a valid indictment. State v. Coleman, 17 S.C. 473 1882 WL 5605 (1882).

**ORIGINAL CHARGED FROM BEAUFORT COUNTY FOURTEENTH JUDICIAL
CIRCUIT COURT?**

**2017-GS-070-1123) Hit and run duties of Driver involved in
accident with death. Indicted on November 16, 2017.**

**2017-GS-070-1026) Possession with intent to distribute marijuana
- 2nd offense. Indicted on December 14, 2017.**

**2017-GS-070-1027) possession with intent to distribute cocaine
Base - 1st offense. Indicted On December 14, 2017.**

NOLLE PROSSE (IN-CUSTODY)

**2017-GS-070-1831) Habitual traffic offender. Indicted on
November 16, 2017.**

**2017-GS-070-1933) Possession with intent to distribute controlled
substance (schedule IV). Indicted on December 14, 2017.**

**2017-GS-070-1934) Possession of cocaine - 1st offense.
Indicted on November 16, 2017.**

**2016-GS-070-2070) Possession with intent to distribute cocaine
Base. Indicted on February 23, 2017.**

**2016-GS-070-2071) Habitual traffic offense. Indicted on
February 23, 2017.**

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF BEAUFORT

2016GS0702070

At a Court of General Sessions, convened on February 23, 2017, the Grand Jurors of Beaufort County present upon their oath:

Possession with Intent to Distribute Cocaine Base

That in Beaufort County, South Carolina, on or about November 14, 2016, the Defendant, Henry Edward Pinckney, did possess with intent to distribute, dispense, or deliver cocaine base, all in violation of Section 44-53-375(B)(1), et al. of the Codes of Law of South Carolina.

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



Solicitor

(EXHIBIT ONE)

WITNESSES

T. Nelson - BCSO

DOCKET NO. 2016GS0702070

The State of South Carolina

County of Beaufort

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

Defendant

COURT OF GENERAL SESSIONS

February Term 2017

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

ARREST WARRANT NUMBER

2016A0720300210

THE STATE

vs.

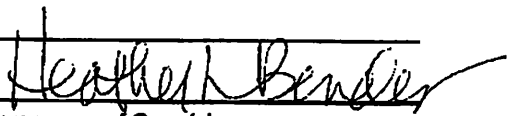
Henry Edward Pinckney

Indictment For

**Possession with Intent to Distribute
Cocaine Base**

SC Code: 44-53-375(B)(1)

CDR Code: 3014


 Foreperson of Grand Jury

Date:

FEB 18 2017

Defendant

VERDICT

Witness:

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

(EXHIBIT ONE)

CAN THE STATE OF SOUTH CAROLINA MAINTAIN A CONVICTION THAT
RESULTED FROM AN ILLEGAL GRAND JURY, A VOID INDICTMENT AND
CRIMINAL ACTS

Here Petitioner will show that State knowingly employed the use of unlawful procedures for the return and publication of its true-billed indictments. That State unlawfully impaneled its grand jury outside the jurisdiction of the court of General Sessions, and then willfully caused false and misleading information to be printed in its indictment. Consequently, the unlawful and illegal acts committed by State require the court to hold petitioner's indictment null and invalidate all judicial proceedings taken in this case.

A. Invalid Proceedings an void Indictment:

The matter presented below for review is not a challenge to the court's general grant of authority to hear and determine cases. That authority is rightfully granted by our constitution, State v. Gentry, 363 S.C. 93, 610 S.E. 2d 494 (2005), and will not be at issue here.

Instead Petitioner contends that the court of General Sessions failed to comply with statutory Law jurisdictional in nature, specifying the manner and means for lawful return of true-billed indictments.

"The jurisdiction of a court over the subject matter of a proceeding is determined by the constitution, the Laws of the State, and is fundamental. State v. Heyward, 564 S.E. 2d 379 (S.C. App. 2002)(citing Anderson v. Anderson, 299 S.C. 110, 113, 382 S.E. 2d 897, 900 (1989)(emphasis added). Subject matter jurisdiction may not be waived even with consent of the parties, and may be raised at any time, Brown v. State, 343, S.C. 342, 540 S.E. 2d 846 (2001).

And, "no indictment may be true billed by grand jury when circuit court lacks jurisdiction, since grand jury's jurisdiction is coextensive with criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry..."State v. McClure, 277 S.C. 432, 289 S.E. 2d 158 (S.C. 1982) and State v. Funderburk, 259 S.C. 256, 191 S.E. 2d 520 (1972),

State v. Wheeler, 259 S.C. 571, 193, S.E. 2d 515 (1972).

The primary question before this court are whether S.C. code Ann. § 14-9-210 is jurisdictional in nature and whether it requires that all criminal indictments must be issued through a grand jury impaneled before the court of General Sessions, and whether State's noncompliance with mandatory indictment procedures, and willful acts of perjury have rendered all judicial proceedings invalid and its indictments null.

The statutory provisions at issue are contained in section 14-9-210, and provide in pertinent part that:

"The county solicitor shall prepare and through the presiding judge of the court of General Sessions submit to the grand jury while in attendance upon the court of General Sessions, bills of indictments in all cases pending in the county court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the grand jury. The grand jury shall act thereon, and shall report its action to the presiding judge of the court of General Sessions and said judge shall direct the clerk of the court of General Sessions to report the same to the presiding judge of the county at its next ensuing term.

The statutory terms above are clear, unambiguous, and require the county solicitor to prepare and submit bills of indictment through the presiding judge of the court of General Sessions to a grand jury impaneled under the authority of the court of General Sessions. NO exceptions.

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E. 2d 578, 581 (2000), State v. Martin, 293 S.C. 46, 358 S.E. 2d 697 (1987). When a Statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning, Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E. 2d 177, 179 (1994). And words must be given

their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statutes operation, Bryant v. City of Charleston, 295 S.C. 408, 368 S.E. 2d 899 (1998). Moreover, penal statutes must be construed strictly against the state and in favor of defendant, State v. Blackmon, 304 S.C. 270, 403 S.E. 2d 660 (S.C. 1991).

Accordingly, section 14-9-210, requires strict compliance with its provision, and mandates that the grand jury must be impaneled under the jurisdiction of the court of General Sessions before lawful return of a true billed- indictment can take place.

However, here, evidence will establish that State unlawfully impaneled its grand jury outside the jurisdiction of the court of General Sessions, and then willfully printed and published false and misleading information in its indictment in order to keep secret its violations of statutory Law.

Thus a controversy has come before the court.

In this case, True bill of indictment prints that it was returned, "At a court of General Sessions convened on 2/23/2017 the Grand jurors of Beaufort county present upon their oath, ~~see exhibit 1~~. ~~The indictment is signed~~ by the solicitor/Assistant solicitor and sealed with a true bill stamp. (See exhibit 1). Further, the title page of State's indictment prints that it was published at a court of General Sessions term as convened on 2/23/2017 (See exhibit 1).

However, the evidence presented below will conclusively establish that State printed and published FALSE information in the indictment.

The terms of the court of General Sessions for Beaufort county are fixed by S.C. code Ann. § 14-5-410 and which DOES NOT offer provision for a court to be open on 2/23/2017. Thus, State could not have lawfully returned its indictment "at a court of General Sessions, convened on 2/23/2017 as FALSELY alleged in State's indictment. See exhibit 1).

Also note the same date on the true bill stamp, because NO such court is allowed to be open.

One additional piece of evidence very clearly settles the matter of State's FALSE condition. The information contained in Exhibit 1 also establishes that no special term of the court of General Sessions was convened on 2/23/2017 under the provisions of either section 14-5-410, section 14-5-910, or section 14-5-920.

The attached judicial Department Circuit Court Calendar for the 2/23/2017 County Beaufort court terms proves beyond doubt that NO court of General Sessions was convened on 2/23/2017 as FALSELY printed in petitioner's indictment. (See exhibit 1).

Therefore, recognizing the jurisdictional requirements set forth in section 14-9-210, mandating the only process allowed for impaneling a lawful grand jury, and often consideration of the facts and evidence presented above, it becomes apparent that Petitioner was indicted outside the jurisdiction of the court of General Sessions and by a mode of procedure that State had no lawful authority to adopt.

When a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way. Thus, since the court utilized an unlawful mode of procedure not allowed under 14-9-210, State lacked the requisite jurisdiction to complete return of its true-billed indictment.

As established above, section 14-9-210 is clearly a jurisdictional statute and sets forth mandatory procedure to be utilized by State for lawful return of a true-billed indictment. A substantial body of South Carolina Law holds that a failure to comply with statutory Law jurisdictional in nature deprives the court of subject matter jurisdiction, State v. Lee, 364 S.E. 2d 372 (S.C. App. 2002); State v. Brown, 370 S.E. 2d 559 (Ct. App. 2002); State v. Felder, 437 S.E. 2d 43 (S.C. 1993); State v. Richburg, 304 S.C. 162, 403 S.E. 2d 315 (1991); State v. Loftin, 275 S.E. 2d 575 (S.C. 1981); Gray v. State,

276 S.C. 634, 281 S.E. 2d 226 (S.C. 1981); State v. Brunson, 274 S.C. 220, 262 S.E. 2d 44 (1980); State v. Castleman, 64 S.E. 2d 250 (1951), and many more.

Consequently, and in keeping with the mandatory provision of section 14-9-210, State has NO jurisdiction to issue return of true-billed indictment except during a time when the court of General Sessions is lawfully convened to oversee the grand jury process. Any acts of the court taken outside those statutory restrictions would by necessity be null and void. In fact, ~~our~~ ^{supreme} court has already determined that NO indictment may be true billed by a grand jury when the court lacks jurisdiction.

The grand jury must be impaneled under the jurisdiction of the court of General Sessions before lawful return of indictment can take place. See State v. McClure, State v. Funderburk, and State v. Wheeler.

Therefore since NO court of General Sessions was convened on the date 2/23/2017 indictment was allegedly true billed, the grand jury proceedings would therefore by necessity be held invalid, and its illegally issued indictment null and without binding legal effect.

B. Court Rules Order or other processes

It should be noted that section 14-9-210 is not a local rule or statute but a general provision applicable to the courts in every county, and as shown, mandates that the grand jury must be impaneled under the jurisdiction of the court of General Sessions before lawful return of a true bill indictment can take place. Thus, section 14-9-210 is clearly a jurisdictional statute, and sets forth the only process allowed for lawful return of indictment.

No local rule of court, administrative order, policy, or other procedure can take precedent over statutory Law, which is always controlling. See S.C. constitution Article §§ 1. 4. and State v. Cottingham, 77 S.E. 2d 897, 224 S.C. 181 (1953)(statutes override rules of court if in conflict); State v. Duncan, 264

S.C. 2d 421 (S.C. 1980)(Circuit Court rule promulgated by individual judicial circuit was unconstitutional and void).

However, the issue of whether or not a local rule, order, policy, or procedure was utilized for process and return of True Billed indictment is irrelevant, because by State Law, it would still have to be in agreement with the provisions of section 14-9-210 for it to be constitutional.

Article V. section 4 of our constitution provides in pertinent part:

"The Supreme court shall make rules governing the administration of all court of the State, subject to the statutory Law the supreme court shall make rules governing the practice and procedures in all such courts. "[Emphasis added]

And S.C. code Ann. § 14-5-310, Rules of court:

"The circuit courts may make and establish all necessary rules for the orderly conducting of business in said courts, provided such rules are not repugnant to the Laws of the State or the rules prescribed by the justices of the supreme court and circuit judges" [Emphasis added]

Thus, under those requirements NO rules can be made or established for process and return of indictment, unless it comports with section 14-9-210. Otherwise, it would be Unconstitutional and null, being without binding legal effect.

Additionally, it should be noted that the court of Common Pleas is vested with NO authority to take any action on matters pertaining to return of true-bill criminal indictments. The court is made up of the court of Common Pleas which hears civil actions and the court of General Sessions which hears criminal cases... "See Dove v. Gold Kist Inc., 314 S.C. 235, 442 S.E. 2d 598, 600 (S.C. 1994); See also S.C. constitution Article V § 1.

Thus, there is no grant of concurrent jurisdiction, and therefore NO true bill criminal indictments can be lawfully issued through grand jury proceedings held before a court of Common Pleas.

Lastly, it should also be noted that a circuit court judge retains NO authority on his own standing to conduct and oversee grand jury proceedings outside the bounds of a lawfully convened court of General Sessions.

"Under our judicial system the presiding judge in the circuit court loses jurisdiction with the adjournment of the term. See State v. Best, 257 S.C. 361, 186 S.E. 2d 272 (1972)(citing State v. Thompson, 122 S.C. 407, 115 S.E. 326). Also see State v. Rinheart, 430 S.E. 2d 536 (S.C. App. 1993).

Therefore if raised by State, there would be no merit to the contention that a judge on his own standing retains authority to impanel a grand jury after the close of court, because in this case the record shows that no lawful term of General Sessions court was in progress on 2/23/2017 (See exhibit 1). And as established a judge loses jurisdiction with the adjournment of court. Thus, NO term of court, NO lawful judicial authority.

Accordingly, and in this case, no court rules, order procedures can be invoked or cited by State to as save its unlawful grand jury process, and resulting null indictment. Therefore execute justice and righteousness.

C. Criminal violations

Also brought before the court for judgment area violations of S.C. code Ann. § 16-9-10. Offense Against Public Justice and S.C. code Ann. § 16-17-410.

[Offense Against Public Justice]

S.C. code Ann. § 18-9-10, "perjury and subornation of perjury. States in pertinent part: A (2) it is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, or report, or form required by the Law of this State.

B (2) A person who violates the provisions of subsection A (2) is guilty of a misdemeanor, and upon conviction, must be imprisoned not more than six months, or fined not less than one hundred dollars, or both. A person may be convicted under this section ... if he commits perjury by his own act, consent, or agreement.

First, as previously shown in subsection A, S.C. code Ann. § 14-9-210, mandates that the county solicitor shall prepare and process bills of indictment through the jurisdiction of the court of General sessions. Also established in subsection A, was the fact that 2/23/2017 indictment was sealed with a true bill stamp, signed by the solicitor/assistant solicitor, and contained false information incorrectly printing that it had been processed. At a court of General Sessions, convened on 2/23/2017 "compare Exhibit 1 with Exhibit 1, clearly showing that no General Sessions court was convened on 2/23/2017.

Second it should be noted that a criminal indictment is a document required by the Law of this State. In Gentry, our supreme court determined that an indictment is a notice document required by State constitution and statute. See S.C. constitution Article 1, § 11 and Article v. § 22 [footnote omitted], S.C. code Ann. § 17-19-10 (2003) ("no person shall be held to answer in any court for an illeged crime or offense, unless upon indictment by a grand jury, except in specified instances).

Thus, Petitioner true bill indictment satisfies the provisions of section 16-9-10 A (2) perjury, that specify the false information must be included in a document ... required by the Law of this State.

Third, and importantly, it must be emphasized for purposes of blame that an solicitor/assistant solicitor hold full knowledge an understanding of the Law of this State. It is a requiement of the high office of a prosecutor.

The prosecutor occupies a quasi-judicial position and must see that justice is done, that no conviction takes place except in strict conformity with the Law. See e. g., State v. Quattlebaum, 338 S.C. 441, 527, S.E. 2d 105 (S.C. 2000); State v. Dueden, 264 S.C. 86, 212 S.E. 2d 587 (1975); State v. King, 222 S.C. 108, 71 S.E. 2d 793 (1952).

Hence, the solicitor/Assistant solicitor is required to know and obey the legal mandates of section 14-9-210, and lawfully impanel a grand jury accordingly.

As presented above, instead of discharging his responsibilities in conformity with State Law, the solicitor/Assistant solicitor broke his oath of office. The solicitor/Assistant solicitor intentionally violated the provisions of section 14-9-210 by unlawfully processing True Billed indictment (See subsection A above), outside the jurisdiction of the court of General Sessions, and then by willfully printing false and misleading information in the indictment incorrectly stating that it had been returned at a Term of court of General Sessions (See subsection A above). Thus he committed the offense of perjury and must be punished accordingly.

The Solicitor/Assistant Solicitor is now subject to the governing Authority.

[Conspiracy Against Public Policy]

S.C. code Ann. § 16-17-410 provides in pertinent part:

The common-Law crime known as "conspiracy" is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object, or lawful means. A person who commits the crime of conspiracy is guilty of a felony and upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.

From the evidence shown above and in subsection A, of this memorandum, it was determined that the solicitor/Assistant solicitor committed an offense of perjury against public justice by willfully printing false information in petitioner's State indictment.

Here the facts and evidence will establish that the solicitor/ Assistant solicitor also conspired with several other State judicial personnel in order to impanel a grand jury outside the authority of the court of General Sessions, to complete return of an illegal true bill and to print and publish false indictment information.

Petitioner submits that sufficient evidence is presented here to establish the existence of criminal conspiracy.

A "conspiracy" is a combination or agreement between two or more persons for the purpose of accomplishing a criminal or unlawful object, or achieving by criminal or unlawful means an object that is neither criminal nor unlawful. See State v. Buckman, 347 S.C. 316, 555 S.E. 2d 402 (S.C. 2001)(emphasis added). The gravamen of conspiracy is the agreement or mutual understanding. See State v. Hammitt, (S.C. App. 2000) 341 S.C. 638, 535 S.E. 2d 459, rehearing denied, certiorari granted.

"If there is one overall agreement among the various parties to perform different functions in order to carry out the objective of the conspiracy, the agreement among all the parties constitutes a single conspiracy. State v. Dasher, 298 S.E. 2d 215, 217 (S.C. 1986)(citing 16, AM. Jur. 2d, conspiracy § 11 (1979)).

Conspiracy may be shown by circumstantial evidence including the parties consent, State v. Oliver, 275 S.C. 79, 267 S.E. 2d 529 (1980), and under South Carolina does not require an overt act. See State v. Ferguson, 221 S.C. 300, 70 S.E. 2d cert. denied, 344 U.S. 830, 73 S.Ct. 35, 97 L.Ed. 646 (1952).

Preliminary Statement:

For some time now it has been an open secret in the State's judicial circle that none of its true billed indictments are being processed and returned in compliance with statutory Law, and that some unlawful process is being utilized. In fact, several of one more prominent newspapers have commented on the irregularities in State's indictment process, and the impossibility of lawfully returning true billed indictments at the excessive rates reported, given the known time constraints,

(See exhibit 1). The grand jury proceedings were most likely held in a back office conference room with Solicitor/Assistant Solicitor overseeing the process. Also present would have been a court administrative assistant, the Clerk of Court, the court reporter and grand jury foreman. In this case, the actual type of unlawful process utilized by State to complete return of Petitioner true-bill indictment is not important or determinative of the criminal conspiracy issue presented here. However what is determinative is the fact that the grand jury proceedings were held outside the jurisdiction of the Court of General Sessions for illegal return of true bill, and that the Solicitor/Assistant Solicitor committed an offense of perjury in order to keep secret the unlawful process. That overt act of perjury, along with the cooperation provided by other parties to make complete and secret the illegal process, is determinative of the criminal conspiracy issue.

A criminal conspiracy is very clearly evident here, unless that is, the Solicitor/Assistant Solicitor submits that he forged Petitioner indictment. Otherwise, and realizing that it would have been impossible for the Solicitor/Assistant Solicitor to fully complete return of true bill indictments on his own, cooperation from the below listed judicial official would have been necessary.

Here petitioner has restricted the list of conspirators to individuals essential to the State indictment process. Full blame can be properly determined once the grand jury records are subpoenaed, and the necessary criminal investigation is complete.

Additionally and importantly, it must be pointed out that all the below listed conspirators are State judicial officials, and as such, they are required by virtue of their high offices to possess full knowledge and understanding of the Laws of South Carolina. In this case, a claim of ignorance to the Law would be unacceptable.

Conspirators and Blame

First, the circuit court Administrative Judge of Beaufort County who was seated in office at the times relevant to the indictments return date 2/23/2017 ~~would be the State~~ Judicial officer directly responsible for the scheduling and ordering a grand jury impaneled outside the bounds of the court of General Sessions. This judge would have been in possession of knowledge concerning the mandatory provisions of section 14-9-210, and still chose to impanel an unlawful grand jury and assist in printing and publishing the false information contained in Petitioner State indictment.

It should be noted that the code of Judicial conduct, cannon 2 (A), states, "A judge shall respect and comply with the Law, and shall act at all time s in a manner that promotes public confidence in the integrity and impartiality of the judiciary".

Second, the facts and evidence presented above, and in subsection A of this memorandum, establish that the Solicitor/Assistant Solicitor violated his oath of office and committed perjury by willfully printing false information in Petitioner indictment. Thus, the Solicitor/Assistant Solicitor is a "central figure" in the criminal conspiracy.

Also, it should be noted that the Acting Solicitor, as chief prosecuting officer for the county, directs and supervises the activities of the assistants under his authority. Thus, it would be the Solicitor who is ultimately responsible for the criminal acts committed by the Assistant Solicitor in any case. Moreover, the possibility exists that others of the Solicitor's assistants are involved in the same type of unlawful and illegal indictment activities. Therefore, the activities of the Solicitor's office should be investigated by the appropriate authorities.

Third, the grand jury foreman was the individual responsible for signing the true bill stamp affixed to Petitioner indictment, thus completing and giving validity to the unlawful grand jury process by signing the false and incorrect true stamp, the grand jury foreman by his actions, committed an offense of perjury, as well as assisted the other conspirators.

Fourth, the clerk of court pursuant to section 14-9-210, reported Petitioner State indictment with its printed false information to the presiding judge at the court's next term. Moreover, the indictment containing the shown false information would have been filed in the court's public records.

Fifth, the presiding judge at the First term of General Sessions court allowed Petitioner indictment, containing the false information to be reported and published (see exhibit 1) at his court, judge allowed the illegal indictment to enter into the official court record unchallenged even though he would have known that no county grand jury were being impaneled under the jurisdiction of the court of General Sessions. Also, it should be noted that the code of Judicial conduct, cannon 2 (A), requires a judge in this State to comply with the Law and promote public confidence in the integrity of the judiciary.

Again, unless the Solicitor/Assistant Solicitor is willing to admit that acting alone, he knowingly and completely forged Petitioner indictment, the existence of a criminal conspiracy is established. Because, barring the existence of an outright forged indictment, it would have taken the combined effort of the above listed judicial officials all working in concert to establish scheduling, to order and impanel the grand jury during a time when no court of General Sessions was convened, to meet and execute the return of the illegal true bill, to report and publish Petitioner illegal indictment, and to then file the illegal indictment into the court records.

It is axiomatic that conspiracy need not be proved by direct evidence of unlawful agreement. A conspiracy may be shown by circumstantial eviednec including the party's consent; State v. Oliver, supra. And the substantive crime on crimes committed in furtherance of the conspiracy constitutes circumstantial evidence of the existence of the conspiracy, its object, and scope. See State v. Amerron, 428 S.E. 2d 871 (S.C. Supreme Court 1993).

In this case, it has been shown that various parties performed different functions in order to carry out, and make complete, by an act of perjury, a State indictment process done by unlawful means, section 16-17-410, provides in pertinent part that ... conspiracy is defined as a combination between two or more persons for the purpose of accomplishing ... lawful object [return of true bill indictments], by unlawful means [illegal grand jury and act of perjury]" (insertions added). Accordingly, an offense of criminal conspiracy has come before the court for Judgment.

D. Contemporaneous Objections and Rights Violations

Here, Petitioner would show this court that this court that his failure to make timely objections to the illegal grand jury and void indictment were the direct result of State's act of perjury and criminal conspiracy, and that U.S. Constitutional Law requires the default to be imputed against the responsible party, the State of South Carolina. S.C. code Ann. § 17-7-10 provides that, "A criminal action is prosecuted by the State as a party, against a person cahrged with a public offense, for the punishment thereof. Thus, all criminal violations of section 16-9-10, perjury, and section 16-17-410, conspiracy, must by necessity be imputed against both the individuals actually responsible and the State of South Carolina. Consequently, South Carolina is a party to criminal acts.

The record in this case has clearly established that Petitioner was indicted by way of a grand jury process that the court of General Sessions had no lawful authority to adopt. And that ~~in order to keep secret the fact of the illegal grand jury, the~~ Solicitor/Assistant Solicitor willfully printed false information in Petitioner indictment (See subsection A and C), and then joined into a criminal conspiracy with other State Judicial officials to make effective a null indictment. See subsection A and C.

Consequently, the criminal acts of State resulted in violation to Petitioner Constitutional rights, and caused his failure to make objections to the illegal grand jury and null indictment.

[Constitutional and statutory Rights]

In Gentry, the court held that an indictment is a "notice document" required by State constitution and statutes. See S.C. constitution Article I § 11 and Article V. § 22 [footnote omitted]. S.C. code Ann. § 17-19-10 (2003) ("No person shall be held to answer in any court for an alleged crime of offense, unless upon indictment by a grand jury except in specified instances).

"The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. See Evans v. State, 363 S.C. 495, 508-13, 611 S.E. 2d 510, 517-19 (S.C. 2005)(citing Gentry, 363 at 102-03, 610 S.E. 2d at 500).

Furthermore, a sufficient indictment prevents later retrials for the same offense in contravention of the constitutional prohibition against double jeopardy and prevents the prosecutor from usurping the power of the grand jury by ensuring a defendant is tried for the crime which he was indicted. See State v. Tabor 262 S.C. 136, 139, 202 S.E. 2d 852, 853 (1974), State v. Guthrie, 352, S.C. 103, 108, 572 S.E. 2d 309, 312 (Ct App. 2002) overruled on other grounds, Gentry 363 S.C. 93, 610 S.E. 2d 494; People v. Grega, 531 N.E. 2d 279, 382 (NY 1988); State v. Lewis, 36 S.W. 3d 88, 97 (Tenn Crim. App. 2000).

This required notice is a component of the due process that is accorded every criminal defendant. See U.S. constitution Amendment V; S.C. constitution Article I, § 3.

Additionally, a criminal defendant has a constitutional and statutory right to have the indictment issued by a legally constituted grand jury. See e.g., State v. Means, Op No. 26105 (S.C. Supreme court filed February 6, 2006), See Evans v. State, 363 S.C. 495, 611 S.E. 2d 510 (2005); State v. Williams, 263 S.C. 290, 210 S.E. 2d 298 (1974). Also see S.C. constitution Article I, § 11 and Article V, § 22, S.C. Code Ann. § 14-9-210.

[Contemporaneous Objections]

In Gentry, relying on section 17-9-90, ("Every objection to an indictment for any defect apparent on the face therefore, shall be taken by demurrer or on motion to squash such indictment before the jury shall be sworn and not afterwards"), the supreme court held that the sufficiency of an indictment must be challenged before the jury is sworn.

Recognizing Gentry, our supreme court in Evans held that, challenges to the legality and sufficiency of the process of a county grand jury also must be made before the jury renders a verdict in order to preserve the error for direct appellate review. See S.C. code Ann. § 14-7-1140 (Supp 2003), no irregularity in any writ of venire fascias or in drawing, summoning returning or impaneling of jurors is sufficient to set aside the verdict, unless the party making the objection was injured by the irregularity or unless the objection is made before the returning of the verdict. The Evans court overruling several cases, further determined that an indictment which is deemed to be a nullity because it was issued by an illegal grand jury no longer implicate subject matter jurisdiction.

In this case however, petitioner takes the position that a challenge to either the illegal grand jury process or null indictment would be immaterial, because no valid waiver can be entered absolving the State of it criminal conduct, and a null indictment is of no legal effect and therefore nonbinding. Under Law, petitioner's null indictment (see subsection A and C) is by its very nature insufficient to support a conviction or sentence, and protects against double jeopardy. It is an axiomatic rule of Law that an indictment deemed to be a nullity

is "something that is legally void" and of no legal effect" (citing Black Law Dictionart, 8th Ed. 2004, nullity and viod). See e.g., Hardison v. Glendhill, 72 GA App. 432, 33 S.E. 2d 921, 924 (void, null, ineffectual, nugatory, having no legal force or binding effect, unable in Law to support the purpose for which it was intended).

And most certainly, a conviction and sentence based on the fruits of criminal acts cannot be allowed to stand under any circumstances. The facts and evidence in this case very clearly show that State committed perjury and criminal conspiracy, (see subsection A and C) in order to secure its conviction against petitioner. Surely the Evans ruling does not stand for the proposition that because State was not caught for its criminal acts in a timely manner, it is granted absolution.

For the reason stated above, Petitioner asserts that an objection to State's illegal grand jury and null indictment would be pointless. However, for the sake of argument Petitioner would show this court that: In Murray v. Carrier, 106 S. Ct. 2639, 2645 (1986) the United States Supreme Court held that the existence of cause for procedural default [for failure to comply with a State's contemporaneous objection rule], must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the State procedural rule. The court stated, "without attempting an exhaustive catalog of such objective impediments to compliance with a procedural rule, we note that a showing that the factual or legal basis for a claim was not reasonably available to counsel. See Reed v. Ross, 468 U.S. at 16, 104 S.Ct. at 2910, or that some interference by officials Brown v. Allen, 344 U.S. 443, 486, 73 S.Ct. 397, 422, 97 L.Ed. 469 (1953), made compliance impracticable, would constitute cause under this standard. Id 106 U.S. at 2645. In this case, the Solicitor/Assistant Solicitor willfully printed false information in Petitioner State indictment (see subsection A), and then joined into a criminal conspiracy to keep secret the illegal grand jury process (see subsection C). Surely those acts by State constitute an external factor sufficient to show cause for failure to make timely objections.

Additionally, however, Evans, citing State v. Griffin, 277 S.C. 193, 285 S.E. 2d 634 (1981), State v. Thompson, 305 S.C. 496, 409 S.E. 2d 420 (Ct. App. 1991), hold that the regularity of grand jury proceedings is presented absent clear evidence to the contrary. And that counsel was therefore ineffective for failing to request and review the impaneling documents and supporting materials.

In this case, it seems that State utilized the presumption of correctness to assist in keeping its criminal acts secret and to make effective an unlawful taking of Petitioner rights to make contemporaneous objections. State used to its benefit the fact that no one would be checking into its grand jury process.

Therefore, in light of the United States Supreme Court's decision in Murray v. Carrier, and taking into consideration State's criminal acts, the responsibility for Petitioner failure to make timely objections to the illegal grand jury and null indictment must be imputed to State.

This court should also take note of the fact that in State v. Arthur, 296 S.C. 495, 374 S.E. 2d 291 (1988), the court held that a waiver of a constitutional and statutory right requires a showing on the record that a defendant made the waiver knowingly and intelligently, citing Patton v. United States, 281 U.S. 276, 50 S.Ct. 253, 74 L.Ed. 854 (1930) as the landmark case. That same standard should be applied here, because under no circumstances, can State be allowed to use criminal means to effect a forfeiture of Petitioner right to make objections.

Here, Petitioner is convicted and sentenced pursuant to a null indictment and illegal grand jury, made effective by criminal acts committed by State in order to keep secret its unlawful procedures. A null indictment by its very nature does not protect Petitioner against double jeopardy and is insufficient to enable the court to pronounce judgment. See also section 17-25-10. In this case, State violated nearly

every component of the due process notice requirement that's owed to petitioner.

State, however, seems to have overlooked one very essential fact; God's righteous justice always prevails.

Accordingly, and for the reasons shown above this court should remand this case back to the lower court in order to allow Petitioner to enter belated objections to State's illegal grand jury and null indictment.

E. S.C. code Ann. § 17-25-10

Petitioner would show is this court, that as a result of the criminal violations committed by State in this case, the lower trial court was divested of the requisite authority to impose sentencing.

Section 17-25-10 provides that:

No person shall be punished for an offense unless duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person.

South Carolina Law holds that words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction. See State v. Muldrow, 348 S.C. 264, 559 S.E. 2d 847 (2003). And statutory prescriptions couched in language such as "shall" and "must" are mandatory in application and effect. See e.g., South Carolina Police Officers Ret. Svs. v. City of Spartanburg, 301 S.C. 188, 191, 391 S.E. 2d 239, 241 (1990); Starnes v. South Carolina Dept of Public Safety, 342 S.C. 216, 221, 535 S.E. 2d 655, 667 (Ct. App. 2000).

A plain reading of section 17-25-10 requires that a criminal defendant cannot be punished [sentenced] for an offense until after the State has duly and legally convicted the individual. That did not happen in this case.

As established above in subsection A. State knowingly violated the provisions of S.C. code Ann. § 14-9-210 by, (1) unlawfully impaneling its grand jury outside the jurisdiction of the court of General Sessions, (2) utilizing an unlawful process for the return of true bill, and (3) causing false information to be printed and published in Petitioner indictment. Consequently the grand jury was illegal and its indictment null.

As established above in subsection C, the Solicitor/Assistant Solicitor knowingly committed an offense of perjury in violation of S.C. code Ann. § 16-9-10, by willfully printing false and misleading information in Petitioner State indictment. Additionally, several judicial personnel joined into a criminal conspiracy, in violation of S.C. code Ann. § 16-17-410, for purposes of completing return and publications of State's illegal and void indictment.

As established above in subsection D. State's unlawful indictment process and subsequent criminal acts, resulted in an illegal grand jury, a void indictment a denial of Petitioner rights to make objection to the indictment and violation of every component of the due process notice requirement owed to Petitioner by this State.

Accordingly, it would be hard to imagine a situation where the State of South Carolina has violated more of a criminal defendant's rights than in the case found here. Indeed, it would take a novel rule of Law, which would allow the State to maintain a conviction and sentence under the circumstances described above. To adopt such a rule of Law here would be tantamount to an unrighteous.

AND PERVERTED JUDGMENT

Based on the above reasons Petitioner has established that he was not duly and legally convicted and therefore was sentenced in violation of section 17-25-10. Accordingly, the sentence in this case should be vacated.

CONCLUSION

The holding in Evans, should not stand for the proposition that a conviction and sentence gained through judicial acts of perjury and criminal conspiracy can be declared lawful. Judicial integrity will have been lost if the State is not constrained by its own statutory and criminal Laws. Basic United States constitutional due process Law dictates, with authority that under no circumstances can a State commit criminal acts against its citizens in the name of judicial economy.

Petitioner would point out that in this case, the criminal acts committed by State clearly establish the essential elements of fraud on the court in addressing a case involving fraud on the court, the United States Supreme Court explained that to be granted relief under the provisions of Rule 60 (b)(3), Fed R. Civil Proc. the issue turns on whether the alleged misconduct "harms" the integrity of the judicial system.

Tampering with the administration of justice in the manner undisputedly shown here involves far more than injury to a single litigant it is a wrong against the institution set up to protect and safeguard the public institution in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed. 1250 (1944).

Accordingly, fraud on the court is misconduct by an officer of the court that is directed at the judicial machinery itself. Thus, fraud on the court is very evident here.

However, it should be noted that even if appropriate the filing of a State Rule 60 (b)(3), S.C. Rules of Civil Proc., would not be proper in this case, due to the criminal conspiracy issues raised implicating the very circuit court judges who in all likelihood would be instrumental in ruling on the motion. Hence Petitioner has no other adequate remedy at Law except the present action at bar.

in sum, determination of the issues raised in this petition must by necessity be resolved through consideration of one question; Can the State of South Carolina commit criminal acts and gross misconduct in order to gain a conviction.

Petitioner would pray the answer is "NO"

Therefore, based on the reasons above Petitioner respectively moves this court to grant a writ of mandamus, and issue an order specifically directing the lower court to allow entry of belated objections, to hold invalid the unlawful grand jury process, and to squash State's null indictment.

Additionally, Petitioner moves this court to initiate an official investigation into the herein alleged misconduct and criminal violations of Law.
Or in the alterative, vacate the illegal conviction and sentence.

RESPECTFULLY SUBMITTED,

Circuit Number	2/6/2017	2/13/2017	2/20/2017	2/27/2017
<u>14</u>	Common Pleas/Common Pleas Nonjury Beaufort Mullen, Carmen <u>MARCENGILL</u> Common Pleas/Common Pleas Nonjury Jasper Early, Doyet <u>NO CR NEEDED</u> General Sessions Hampton McIntosh, R. <u>ROWE</u> 6, 7, 8 <u>NO CR NEEDED</u> 9, 10 Common Pleas Non- Jury Buckner, Perry <u>HILL</u> 6 am, 7, 8, 9 <u>NO CR NEEDED</u> 10	Common Pleas/Common Pleas Nonjury Allendale McIntosh, R. <u>NO CR NEEDED</u> Common Pleas Non- Jury/PCR Sprouse, R. <u>ROWE</u> 13, 14 am <u>ROWE</u> 15, 16 am <u>NO CR NEEDED</u> 17 Common Pleas/Common Pleas Nonjury Colleton Buckner, Perry <u>NO CR NEEDED</u> Common Pleas/Common Pleas Nonjury Beaufort Mullen, Carmen <u>MARCENGILL</u> 13, 14, 15 <u>NO CR NEEDED</u> 16, 17	Common Pleas/Common Pleas Nonjury Beaufort Young, Roger <u>HAFFENDEN</u> 21, 22 am <u>NO CR NEEDED</u> 23, 24 Common Pleas/Common Pleas Nonjury Hampton McIntosh, R. <u>NO CR NEEDED</u> Common Pleas/Common Pleas Nonjury Beaufort Mullen, Carmen <u>HILL</u> 21, 22, 23 am <u>HILL</u> 24 General Sessions Jasper Buckner, Perry <u>MANLEY</u> 21, 22 <u>HAFFENDEN</u> 23 <u>ROWE</u> 24	Common Pleas/Common Pleas Nonjury Beaufort Mullen, Carmen <u>HILL</u> 27 <u>NO CR NEEDED</u> 28 <u>MANLEY</u> 1, 2, 3 General Sessions Beaufort McIntosh, R. <u>ROWE</u> 27, 28, 1, 2 <u>NO CR NEEDED</u> 3 General Sessions Beaufort Brown, D. <u>WEESE</u> General Sessions Colleton Buckner, Perry <u>MANLEY</u> 27, 28 <u>HILL</u> 1, 2 <u>NO CR NEEDED</u> 3 General Sessions Non-Jury 2 Cooper, Thomas W. <u>HILL</u> 2
	Family Court Beaufort Smoak, Gerald C. <u>BROWN</u> 6 am <u>HARTLEY</u> 7 <u>NO CR NEEDED</u> 8 <u>HARTLEY</u> 9, 10 Family Court Beaufort Malphrus, Deborah A. <u>BROWN</u> 6, 7, 8 <u>BROWN</u> 9 am, 10 am Family Court 8, 9, 10 Colleton Fuge, Peter L.	Family Court 14 Colleton Smoak, Gerald C. <u>TAYLOR</u> 14 am Family Court 16 Jasper Malphrus, Deborah A. <u>TAYLOR</u> 16	Family Court Colleton Creech, Wayne M. <u>TAYLOR</u> 21 <u>BROWN</u> 22 <u>TAYLOR</u> 23, 24 am Family Court Beaufort Smoak, Gerald C. <u>NO CR NEEDED</u> 21, 22, 23 <u>BROWN</u> 24 am Family Court Allendale / Beaufort Fuge, Peter L.	Family Court Jasper McLin, Nancy C. <u>BROWN</u> 27, 28, 1 am <u>BROWN</u> 2 am <u>NO CR NEEDED</u> 3 Family Court Hampton Martin, Daniel E. <u>JOHNSON</u> 27 am <u>NO CR NEEDED</u> 28 <u>MANLEY</u> 1 <u>LANDRY</u> 2 am <u>YOUNG</u> 3 Family Court Beaufort Malphrus, Deborah A.

Mr. Henry Edward Pinckney, # 377144
Broad River Correctional Institution
Marion Unit a - 182
4460 Broad River Rd.
Columbia, SC 29210

Date: 1-22-2019

Beaufort County Clerk Of Court
Jerri Ann Roseneau, Clerk
14th Judicial Circuit Court
P. O. Box 1128
Beaufort, South Carolina 29901

2019 JAN 28 PM 12:13
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Enclosed please find for filing and processing with the Beaufort County Clerk Office. An application for post-conviction relief. Please file the original, once filing is complete please return the clocked stamped copy to me with file date thereof, your assistance in this matter will be greatly appreciated.

Sincerely,

S/ Henry E. Pinckney
Henry E. Pinckney, 377144

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Henry Edward Pinckney, #377144,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

2019-CP-07-0173

RETURN AND MOTION FOR MORE
DEFINITE STATEMENT

FILED
JUL 23 2019
CLERK OF COURT
JUL 23 2019
FILED

Respondent, making its return to the application for post-conviction relief filed by Henry Edward Pinckney (Applicant) on January 25, 2019, the State of South Carolina (Respondent) would respectfully show this Court:

I. Procedural History

Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of the Beaufort County Clerk of Court. During its May 2017 term, the Beaufort County Grand Jury indicted Applicant for possession with intent to distribute marijuana, second offense (2017-GS-07-01026), possession with intent to distribute cocaine base, first offense (2017-GS-07-01027), and felony hit and run with death resulting (2017-GS-07-01123).

Applicant was represented by Jeffrey Stephens, Esquire, of the Fourteenth Circuit Public Defender's Office. Assistant Solicitor Leigh Staggs, of the Fourteenth Circuit Solicitor's Office, prosecuted the case.

On July 24, 2018, Applicant appeared before the Honorable Perry M. Buckner and pled guilty as indicted, with a negotiated plea of 15 years' incarceration. Judge Buckner went along with the negotiated plea and sentenced Applicant to a term of imprisonment of 10 years for PWID

marijuana, second offense; 15 years for PWID cocaine base, first offense; 15 years for hit and run, death resulting; with all sentences to run concurrent. Applicant did not appeal his plea or sentence.

II. Current Application

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

1. Defense counsel was ineffective for failing to properly advise the applicant of the full scope of appellate review from an appeal of a guilty plea.
2. Plea counsel failed to object to the sentence imposed by the court, which exceeded the duration of the negotiated sentence of ten (10) years that Applicant had agreed to.
3. Plea counsel failed to timely seek leave of court to withdraw Applicant's guilty plea on the basis that the court imposed sentence exceeded the duration of the sentence of a plea bargain to which Applicant had agreed.
4. Applicant would otherwise have proceeded to trial and not have pled guilty had he known the sentence would or could have exceeded the ten (10) year cap that was promised as part of his plea bargain.
5. Applicant's guilty plea was involuntary as it was induced by an unfulfilled plea bargain that Applicant would not be sentenced concurrently to more than ten (10) years.
 - a. June 6 2018 Letter:
 - i. "As we discussed, the prosecutor in your case is asking you to plead guilty to some minor drug offenses and the charged leaving the scene of an accident with death charge in return for her recommendation of a 10 year jail sentence. I would be arguing for the judge to sentence you to a much lower jail sentence."
6. Plea counsel was ineffective for failing to properly advise Applicant of his right to a direct appeal following his guilty plea.
 - a. Plea counsel did not properly advise Applicant of the full scope of appellate review of an appeal from a guilty plea. "As defense counsel was required to do so, but failed in this duty, the defendant was entitled to relief on this ground."
7. Plea counsel failed to investigate both factual and legal matters in order to develop potential defenses.
8. (P. 23) Illegal search warrant
9. Chain of custody
10. Due process
11. Indictment Violation
12. SMJ

Attached to this Return and incorporated by reference are the records of the Hampton County Clerk of Court regarding the subject convictions, Applicant's records from the South

Carolina Department of Corrections, the plea transcript, and current application. Respondent reserves the right to amend the Return upon receipt of any relevant materials.

III. Ineffective Assistance of Counsel

Applicant alleges in his application for relief that counsel was ineffective for failing to investigate the facts of the case. However, Applicant has failed to provide any additional details or sufficient facts regarding what, specifically, counsel failed to investigate to support this allegation as required. Accordingly, it is impossible for Respondent to reply with specificity and requests that Applicant, through counsel, provide a more definite statement of the allegation on which Applicant intends to proceed forward. In a post-conviction relief action, an applicant has the burden of proving the allegations in his application. Rule 71.1(c), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In order to prevail on a claim of ineffective assistance of counsel, an applicant must present evidence to satisfy the two prong test enumerated in *Strickland v. Washington*[466 U.S. 668, 687 (1984)] to determine whether plea counsel's "assistance was so defective as to require a reversal of" Applicant's sentence. First, the applicant must prove counsel's performance was deficient; and second, the applicant must show they were prejudiced by that deficiency. *State v. Stalk*, 383 S.C. 559, 560-61, 681 S.E.2d 592, 594 (2009) (citing *Hill v. Lockhart*, 474 U.S. 52 (1985)) (extending the Court's two prong Strickland test to apply to guilty pleas).

In order to prove deficient performance under the first prong of *Strickland*, the burden is on applicant to show that plea counsel's representation fell below an objective standard of

reasonableness. *Strickland*, 466 U.S. at 687-88. The proper measure of attorney performance remains simply reasonableness under prevailing professional norms. *Id.* In considering whether counsel's performance was reasonable:

Judicial 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.... A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.

Strickland, 466 U.S. at 689; *Edwards v. State*, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011).

"[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing *Caprood v. State*, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S. at 690, 104 S.Ct. at 2066). The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Even if the applicant can establish that counsel's performance was deficient, they must still overcome their burden to demonstrate prejudice from that deficiency. The second prong of *Strickland* requires the applicant to prove that counsel's deficient performance prejudiced applicant to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." *Cherry*, 300 S.C., at 117-18, 386 S.E.2d, at 625 (citing *Strickland*, 466 U.S., at 694, 104 S.Ct., at 2068).

Hill v. Lockhart[474 U.S. 52, 58 (1985)] extended the application of the two-part *Strickland* test "to challenges to guilty pleas based on ineffective assistance of counsel." See also

Stalk v. State, 382 S.C. 559, 560, 681 S.E.2d 592, 594 (2009). The analysis of counsel's performance under the first prong of the *Strickland* test remains unchanged. *Hill*, 474 U.S., at 59. The second requirement "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* The applicant must "show that there is a reasonable probability that, but for counsel's error, [s]he would not have pleaded guilty and would have insisted on going to trial." *Id.*

Respondent submits Applicant cannot satisfy neither requirement of the *Strickland* test. Applicant has failed to present any evidence to show any error on behalf of counsel. Applicant's assertion that counsel failed to investigate the facts of the case does not meet the standards enumerated in *Strickland*. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. MOTION FOR A MORE DEFINITE STATEMENT

In his application for relief, Applicant fails to set forth with specificity the facts and circumstances upon which his allegations of ineffective assistance of appellate counsel are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon 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. MacDowell*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant fails to provide any supporting information for his claims.

Accordingly, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss his application.

V. ANY FUTURE AMENDMENTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRPC; *Mangal v. State*, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRPC.

VI. RESPONSE TO ANY AND ALL OTHER ALLEGATIONS

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

VII. REQUEST FOR AMENDED APPLICATION

WHEREFORE, having made its return, Respondent requests that Applicant, through his counsel, amend the application to provide required specificity for the aforementioned allegation of ineffective assistance of counsel. Until Applicant files an amended application, Applicant has not shown sufficient cause to warrant an evidentiary hearing on this application and requests a hearing not be scheduled until after an amended application is so filed.

Respectfully submitted,

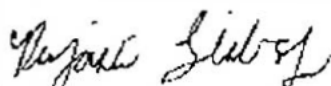
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March 18, 2020

<u>I N D E X</u>				
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Henry Edward Pinckney				
Mr. Falk	03		17	
Ms. Mims		13		18
Jeffrey Stephens				
Mr. Falk	19		40	
Ms. Mims		31		
Closing by Mr. Falk	40			
Closing by Ms. Mims	42			
Certificate of Reporter	44			

P R O C E E D I N G S

* * * * *

MS. MIMS: May it please the Court? This is the case of Henry Edward Pinckney vs. The State of South Carolina, Docket Number 2019-CP-07-0173. Albert Pinckney is currently confined in the South Carolina Department of Corrections pursuant to Order of the Beaufort County Clerk of Court. During his term, Beaufort County Grand Jury indicted applicant for possession with intent to distribute marijuana, 2nd offense; possession with intent to distribute Cocaine base, 1st offense; and felony hit and run with death resulting.

Applicant was represented by Jeffrey Stephens, Esquire, of the 14th Circuit Public Defender's Office and the Assistant Solicitor Leigh Staggs of the 14th Circuit Solicitor's Office prosecuted the case. On July 24th, 2018, Applicant appeared before the Honorable Perry M. Buckner and pled guilty as indicted with a negotiated plea of 15 years incarceration. Judge Buckner went along with the negotiated plea and sentenced Applicant to a term of imprisonment of ten years with possession of intent to distribute marijuana, second offense; 15 years for possession with intent to distribute Cocaine

1 base, first offense; and 15 years for the hit and
2 run death resulting, with all sentences to run
3 concurrent. Applicant did not plea -- appeal his
4 plea or sentence. This matter -- this PCR matter
5 was filed on January 27, 2019. Applicant is present
6 and represented Mr. James Falk, Esquire. And we are
7 ready to proceed.

8 THE COURT: All right. Yes, sir, Mr. Falk?

9 MR. FALK: I call Mr. Pinckney to the stand.

10 (WITNESS SWORN.)

11 * * * * *

12 Henry Edward Pinckney,
13 having been duly sworn,
14 testifies as follows:

15 * * * * *

16 DIRECT EXAMINATION

17 BY MR. FALK:

18 Q. Good morning, Mr. Pinckney.

19 A. Good morning.

20 Q. So tell me who represented you in this -- in
21 this case?

22 A. Jeffrey Stephens. Jeffrey Stephens.

23 Q. Okay. And was he appointed to represent
24 you, or were -- did you retain him?

25 A. He was appointed.

1 Q. What kind of conversations did you have with
2 him prior to this plea? Let me back up. Where --
3 were you in the Detention Center or were you on the
4 street?

5 A. Detention Center.

6 Q. How many times did he come to the Detention
7 Center to meet with you?

8 A. I recall none, but his assistant came one
9 time.

10 Q. The assistant that came, what did -- what
11 was -- what did you discuss?

12 A. He showed me a couple of videos of the
13 incident that happened that night and said he would
14 be getting back with me soon.

15 Q. Okay. What was your -- so it was your --
16 did you have written communications with him?

17 A. Well, my family tried to contact Mr.
18 Stephens on numerous occasions, but they didn't get
19 no response.

20 Q. Okay. What was your -- was there plea
21 negotiations that were going on? Were you made
22 aware of any?

23 A. Well, I received a letter stating about a
24 ten-year plea.

25 Q. Okay.

1 MR. FALK: If I could approach, Your Honor?

2 THE COURT: Yes, sir.

3 MR. FALK: I showed the Attorney General's
4 Office this letter. I'm going to mark this as
5 Applicant's Exhibit Number 1.

6 (Applicant's Exhibit Number 1, Letter, is marked
7 for identification purposes.)

8 BY MR. FALK:

9 Q. I'm showing you what I've marked as
10 Applicant's Exhibit Number 1. Do you have a copy of
11 that letter also in your file?

12 A. I do.

13 Q. How about if we swap? You give me one
14 that's not marked. All right, so that letter that
15 you have in your hand, can you tell me what's the
16 date on the letter?

17 A. June 6th, 2018.

18 Q. And whose letterhead is it on?

19 A. Say that again?

20 Q. Who did it come from? Who -- what
21 letterhead is it?

22 A. Human Resources.

23 Q. What's the -- what are the big words on the
24 top of the letter?

25 A. Oh, Office of Public Defender 14.

1 Q. Okay. And it's addressed to you?

2 A. Yes, sir.

3 Q. And did you receive that letter?

4 A. Yes, I did.

5 Q. And how did you receive it?

6 A. Through mail when I was in County.

7 Q. Well, it says it was hand-delivered; do --
8 do you recall it?

9 A. Yes, hand-delivered.

10 Q. So did somebody -- did -- you said -- did
11 Mr. Stephens hand this to you, or somebody ---

12 A. No.

13 Q. -- in the office hand it to you?

14 A. Yeah, one of the officers.

15 Q. Okay. And when about was that? Well, it
16 says June 6th, was it a closer time to June 6th?

17 A. No, it was after that.

18 Q. Right.

19 A. Yes, probably about ---

20 Q. Okay. And after you read the letter, what
21 did you think was gonna happen? Let me just back
22 up, so this letter that I handed you, that has been
23 -- that I marked as Applicant's Exhibit Number 1,
24 you did identify that you had received that letter,
25 correct?

1 A. Yes, sir.

2 Q. Okay. Now, you got that letter and you read
3 it. What did you think was going to happen?

4 A. At that time I thought everything was gonna
5 be all right.

6 Q. Why ---

7 A. That I heard too much.

8 Q. Why was that?

9 A. 'Cause I was trying to contact and contact
10 him, and then I finally received that and see what's
11 going on.

12 Q. Okay. And were there any discussions about
13 a plea offer conveyed to you in the letter?

14 A. Yes, sir.

15 Q. And what was your understanding of what the
16 plea offer was going to be?

17 A. Ten years.

18 Q. Were you willing to take a ten-year offer?

19 A. Yes, sir.

20 Q. Why was that?

21 A. Because what happened that night on the
22 incident was an accident, and I don't think I should
23 get that, 'cause ---

24 Q. I'm sorry, I didn't understand.

25 A. 'Cause when -- when the incident happened

1 that night, it was accidentally, 'cause I didn't see
2 nobody, so I was looking for a higher number like
3 15, or even above that.

4 Q. Because you were saying it was an accident?

5 A. Yes, sir.

6 Q. Okay. And you would have accepted the ten-
7 year offer; is that correct?

8 A. Yes, sir.

9 Q. Then what happened?

10 A. We went to the court and it was 15. And
11 they should have that on record, I denied that,
12 because I didn't know nothing that I thought it was.
13 You know, so I went back to talk to my family some
14 more before that, and I recall that he sent me
15 another letter stating that, you know, before that
16 court -- before court he was saying that we had --
17 should change the plea for 15, that either take the
18 plea, or it's gonna be tried in multiple trials,
19 meaning they're going to try it in multiple trials.

20 Q. Did you feel threatened by that comment?

21 A. Yeah, I really wanted -- like we didn't talk
22 about that, you know?

23 Q. What do you think he meant?

24 A. That I would have different trials on each
25 certain charge.

1 Q. Do you think that meant that you wouldn't
2 have the time run concurrent, but it would run
3 consecutive?

4 A. Yes, sir.

5 Q. When was the first time you knew it wasn't a
6 ten-year offer?

7 A. When we went to court.

8 Q. Okay. So you went to court -- the date of
9 the transfer -- of the plea is July 24th.

10 A. Yes, sir.

11 Q. And so you're saying that July 24th was the
12 first day you knew it was the 15 -- or was not the
13 ten-year offer?

14 A. It wasn't the ten. Right, it wasn't the
15 ten, it was 15, yes, sir.

16 Q. And what is -- what communication did you
17 have with anybody in the Public Defender's Office
18 from the date when you received that letter, which
19 is my -- your Exhibit Number 1, until July 24th,
20 2018? What communications did you have with anybody
21 at the PD's office?

22 A. None.

23 Q. Okay. So what happened, you just --
24 somebody told you, "You're going to court today?"

25 A. Yes.

1 Q. So did he come and -- did you meet with
2 anybody the day before?

3 A. No, sir. He said he was coming, but he
4 never showed up.

5 Q. Okay. So did -- did you have an opportunity
6 to talk to your family?

7 A. Yes, sir, but the second time we went to
8 court, nobody didn't know. Like everyone's like,
9 "You're going to court, come on, let's go."

10 Q. All right. And that's the second time you
11 went to court?

12 A. Huh?

13 Q. What happened -- you said the second time
14 you went to court, so what happened the first time?

15 A. Well, I took the plea.

16 Q. Okay. And what happened on the first time
17 you went to Court?

18 A. I didn't take it.

19 Q. Okay. And what plea was that that was
20 offered?

21 A. Fifteen.

22 Q. That was 15?

23 A. Yes, sir.

24 Q. Okay. So how much time was there between
25 those two dates, the first and second time?

1 A. Probably about a week.

2 Q. Okay. So what conversation did you have
3 with the Public Defender's Office between the first
4 time you went to court and the second time you went
5 to court?

6 A. None.

7 Q. Did you have somebody in your family contact
8 them?

9 A. Yes, sir.

10 Q. And what did you have them ---

11 A. No message. Leaves messages, no response.

12 Q. Okay. And so the second time you went to
13 court, your testimony is that they just grabbed
14 you ---

15 A. They say, "Let's go to court."

16 Q. -- from the Detention Center and walked you
17 over here?

18 A. Right.

19 Q. And you didn't have the opportunity to speak
20 with any of your family?

21 A. No, sir.

22 Q. Are you asking this Court to now impose the
23 ten-year sentence?

24 A. Yes, sir.

25 Q. Do you think that -- are you alleging that

1 your lawyer did anything ineffective from going to
2 the ten-year offer to the 15-year offer?

3 A. Maybe, he was asking for 15, unless he never
4 even figured out what was going on. He sent me a
5 letter.

6 Q. Okay. And so at your sentencing hearing
7 when you got the 15, there was nobody there from
8 your family to talk on your behalf; is that correct?

9 A. No, nobody there to talk, no, sir.

10 Q. Is there anything else you want to say?

11 A. No, sir.

12 MR. FALK: I have no further questions.

13 THE COURT: All right. Thank you.

14 Yes, ma'am.

15 **CROSS-EXAMINATION**

16 BY MS. MIMS:

17 Q. So do you recall discussing any elements of
18 the offenses charged with your attorney at all
19 before you pled?

20 A. No, sir. No, ma'am, I apologize.

21 Q. Okay. If I showed you a place in the
22 transcript, would that refresh your recollection?

23 A. I don't know.

24 Q. (Provides witness with transcript.) You can
25 keep that. So do you remember telling the Court

1 that you understood what the charges were against
2 you and the elements of the offenses charged?

3 A. Yes, ma'am.

4 MR. FALK: Where is this?

5 MS. MIMS: Page 18.

6 BY MS. MIMS:

7 Q. So do you recall discussing any possible
8 defenses with your attorney at all?

9 A. No, ma'am, I never talked to him.

10 Q. You never talked to him. So did you give
11 your attorney, or even his assistant any leads, or
12 lead them to investigate on your behalf?

13 A. He said he knew a lot of people saying they
14 know what happened, now what happened, but I never
15 gave him nobody.

16 Q. So you never did. Do you recall waiving
17 your constitutional rights, you know, such as your
18 right to a jury trial?

19 A. Yes, ma'am.

20 Q. Okay. Your right to remain silent?

21 A. Yes, ma'am.

22 Q. And your right to challenge any of the
23 evidence that you discussed against you?

24 A. Uh-huh.

25 Q. Do you recall telling the plea judge that

1 you were satisfied with your attorney's services at
2 the time?

3 A. Yes, ma'am.

4 Q. Do you recall offering any complaints to the
5 plea judge regarding your counsel's performance?

6 A. Yes, ma'am.

7 Q. You do recall offering a complaint towards
8 your ---

9 A. No, I'm not.

10 Q. Okay. Do you recall telling the Judge that
11 no one was promising or threatening you in order for
12 you to plead guilty?

13 A. Yes.

14 Q. And do you recall telling the plea judge
15 that you wish to plead guilty to the 15 years?

16 A. Yes.

17 Q. And do you recall hearing the State present
18 the facts of your case at trial or plea negotiation?

19 A. Yes.

20 Q. And do you recall the Judge telling you that
21 you had a right to appeal?

22 A. Yes.

23 Q. And telling you that you had ten days to
24 file your appeal?

25 A. Yes.

1 Q. And did you ask counsel about pursuing your
2 appeal?

3 A. No, he -- he -- mentioned -- after all that
4 happened, he mentioned something about a PCR, I
5 could apply for a PCR, but this is my first time
6 really knowing what it was and that I could file
7 that later on.

8 Q. And so you filed the PCR, but you -- did he
9 talk to you about filing a direct appeal?

10 A. No, I didn't know too much about that.

11 Q. You didn't want to file one?

12 A. No.

13 Q. Okay. So you testified on direct that Mr.
14 Stephens sent you a letter regarding a ten-year
15 plea?

16 A. Yes.

17 Q. Did he discuss the 15 years with you before
18 the plea, even if it was before the court term ---

19 A. No, not the 15.

20 Q. You didn't know anything about a 15 ---

21 A. No.

22 Q. Okay. Did you review sentencing sheets with
23 Mr. Stephens before the plea began?

24 A. The only one that was sent to me.

25 Q. Okay. And did you sign those sentencing

1 sheets before they were given to the Judge?

2 A. No.

3 Q. And would you agree that you were willing to
4 accept a plea offer and accept your guilt if it was
5 for ten years?

6 A. Come again?

7 Q. Would you agree that you would accept a plea
8 offer and accept your guilt for the crimes that were
9 presented at the time given those were for ten
10 years?

11 A. Yes, ma'am.

12 Q. And ---

13 MS. MIMS: I beg the Court's indulgence. No
14 other questions, Your Honor.

15 THE COURT: Any redirect?

16 MR. FALK: Yes, Your Honor.

17 **REDIRECT EXAMINATION**

18 BY MR. FALK:

19 Q. You had testified that you told the Judge
20 that you were satisfied with your lawyer; is that
21 right?

22 A. Yes, I did.

23 Q. Why did you say that?

24 A. At the time I was frustrated, I didn't know
25 what was going on, and I decided I wanted to think

1 about what was said about a PCR.

2 Q. So were you really satisfied with Mr.
3 Stephens?

4 A. No.

5 Q. And what was -- what was the basis for your
6 dissatisfaction?

7 A. I was looking forward to the ten years,
8 instead of 15.

9 MR. FALK: No further questions.

10 THE COURT: Anything else from the State?

11 MS. MIMS: Yes, briefly, Your Honor.

12 **RECROSS-EXAMINATION**

13 BY MS. MIMS:

14 Q. At the plea hearing do you recall talking --
15 or do you recall the Court asking you if you needed
16 anymore time to speak with your lawyer about your
17 plea?

18 A. I don't recall.

19 Q. If I showed you in the transcript ---

20 A. Yes, that's common sense.

21 Q. Okay.

22 A. Is it on the same transcript I've got?

23 Q. Yes, it's page 17, starting at line 11.

24 A. Yes.

25 Q. And also at the plea hearing did you state

1 that you understood all your talks with your lawyer?

2 A. Yes.

3 MS. MIMS: No further questions, Your Honor.

4 THE COURT: Okay, thank you. Any redirect?

5 MR. FALK: No redirect.

6 THE COURT: All right, sir, you may step down.

7 MR. FALK: Is that letter still up there. Leave
8 it right in front.

9 THE COURT: Was the letter marked as an exhibit?

10 MR. FALK: Yes, Your Honor.

11 THE COURT: Thank you. Yes, sir, call your next
12 witness.

13 MS. FALK: We'll call Mr. Stephens.

14 (WITNESS SWORN.)

15 * * * * *

16 Jeffrey Stephens,

17 Having been duly sworn,

18 testifies as follows:

19 * * * * *

20 DIRECT EXAMINATION

21 BY MR. FALK:

22 Q. Mr. Stephens, how did you come to represent
23 Mr. Pinckney?

24 A. I was appointed to Mr. Pinckney's cases
25 while at the Public Defender's Office. I was at the

1 Public Defender's Office from about April 2017 to
2 the end of March of '21.

3 Q. Okay.

4 A. And I couldn't tell you the exact date that
5 I was appointed. He had separate sets of charges.
6 I believe I inherited the first set of charges and
7 was appointed on the hit and run with that charge.

8 Q. How many times would you speak with him in
9 the court -- at that Detention Center?

10 A. I'll be honest, sir, I had spoken with him,
11 on the whole, twice by telephone, and I believe I
12 was at the Detention Center twice physically,
13 although those were closer in time to his plea. Mr.
14 Pinckney testified about an assistant showing him
15 some video -- videos related to the case. I
16 actually believe that was myself. I recall getting
17 permission from the director at the Detention Center
18 to bring my laptop in, and that was the first time I
19 brought my laptop into the Detention Center to view
20 evidence with my client. That's why it sticks in my
21 mind.

22 Q. Okay.

23 MR. FALK: May I approach, Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. FALK:

1 Q. I'm showing you a letter that we've
2 identified as our Exhibit Number 1; that is a letter
3 which appears to be from your office to Mr.
4 Pinckney.

5 A. (Reviews document.) Yes, sir, actually, I
6 believe this is the first page of a two-page letter,
7 the second page has my signature on it, but I don't
8 believe -- I don't -- recall what's on the second
9 page.

10 Q. All right.

11 A. I believe this is the original of the same
12 page you have.

13 Q. Okay. And so -- I'll take that back. So
14 you had sent him that letter, and it showed that it
15 was hand-delivered?

16 A. Yes, sir. We had to -- we hand-delivered
17 jail mail, and that just means we hand-carried it
18 over to the jail, and had it processed over in the
19 jail by employees who ---

20 Q. Gotcha.

21 A. -- screen them.

22 Q. But as far -- but you -- either you sent --
23 either you sent him that letter, or you had somebody
24 -- I mean either you typed that letter, or you had
25 somebody type it for you; is that right?

1 A. I typed that letter and put in on our mail
2 delivery basket to go over to the jail.

3 MR. FALK: Your Honor, at this time we'd like to
4 introduce that into evidence as Applicant's Exhibit
5 Number 1.

6 THE COURT: Any objection?

7 MS. MIMS: No, Your Honor.

8 THE COURT: Okay. It is entered without
9 objection.

10 (Applicant's Exhibit Number 1, Letter, is
11 entered without objection.)

12 MS. MIMS: Oh, we -- do we need to supplement
13 the second page with the signature?

14 MR. FALK: Yes, we could. Yes, Your Honor,
15 we'll make copies of the second page ---

16 THE COURT: Okay.

17 MR. FALK: -- and supplement it, so it'll still
18 be the same Exhibit 1. It will be two pages.

19 THE COURT: All right.

20 BY MR. FALK:

21 Q. So tell me about the plea negotiations in
22 this case.

23 A. Well, I don't have all my records with me,
24 just because my email is with my old defender
25 account, and so I'm going on my recollection. But I

1 recall receiving an email from Lee Staggs, who was
2 the Assistant Solicitor assigned to Mr. Pinckney's
3 case. And I believe that the -- that the offer
4 extended -- the email dealt with more than one
5 defendant, but I believe that the offer was extended
6 by the email was for a recommendation of ten years
7 by the Solicitor's Office, if Mr. Pinckney would
8 plead to discharge, and I don't remember at the time
9 what the offer was relating to his -- his drug
10 offenses. He had a number of drug offenses that
11 arose after a search of his residence with a search
12 warrant. But I recall that the Solicitor was going
13 to have him plead, which it actually did lead into
14 some of the drug offenses, I just don't remember
15 what the original offer was. I just recall that
16 when we got to the first court date, the offer was
17 different than what I believed it was, and we had to
18 stand down. I believe that's what Mr. Pinckney is
19 talking about that he didn't plead when he got to
20 court. It was a 15-year offer. I believe I had to
21 talk to him that time, and one more time, because I
22 don't think he and I were clear that it was a
23 negotiated offer from the Solicitor's Office. And
24 so I recall when I was discussing the -- the -- the
25 plea colloquy with him back in the detention area to

1 the side of the courtroom, I seem to recall going
2 over with emphasis the fact that this was
3 negotiated, because I remember that it was different
4 than what we had discussed, at least originally.
5 And I also recall noting that I was going to send
6 him a letter after his plea, because the offer was a
7 little bit different. I don't normally have kind of
8 a bait and switch change in the offer between when
9 it's made and when there's a plea.

10 Q. This was before Judge Buckner, had you been
11 before Judge Buckner on other occasions?

12 A. I have been in front of Judge Buckner a
13 number of times.

14 Q. Okay.

15 A. The first time I don't think I was in front
16 of Judge Buckner, I think that was the second time
17 on July 24th, the day on the sentencing sheets. I
18 don't recall who the judge was the first time. I
19 believe Judge Buckner was doing like a non-jury day
20 or something the second time in court, but -- but I
21 had been in front of Judge Buckner a number of
22 times, starting when I was an assistant solicitor in
23 2008 -- or 2007, sorry.

24 Q. In your experience, does Judge Buckner
25 accept -- this was a negotiated plea?

1 A. Yes, sir.

2 Q. What is your experience on whether or not
3 Judge Buckner will follow the recommendations or the
4 negotiated plea?

5 A. Originally, I never tried to do a negotiated
6 plea in front of Judge Buckner before this occasion.
7 To the best of my recollection, I do remember Judge
8 Buckner advising other counsel on occasion that he
9 would -- that he would take it, email it, and have
10 it marked as a negotiation, and take it as a
11 recommendation. And if he wasn't going to go along
12 with this -- with it, I think we would have a chance
13 to stand down and not give the plea at that time.
14 And, again, that's to the best of my recollection.

15 Q. And you're not disputing that you told him
16 in this letter, Exhibit 1, that it was a ten-year
17 deal?

18 A. Oh, I do not, and I understand how Mr.
19 Pinckney could have been confused about it, which is
20 why my -- I recall making sure that -- that the --
21 we were gonna go forward the second time, because
22 there had been a change in the offer, and I -- and
23 as I said, I think one of the last things I said to
24 him before he left the courtroom was that I was
25 going to send a letter about his appellate rights,

1 which I did mail to the Detention Center, but it
2 came back to us, because he was already transported
3 to SCDC.

4 Q. What happened to the ten-year offer? Were
5 you just mistaken from the get-go, or what happened?

6 A. I -- I couldn't tell you. I don't know if
7 -- from memory, I don't know if -- if I was mistaken
8 in what the Solicitor had said and conveying it
9 incorrectly to Mr. Pinckney or if -- if she wrote
10 something that I misinterpreted.

11 Q. Okay.

12 A. I remember going back and trying to find the
13 email that she had sent me. I just don't remember
14 right now what it said, so I couldn't tell you. It
15 could very well have been my mistake and my error in
16 what I wrote to him, or it could have been a
17 miscommunication with the Solicitor. Well, I -- I
18 don't recall the Solicitor ever saying, "No, we're
19 -- we were throwing this prior offer, here's the new
20 offer." I think regardless of whether it was her
21 mistake or my mistake, it was a miscommunication of
22 what the -- initially what the offer was.

23 Q. But was there any doubt in your mind on the
24 first day you went to court whether he would accept
25 the ten-year offer?

1 A. No, I recall that we had discussions about
2 the charge, and as Mr. Pinckney said, my concern
3 that I expressed to him that if we didn't tie
4 everything up at once, it would be a dismissal of
5 the charges, the certain charges that they could
6 bring them back, and he would be facing an
7 additional trial with an additional sentence that
8 might run concurrent, excuse me, consecutive to his
9 sentence on the hit and run with death charge. I
10 know that the Solicitor had put Mr. Pinckney's case
11 on the trial docket for the hit and run charge, not
12 the drug charges. So, again, my concern was that it
13 could result in multiple trials, and I expressed
14 that to him. Again, to the best of my recollection,
15 he was willing to plea. I know that we didn't stop
16 the colloquy to have any further discussions about
17 it, and I did cover some of this in the side area
18 where he signed the paperwork.

19 Q. I'm looking at the possession with the
20 intent to distribute marijuana. That was -- the
21 offense date on that in the indictment, based on the
22 information that was provided in the packet, it was
23 on June 26th, 2017, and the offense date for the hit
24 and run -- I'm sorry, so what is the offense date
25 for the hit and run?

1 THE COURT: July 15.

2 BY MR. FALK:

3 Q. Okay. So the offense date for the hit and
4 run is July 15, 2017.

5 A. Yes.

6 Q. I'm just -- so those are not related
7 charges?

8 A. They're not related.

9 Q. That's all I was trying to get to. Those
10 are separate offense dates, separate charges?

11 A. That's correct.

12 Q. It wasn't a situation where he had
13 marijuana, he had the accident and he got charged
14 with that at the same time?

15 A. No, sir. I mean they were two related sets
16 of charges, but they weren't related to the hit and
17 run.

18 Q. Okay.

19 A. No, my recollection was that he had got
20 arrested for an assault and battery charge, and then
21 there were drugs found on him during his -- his
22 arrest that led to a search warrant for his home,
23 which was for drugs, but that was a month before and
24 unrelated to this hit and run charge.

25 Q. And so they could have been tried

1 consecutively?

2 A. Correct.

3 MR. FALK: Your Honor, may I approach?

4 THE COURT: Yes.

5 BY MR. FALK:

6 Q. I'm going to show you a sentencing sheet for
7 the hit and run, and it has one to 25 in parentheses
8 on the top of it.

9 A. (Reviews document.) Yes, sir.

10 Q. That is the sentencing sheet in this case?

11 A. Yes, sir.

12 Q. And that's your signature on it?

13 A. It is, sir.

14 Q. What is the practice here in Beaufort
15 County, or -- and what is the practice in Beaufort
16 County about getting sentencing sheets? Did you get
17 his signature on the sentencing sheet?

18 A. I did. The Solicitor handed me sentencing
19 sheets, and the practice at the time was that -- at
20 least in Beaufort County, we'd put the sentencing
21 range on the top of the sheet so that the -- the
22 Judge can see it, and also the Defendant, you know,
23 can see it when it's handed to him. So the
24 sentencing sheet was given to me without any
25 signatures on it, otherwise filled out, with that

1 sentencing range, I believe, at the top. I -- to
2 the best of my recollection, I went into the holding
3 area side of the courtroom, and -- and presented
4 these to Mr. Pinckney. While I don't remember the
5 exact papers I handed to him at the time, I do
6 recall that it's, you know, it's my process to -- to
7 hand the sentencing sheets, along with copies of the
8 indictment, and show the Defendant the CDR codes and
9 statute codes ---

10 Q. Serious, most violent and all that kind of
11 stuff?

12 A. Exactly. And again, as negotiated as this
13 one was, I would bring your attention to that.

14 Q. I just have one question.

15 A. Yes, sir.

16 Q. But on that sheet it says 15 years up where
17 it has the actual sentence.

18 A. Yes, sir.

19 Q. That was -- was that on the sentencing sheet
20 when he signed it?

21 A. No, sir, that's something that ---

22 Q. That's -- so that's something that the Judge
23 put on?

24 A. Right, there's -- there's nothing on the
25 sentencing sheet that says what the negotiations

1 were.

2 Q. Right. And so when he signed the sentencing
3 sheet, he was looking at -- the only thing he knew
4 was how many strikes it was, and what kind of --
5 what the CDR code was, and what the sentencing rank
6 was?

7 A. Well, from the paperwork, yes. I told him
8 it was negotiated to 15, and I believe that had
9 already been on the record the first time we were in
10 court, but the only thing that you would see from
11 the -- in the paperwork is the sentencing rank.

12 Q. Okay.

13 MR. FALK: Your Honor, I have no further
14 questions.

15 THE COURT: All right, thank you. All right,
16 yes, ma'am.

17 **CROSS-EXAMINATION**

18 BY MS. MIMS:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. So at the time of the plea you testified on
22 direct that you took Mr. Pinckney back into the --
23 into the room to -- to discuss the negotiation plea,
24 didn't you?

25 A. Well, he was already in the holding area.

1 They don't bring them out until the paperwork is
2 complete and they're ready to call the case for the
3 plea. So I did take the three sentencing sheets
4 with three indictments to the holding area. I
5 believe there were also three nolle pros for
6 dismissal letters from the Solicitor, but I don't
7 recall if I had him look at those as well. I knew
8 that they were going to hand those up at the time of
9 the plea.

10 Q. So was it your understanding during that
11 time that Mr. Pinckney understood that the
12 negotiation plea would be 15 years?

13 A. At the time we -- we did this plea, yes.

14 Q. And is it also your understanding --
15 understanding that he knew that the 15-year plea
16 would -- that he was facing a 15-year plea at the
17 first plea hearing?

18 A. We did -- we -- we actually stood in front
19 of the -- of the Judge, the Solicitor said
20 something, again, to the best of my recollection,
21 said something about negotiations for -- that this
22 was a negotiated 15-year sentence. And at that time
23 I don't recall if I caught it on the sentencing
24 sheets at that time or not, but I do recall we
25 stopped the proceedings, because that was not our

1 understanding on the defense side to the offer. So
2 we did go forward at that time, and Mr. Pinckney and
3 I did have more discussions about the offer, and --
4 and what it was between the date of that scheduled
5 plea and the date it was actually held.

6 Q. Okay. And did you have any independent --
7 like additional investigations into the facts?

8 A. Well, with respect to the -- with the hit
9 and run, yes, I -- I had not dug in as much as -- as
10 I would have liked on the drug charges at that time,
11 because the hit and run was the one that was going
12 to be noticed for trial. I had gone through the
13 evidence, and also there was -- there was a witness
14 in the case who had been a friend of Mr. Pinckney's,
15 he was a pastor, in the vehicle, who originally
16 called 9-1-1. I don't believe I spoke to him, but I
17 remember talking to my investigator about
18 interviewing him. I did call the medical examiner
19 who examined the victim. I recall calling her and
20 talking with her about the victim's toxicology
21 report, and reviewing videos, there was a video of
22 Mr. Pinckney at a club shortly before the hit and
23 run. And there was a short surveillance video that
24 showed the victim wandering across the street. She
25 was under the influence of some drugs and alcohol at

1 the time, which you can see in the video, and also
2 had discussed with the medical examiner. And I know
3 it's a little bit more than you asked in the
4 question, but I do recall a conversation with Mr.
5 Pinckney explaining the difference between causing
6 -- being negligent and causing the accident, and the
7 hit and run at the crux of the crime. It wasn't
8 causing hitting the girl where she might have
9 attributed to it, but the leaving, and so I recall
10 that. With respect to the drug charges from the
11 search warrant, I read the investigations in the
12 drug lab forensic report including the weight and
13 identity of the drugs, but that's about all I've
14 done.

15 Q. And so were you particularly worried about
16 any evidence against your client as far as trial
17 versus a plea?

18 A. I was absolutely concerned that if we went
19 to trial, not only would we be risking multiple
20 trials, but that he might get an entire sentence
21 than what was negotiated. And that's partly due to
22 the fact that Mr. Pinckney had a prior relationship
23 with the -- with the alleged victim. At least the
24 family had alleged that -- I shouldn't say family,
25 there were persons who had alleged that Mr. Pinckney

1 may have been the person to provide the alleged
2 victim with some of the illegal narcotics that were
3 in her system. I was worried that that would all
4 affect the sentence that he eventually got. Also
5 had a personal relationship with the victim. I
6 believe there were allegations that he had a sexual
7 relationship with the victim at one point. Again, I
8 was worried that this would affect the maximum
9 sentence, that if he got an outstanding with
10 potential for additional trials or convictions for
11 the drug charges.

12 Q. And what was your client's inclination to
13 resolving those charges once you gave him the
14 evidence?

15 A. Well, obviously, no defendant wants to have
16 to plead guilty. I do believe that Mr. Pinckney
17 understood that the risks were dramatically greater.
18 He was looking at an additional ten years of
19 possible confinement on the hit and run charge.
20 There had been a DUI resulting with death charge
21 that had been dismissed earlier. I didn't believe
22 that that would be revived or anything, but there's
23 always a possibility that if there's a plea, or if
24 it goes to trial, it would be at some point later
25 that something like that could be revived. I know

1 that from talking about the total maximum amount of
2 jail time that he would have been facing, if you add
3 up all the drug charges, it was almost a hundred
4 years or something, a potential sentence, you know,
5 versus 15 years. I remember telling him that's the
6 best that I would ever be able to do.

7 Q. And what was your recollection of the
8 negotiation -- or your conversation about the
9 negotiation with Mr. Pinckney regarding the drug
10 charges?

11 A. I recall that I believed that we had a
12 pretty minor -- not really that consequential if
13 they -- if he pled to them, along with the hit and
14 run. I know I put in the letter I wrote to him that
15 they were asking for three years for minor pleas,
16 his drug charges but that's because if the maximum
17 sentence on the hit and run exceeded the maximum
18 that he could get on any drug charges, and of a
19 sudden he thought that the Solicitor's Office was
20 going to be dismissing at least half the charges,
21 which they did. I think they dismissed two
22 possessions with intent to distribute charges for, I
23 believe, Cocaine and Cocaine base, and a simple
24 possession from the time of his arrest of the
25 assault and battery. So I thought it was -- the

1 drugs were not as significant since they were
2 pending trial at that point, and the maximum
3 sentences were still contained within what he might
4 get for the hit and run.

5 Q. And so it's your recollection that Mr.
6 Pinckney understood that he would -- in exchange for
7 his guilty plea, he would be -- that the Solicitor
8 would drop several of the drug charges?

9 A. Yes.

10 Q. Okay. And so do you today stand by the
11 counsel that you provided to him during that time?

12 A. Yes, but -- yes, I do. I wish that I had
13 hopefully a little time to work with Mr. Pinckney,
14 and there hadn't been a miscommunication in the
15 beginning. I think that's the only case I've had
16 when I was at the Public Defender's Office where
17 there was a miscommunication. I think I was -- I
18 was more careful after that to make sure and double
19 check that that offer was correct because of what
20 happened in this incident. Nevertheless, I stand by
21 that plea, by my counsel, by my advice to him. I
22 believed and still believe that he had a tremendous
23 risk, if he took the case forward, the one case to
24 trial, or any of the drug charges took to trial, and
25 I think he got a significant benefit from the plea

1 negotiations.

2 Q. And if Applicant had asked you to take this
3 case to trial, do you believe you would have been
4 prepared to do so?

5 A. I think for the hit and run charge I would
6 have been prepared, but there wasn't a lot I could
7 have done with the nature of the evidence that was
8 coming in. I know that I had talked to my
9 investigator about whether I'd be able to discredit,
10 that -- a friend, or -- or I did have a potential
11 defense to say that Mr. Pinckney wasn't -- might not
12 have been aware that he had hit a person, but based
13 on the facts the other passenger in the car believed
14 he'd hit a person and went back and checked, I
15 thought that -- that a jury would not find that
16 credible.

17 Q. And was there any indication at the time of
18 the plea that Mr. Pinckney needed additional time to
19 discuss plea negotiations with you?

20 A. Not that I recall. We had a few weeks total
21 to try to prepare for trial and discuss the effects
22 of the plea. I wish we had earlier negotiations,
23 but the first time I talked to the Defendant I don't
24 want it to be me bringing him a plea offer, but I
25 think by the time we got to the plea, we'd discussed

1 the charges and the evidence fully.

2 Q. And did you discuss the right to appeal with
3 the Applicant?

4 A. I didn't personally address it with Mr.
5 Pinckney, and that's why I had sent him a written
6 letter. I do know that that's covered by the
7 Judge's instructions about he has ten days to file
8 an appeal. I do know that if he requested me to, I
9 certainly would have filed an appeal, but I'm not
10 really sure what I would have noted since this was a
11 negotiated a sentence. There weren't any real
12 surprises between deciding the sentencing sheets and
13 in getting the Judge's sentence.

14 Q. And in that letter that you sent him, when
15 was the letter returned to you; do you remember?

16 A. Again, based on memory, I believe I had sent
17 the letter the -- either the day of the plea or the
18 next day. I didn't believe he was going to be
19 transported until the next week, normally they
20 transport defendants about a week later on the
21 following Tuesday or Wednesday. I sent the letter,
22 I believe, on a Tuesday afternoon or Wednesday
23 morning, and it came back to us in the mail by
24 Friday.

25 Q. Okay. So it's your recollection that Mr.

1 Pinckney was apprised of his right to appeal by the
2 colloquy to him and the Judge, and even after that
3 colloquy, he still did not ask you to file an appeal
4 on his behalf.

5 A. That's correct. We did briefly talk about
6 PCR, because I didn't think that notice of appeal
7 would really apply when he just did the negotiated
8 plea.

9 MS. MIMS: I beg the Court's indulgence. No
10 further questions.

11 THE COURT: Thank you. Anything further?

12 MR. FALK: Briefly.

13 THE COURT: Yes, sir.

14 **REDIRECT EXAMINATION**

15 BY MR. FALK:

16 Q. Mr. Stephens, I believe it was your
17 testimony earlier on cross-examination that one of
18 your concerns at going to trial was some evidence or
19 suspicions that Mr. Pinckney had a relationship with
20 the -- a prior relationship with the victim; is that
21 correct?

22 A. Yes, sir.

23 Q. And was that -- was there any evidence to
24 that in discovery?

25 A. There was something in the discovery, and I

1 don't know -- to the best of my recollection, and,
2 again, I apologize for my lack of memory, but to the
3 best of my recollection there was nothing that I
4 thought was going to come in during somebody's
5 direct examination that it was admissible, but
6 there's always a fear at a jury trial that things
7 are gonna pop out on the witness stand. And I know
8 that, again, if there had been drugs in Mr.
9 Pinckney's apartment, the victim had -- was under
10 the influence of drugs at that time. I didn't see
11 anything in discovery to say that she got these
12 drugs from Mr. Pinckney, but that's my recollection.
13 But that's not to say that that wouldn't have come
14 out at trial or been alleged at trial. I would have
15 been making a motion in limine to try to exclude
16 some of that.

17 Q. Okay. And that's where I was going.

18 A. Yes. I would have filed a motion in limine,
19 and we didn't get there.

20 Q. I guess I can hardly see how that'd be
21 relevant.

22 A. I understand. And I agree with you.

23 MR. FALK: No further questions.

24 THE COURT: Ms. Mims?

25 MS. MIMS: Oh, no -- no more questions.

1 THE COURT: All right, you can step down. Any
2 objection to this witness being excused?

3 MR. FALK: No, Your Honor.

4 MS. MIMS: No, Your Honor.

5 THE COURT: Thank you.

6 CLOSING BY MR. FALK

7 MR. FALK: Your Honor, my client's case is that
8 he thought he had a ten-year deal, his lawyer told
9 him he had a ten-year deal. We have evidence that
10 he had cooperated when he was told it was a ten-year
11 deal. He was ready, willing, and able to take it.
12 I think there was testimony from Mr. Stevens that he
13 knew that my client would have accepted the ten-year
14 deal. And then there's not much concrete evidence
15 as to what happened between the ten-year deal and
16 the 15-year deal. You know, he -- and I believe his
17 testimony was, "I don't know if it was my mistake,
18 if it was her mistake, or I just misread it wrong."
19 So, again, my client was very willing and able to
20 take this ten-year offer, somehow it evaporated on
21 him, and he wanted -- well, the Court says take this
22 15-year offer. Thank you.

23 CLOSING BY MS. MIMS

24 MS. MIMS: Well, Your Honor, the standard for
25 ineffective assistance of counsel to show additional

1 performance and prejudice therefrom, when considered
2 the context of the guilty plea, Applicant must show
3 that counsel's performance failed on the level and
4 objective standard of reasonableness, and but for
5 that deficiency, he would not have pled guilty, and
6 would have insisted on proceeding to trial. The
7 burden for proving that is upon Mr. Pinckney and
8 today he has failed to meet that burden. Mr.
9 Pinckney testified that he would have pled guilty
10 regardless of the 15-year sentence or the ten-year
11 sentence. He was willing to profess his guilt
12 before the Court. Mr. Pinckney testified that he
13 was just thinking of the sentence reduction, or
14 receiving ten years instead of the 15 years. And on
15 post-conviction relief, applicants can't request a
16 sentence reduction as relief. And furthermore,
17 Applicant, although he was given a ten-year -- or he
18 thought he was going to take a ten-year plea, before
19 he would -- before he entered into the plea
20 voluntarily, knowingly and intelligently as stated
21 in the transcript, the mistake was rectified. He
22 knew that he would be coming before the Court to
23 take a 15-year sentence, as Mr. Stephens testified
24 to and Mr. Pinckney. And so for those reasons we
25 ask that the Court deny relief for Mr. Pinckney's

1 application for post-conviction relief. Thank you.

2 THE COURT: All right, I will take this under
3 advisement and issue a ruling. I don't want to say
4 when because I don't know when.

5 - - -END OF TRANSCRIPT- - -

6 * * * * *

7 CERTIFICATE OF REPORTER

8
9 I, Cathy L. Young, CVR-M, for the
10 Fourteenth Judicial Circuit of the State of South
11 Carolina, do hereby certify that the foregoing is a
12 true, accurate and complete Transcript of Record of
13 the proceedings had and evidence introduced in the
14 trial of the captioned case, relative to appear, in
15 the Circuit Court for Beaufort County, South
16 Carolina, on the 3rd day of November, 2021.

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

19

20

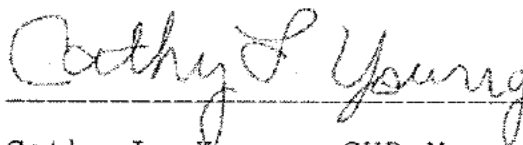
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Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
Henry Edward Pinckney, #377144,	)	
Applicant,	)	Case No.: 2019-CP-07-00173
v.	)	ORDER OF DISMISSAL
State of South Carolina,	)	
Respondent.	)	

In response to Henry Edward Pinckney's (Applicant) action for post-conviction relief (PCR) commenced January 25, 2019. The State made its return on March 18, 2020. The Court convened an evidentiary hearing into the matter on November 3, 2021, at the Beaufort County Courthouse in Beaufort, South Carolina. Applicant was present at the hearing and represented by James Falk, Esq. Assistant Attorney General Lauren Mims of the South Carolina Attorney General's Office, represented the State.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Jeffrey Stephens, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted at the May 2017 term of the Beaufort County Grand Jury for Applicant for possession with intent to distribute marijuana, second offense (2017-GS-07-01026), possession with intent to distribute cocaine base, first offense (2017-GS-07-01027), and felony hit and run with death resulting (2017-GS-07-01123).



Applicant was represented by Jeffrey Stephens, Esquire, of the Fourteenth Circuit Public Defender's Office. Assistant Solicitor Leigh Staggs, of the Fourteenth Circuit Solicitor's Office, prosecuted the case.

On July 24, 2018, Applicant appeared before the Honorable Perry M. Buckner and pled guilty as indicted, with a negotiated plea of 15 years incarceration. Judge Buckner went along with the negotiated plea and sentenced Applicant to a term of imprisonment of 10 years for PWID marijuana, second offense; 15 years for PWID cocaine base, first offense; 15 years for hit and run, death resulting; with all sentences to run concurrent. Applicant did not appeal his plea or sentence.

II. CURRENT APPLICATION

Applicant timely commenced this PCR action on January 25, 2019. Applicant alleges¹ that he is being held in custody unlawfully for the following reasons:

1. Defense counsel was ineffective for failing to properly advise the applicant of the full scope of appellate review from an appeal of a guilty plea.
2. Plea counsel failed to object to the sentence imposed by the court, which exceeded the duration of the negotiated sentence of ten (10) years that Applicant had agreed to.
3. Plea counsel failed to timely seek leave of court to withdraw Applicant's guilty plea on the basis that the court-imposed sentence exceeded the duration of the sentence of a plea bargain to which Applicant had agreed.
4. Applicant would otherwise have proceeded to trial and not have pled guilty had he known the sentence would or could have exceeded the ten (10) year cap that was promised as part of his plea bargain.
5. Applicant's guilty plea was involuntary as it was induced by an unfulfilled plea bargain that Applicant would not be sentenced concurrently to more than ten (10) years.
 - a. June 6 2018 Letter:
 - i. "As we discussed, the prosecutor in your case is asking you to plead guilty to some minor drug offenses and the charged leaving the scene of an accident with death charge in return for her recommendation of a 10-year jail sentence. I would be arguing for the judge to sentence you to a much lower jail sentence."

¹ These allegations were excerpted from Applicant's application for clarity and brevity.

6. Plea counsel was ineffective for failing to properly advise Applicant of his right to a direct appeal following his guilty plea.
 - a. Plea counsel did not properly advise Applicant of the full scope of appellate review of an appeal from a guilty plea. "As defense counsel was required to do so, but failed in this duty, the defendant was entitled to relief on this ground."
7. Plea counsel failed to investigate both factual and legal matters in order to develop potential defenses.
8. (P. 23) Illegal search warrant
9. Chain of custody
10. Due process
11. Indictment Violation
12. SMJ

As relief, Applicant requests "a new trial and any other relief allowed under statutes and case law".

At the evidentiary hearing, Applicant proceeded forward on the allegations of ineffective assistance of counsel, involuntary guilty plea and failure to file an appeal.

III. RELEVANT TESTIMONY

Applicant's Testimony

At the evidentiary hearing, Applicant testified Jeffrey Stephens represented him in this case and was appointed to him. He further testified that he had conversations with plea counsel at the detention center where he was housed. It is Applicant's testimony that plea counsel only came to the detention center one time and that he sent an assistant another time. During the meeting with plea counsel's assistant, Applicant testified that he watched videos. He further testified that his family tried to contact plea counsel on several occasions.

He further testified that he received a written letter from plea counsel that was hand delivered to him by a representative from the Fourteenth Circuit Public Defender's Office. Applicant testified that he believed everything was going to be "alright" because there were plea negotiations that were mentioned in the letter. After receiving the letter, Applicant stated he would

be willing to take a ten-year plea offer. Applicant further testified that plea counsel corrected the offer of ten years to fifteen years after the letter was received by Applicant. Applicant further testified that plea counsel advised him should he proceed to trial, he would be tried separately and would have consecutive sentences. It is Applicant's contention that no one met with him or discussed his matter with him between the time he received the letter on June 6, 2018 and the time of the plea. He further testified that he went to Court one week before his plea and did not take the offer of fifteen years at that time. Applicant further testified that there was no one in his family to testify on his behalf at his sentencing hearing because his attorney did not inform him that he was going back to court the following week to plead guilty.

On cross-examination, Applicant stated that he did not remember discussing elements of the crime with his attorney before he pled, but remembered after his recollection was refreshed. Applicant testified that he recalled discussing possible defenses with his attorney, but did not give his attorney any leads to investigate. Furthermore, Applicant testified that he remembered Judge Buckner explaining that he had several rights that he would be giving up, including: right to jury trial, right to remain silent and right to challenge the facts alleged against him. Applicant could not recall offering any complaints to the Court with his lawyer. Applicant further reiterated that plea counsel did not speak with Applicant before taking the fifteen-year plea, but would have accepted a ten-year plea. On re-direct examination, Applicant testified that he remembers telling the court he was satisfied with his lawyer, but he was not satisfied with his lawyer. On re-cross, Applicant

testified that he remembered telling the Court that he did not need more time with his attorney and that he understood her questions.

Plea Counsel Jeffrey Stephens' Testimony

Plea counsel, Jeffrey Stephens, testified he was appointed in this case. It is his testimony that he spoke with Applicant twice by telephone and physically spoke with him at the detention center twice. During these meetings, Mr. Stephens says he showed Applicant the evidence against him and personally reviewed it with him, as he remembers it was his first time entering the detention center with a laptop.

Mr. Matthews further testified that he had someone from his office walk over the letter conveying the plea offer to Applicant. After the letter was sent, he realized that there was an e-mail from the Solicitor Leigh Staggs, who was handling Applicant's plea. The offer in the e-mail was ten years imprisonment if Applicant was to plea to the charges in this plea as well as a charge that he could not recall. Mr. Stephens stated that offer was different than he believed at the first plea hearing. He testified that when he discussed the plea offer and preparing for the plea colloquy, that he emphasized that this was negotiated. Mr. Stephens did not dispute that he was told in letter that there was a ten-year plea offer, but testified that he went over in detail that the offer was actually fifteen years. Plea counsel felt that Applicant would have pled to the ten-year offer, but it was concerning because the Solicitor could try these matters separately. He further explained that the hit and run charges and drug charges were not related, but could have been tried in separate trials, exposing Applicant to a large amount of time. Plea counsel was then asked "What is the practice in Beaufort County about getting a signature on a plea sheet?" Plea counsel responded, stating that the practice was to put sentencing range on the top of the sentencing sheet so the presiding judge and defendant could see. He further testified that he usually hands sentencing



sheets, indictments and statutory codes to Applicant and explains various classifications, including serious and most serious and violent and nonviolent classifications. Plea counsel states that he told Applicant that the plea was going to be for fifteen years.

On cross-examination, Plea counsel testified that he showed Applicant the three sentencing sheets to the holding area and showed him the three indictments that were *nolle prossed*. He further testified that at the time of the plea, he believed Applicant understood what was taking place at that second plea hearing. He testified at the first plea, Applicant stopped the proceedings and did not go forward, but instead had more discussions surrounding the plea. When asked whether or not he had conducted investigations, Plea counsel testified that he had done most of his investigation on hit and run because it was going to be called for trial. Specifically, Plea counsel testified he called the medical examiner who examined the victim, discussed victim's toxicology report and reviewed the video of Applicant at a club shortly before the hit and run. Plea counsel also recalled a conversation between Applicant and himself where they discussed the difference between actually hitting the victim and leaving the scene of the accident. Plea counsel further testified that he was concerned with the possibility that Applicant could have multiple trials exposing him to a large amount of time. Plea counsel also expressed concerns that there were individuals who alleged that Applicant has possibly provided victim with the narcotics in her system, and that Applicant had a possible personal or sexual relationship with the victim. Plea counsel testified that Applicant did not want to plead guilty at first, but he was also facing up to 100 years if convicted consecutively.

When asked what was his conversation about Applicant's drug charges, plea counsel testified that the negotiations were more focused on the hit and run charge because it carried the highest sentence. He further testified that the drugs were not as significant and that the maximums

of those chargers were contained within the maximum sentence of hit and run. It was plea counsel's contention that Applicant understood the risks associated and that the Solicitor would be dropping some of his drug charges in exchange for his plea of guilty. Plea counsel further testified that he would have been ready to proceed to trial on the hit and run, but it would have been a difficult defense based on the facts of the case. When asked whether he felt Applicant needed additional time, he testified that he did not believe and had no inclination at the plea hearing that he needed more time. Regarding his appeal, plea counsel stated Applicant never indicated that he wished to appeal. He further testified that he tried to send a letter about an appeal but was never told by Applicant that he wished to go forward on an appeal.

On re-direct examination, plea counsel testified that he doesn't remember if there was any actual Rule 5 discovery evidence to support that Applicant may have had a relationship with the victim.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to Section 17-27-80 of the South Carolina Code, this Court makes the following findings based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the

proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCR. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be



reasonable.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his

statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Applicant contends that counsel was ineffective for failing to enforce a ten-year plea offer that counsel presented to Applicant by letter and allowing Applicant to plead to a fifteen-year sentence. This Court finds that Applicant has failed to prove that counsel was constitutionally ineffective.

Here, there was testimony from Applicant and plea counsel that there was letter given to Applicant that conveyed that there was an offer from the Solicitor for a ten-year plea offer in exchange for drug offenses, as well as the hit and run that he was charged with. However, Applicant contended that he was unaware and did not understand that he was going to be pleading to a negotiated fifteen-year sentence before he pled. This Court finds Applicant's contention to be in direct contradiction with the record below and the credible testimony of plea counsel. Specifically, Applicant affirmed his understanding in the following colloquy with Judge Buckner where he said:

THE COURT: Now, you heard the Solicitor tell me at the outside of this hearing and it was confirmed to me by your attorney, Mr. Stephens, that there are negotiations in regards to your plea/ You've signed the plea sheets where all three indicated negotiated plea. Do you understand that negotiations were published to me as a sentence of 15 years imprisonment

and sentences are to run concurrent to each other is that your understanding of the negotiations?

DEFENDANT: Yes, sir.

Plea Tr. p. 16.

Furthermore, this Court finds credible the testimony of plea counsel, Mr. Stephens, that he took the sentencing sheets to a holding area for Applicant to review and that he understood that he would be pleading to a negotiated fifteen-year sentence. This Court also finds credible the testimony of plea counsel that he explained to Applicant in detail that he would be pleading to a negotiated fifteen-year sentence before he entered into is plea. Additionally, during the plea, Applicant testified to the plea judge that he understood what a negotiated sentence was and the ramifications to pleading to a negotiated sentence. Further, Applicant denied during the plea proceeding that anyone had threatened, coerced into taking the plea and expressed that he was satisfied with his counsel's representation. Applicant also testified that the he understood all of the talks with his lawyer as well as plea judge's questions. He further indicated that he answered all of the judge's questions truthfully.

This Court finds Applicant cannot establish any constitutional ineffectiveness of counsel for allegedly "failing" to enforce the ten-year plea offer and not informing Applicant of the fifteen-year plea offer. Plea counsel was not deficient, as this Court found the testimony of plea counsel credible in that he adequately explained and conveyed the fifteen-year plea offer to Applicant before the plea. Applicant was further apprised of the negotiated fifteen-year plea offer and the ramifications of the negotiated plea by the plea judge. As a result, any misunderstanding or miscommunication that Applicant had about the length of time he was pleading guilty to was effectively cured during the plea colloquy. Furthermore, this Court finds that pleading guilty to a



negotiated fifteen-year sentence when Applicant was facing a substantial amount of time did not prejudice Applicant. Accordingly, this allegation is **DENIED**.

Involuntary Guilty Plea

Applicant further claims his plea was not entered knowingly or voluntarily. The record reflects that Applicant's plea was knowingly and voluntarily entered into, thus Applicant cannot establish his plea was involuntary.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. *Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); *see also Boykin v. Alabama*, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. *See Harris v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); *Richardson v. State*, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993).

At the plea hearing, Applicant informed the court that he understood the charges against him and their potential sentences. He further explained to the plea court that he was completely



satisfied with the services of counsel and indicated that he had enough time to speak with his lawyer. Applicant affirmed that he had understood all the talks with his lawyer, as well as all of the plea judge's questions and answered them truthfully. Furthermore, at the post-conviction relief hearing, there was no indication that Applicant would have went to trial but for plea counsel's alleged shortcomings as required by *Roscoe* and *Richardson*. He testified that while he did not understand that he was pleading to fifteen years, he testified multiple times that he wished to take a plea deal for ten years.

While Applicant proclaims that he did not understand or was not informed by plea counsel he was entering into a fifteen-year plea, any miscommunication or misunderstanding was effectively cured by the colloquy between Applicant and the plea court. Accordingly, Applicant's allegation of involuntary guilty plea is **DENIED**.

V. FAILURE TO APPEAL SENTENCE OR PLEA

Applicant claims Counsel was ineffective for failing to file an appeal. Counsel is required to make certain the defendant is made fully aware of the right to appeal following a trial. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). However, absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995). The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Id.* Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal. *Id.* Extraordinary circumstances may exist when there is reason to think that a rational defendant would want an appeal, such as when non-frivolous grounds for an appeal exist, or when the defendant reasonably demonstrates an interest in appealing. *Id.*; *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

This Court finds Counsel credible in his testimony that he never received any inclination or was told by that Applicant wanted to appeal his guilty plea. Further, Applicant was fully apprised of his right to an appeal from the plea judge during the colloquy. Accordingly, Counsel was not required to file an appeal, barring extraordinary circumstances, which have not been shown here. Accordingly, relief on this ground is **DENIED**.

VI. CONCLUSION

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

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 16 day of Feb, 2023.



THE HONORABLE DEANDREA BENJAMIN
Presiding Judge
Fourteenth Judicial Circuit

Columbia, South Carolina

WITNESSES

DOCKET NO. 2017GS0701026

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

December Term 2017

THE STATE

vs.

Henry Edward Pinckney

Indictment For

Possession with Intent to Distribute
Marijuana – 2nd Offense

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

CDR Code: 0187

169

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

Defendant

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

ARREST WARRANT NUMBER

2017A0710200142

ACTION OF GRAND JURY

True Bill

Nelly B. Bosworth
Foreperson of Grand Jury

Date: *Dec 14 2017*

VERDICT

Defendant

Witness:

C.C.C. PLS. and G.S.

Foreperson of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF BEAUFORT)

2017GS0701026

At a Court of General Sessions, convened on December 14, 2017, the Grand Jurors of Beaufort County present upon their oath:

Possession with Intent to Distribute Marijuana – 2nd Offense

That in Beaufort County, South Carolina, on or about June 28, 2017, the Defendant, Henry Edward Pinckney, did manufacture, distribute, dispense, deliver, or purchase or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, which was a controlled substance classified in Schedule I, II, III, flunitrazepam, or a controlled substance analogue, and Henry Edward Pinckney had been convicted within the previous ten years of a first violation of a controlled substance offense provision, of Article 3, Narcotics and Controlled Substances, or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs, et al. of the Codes of Law of South Carolina.

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

Solicitor

WITNESSES



DOCKET NO. 2017GS0701123

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

November Term 2017

THE STATE

vs.

Henry Edward Pinckney

Indictment For

Hit and Run, Duties of Driver
Involved In Accident with Death

SC Code: 56-5-1210(A)(3)

CDR Code: 2463

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

Defendant

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

ARREST WARRANT NUMBER

2017A0710200150

ACTION OF GRAND JURY

True Bill

Nelly B. Basworth
Foreperson of Grand Jury

Date:

NOV 15 2017

VERDICT

Foreperson of Petit Jury

Date:

INDICT

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF BEAUFORT)

2017GS0701123

At a Court of General Sessions, convened on November 16, 2017, the Grand Jurors of Beaufort County present upon their oath:

Hit and Run, Duties of Driver Involved in Accident with Death

That in Beaufort County, South Carolina, on or about July 15, 2017, the Defendant, Henry Edward Pinckney, did, as the driver of a vehicle involved in an accident resulting in Serina Gayle Hardy's death, fail to immediately stop the vehicle at the scene of the accident or as close to it as possible, or failed to return to or remain at the scene of the accident until he complied with the requirements of Section 56-5-1230, all in violation of Section 56-5-1210(A)(3), et al. of the Codes of Law of South Carolina.

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

Solicitor

True Bill

WITNESSES

DOCKET NO. 2017GS0701027

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

The State of South Carolina

County of Beaufort

Defendant

COURT OF GENERAL SESSIONS

December Term 2017

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

ARREST WARRANT NUMBER

2017A0710200143

THE STATE

vs.

Henry Edward Pinckney

Indictment For

Possession with Intent to Distribute
Cocaine Base - 1st Offense

SC Code: 44-53-375(B)(1)

CDR Code: 3014

ACTION OF GRAND JURY

True Bill

Defendant

Witness:

C.C.C. PLS. and G.S.

Nelly H. Basanta
Foreperson of Grand Jury

Date: *Dec 14 2017*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF BEAUFORT)

2017GS0701027

At a Court of General Sessions, convened on December 14, 2017, the Grand Jurors of Beaufort County present upon their oath:

Possession with Intent to Distribute Cocaine Base – 1st Offense

That in Beaufort County, South Carolina, on or about June 28, 2017, the Defendant, Henry Edward Pinckney, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver cocaine or cocaine base, all in violation of Section 44-53-375(B)(1), et al. of the Codes of Law of South Carolina.

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

Solicitor

Beaufort

(0-10 years)

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beau fort

STATE

VS.

Henry Edward Pinckney

AKA:

Race: Black

Sex: Male

Age: 21

DOB:

SS#:

Address:

DL#

SID#

) INDICTMENT/CASE#:

2017GS0701026

) A/W#:

2017A0710200142

) Date of Offense:

06/28/2017

) S.C. Code #:

44-53-370(b)(2)

) CDR Code #:

0187

) SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Possession with Intent to Distribute Marijuana, 2nd Offense

In violation of § 44-53-370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0187

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS☐ MANDATORY GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(def's initials)

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

ATTES

(Section)

101118

(Defendant)

(Attorney for Defendant)

72418

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2017GS0701027, 2017GS0701123☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS☐ Obtain GED☐ Attend Voc. Rehab. Or Job Corp.☐ May serve W/E beginning _____☐ Substance Abuse Counseling☐ Random Drug/Alcohol Testing

Recipient:

*Fine:

Public Defender App Fee

\$ 40.00

§14-1-206 (Assessments 107.5%)

\$ 100.00

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso 61.6 (Public Def/Prob)

\$500

\$

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$ 150.00

§50-21-114 (BUI Breath Test Fee)

\$50

\$

§56-5-2942(J) (Vehicle Assessment)

\$40/each

\$

3% to County (if paid in installments)

\$ 8.25

TOTAL

\$ 323.25

Clerk of Court/Deputy Clerk
Court Reporter:Pam Gunn
M. Rebecca Hill

Presiding Judge:

Judge Code:

Sentence Date:

2017 GS0701026
7/24/18
Perry M. Buchner

(1-25 years)

171

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort

STATE

VS.

Henry Edward Pinckney

AKA:

Race: Black

Sex: Male

Age: 30

DOB:

SS#

Address:

DL#

SID#

) INDICTMENT/CASE#:

2017GS0701123

) A/W#:

2017A0710200150

) Date of Offense:

07/15/2017

) S.C. Code §:

56-5-1210(A)(3)

) CDR Code #:

2463

) SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or

☒ PLEADS

TO: Illicit and Run. Duties of Driver Involved in Accident with Death

In violation of § 56-5-1210(A)(3) of the S.C. Code of Laws, bearing CDR Code # 2463

☐ NON VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ MANDATORY GPS ☐ §17 25-45
(CSC within 1* or CSC within 3*)

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

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

ATTEST

(Notary)

(SC Bar #)

(Defendant)

(Attorney for Defendant)

(SC Bar #)

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and or payment of \$ _____
plus costs and assessments as applicable*: the balance is suspended with probation for _____ months/years and subject to South Carolina Department of
Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2017GS0701027; 2017GS0701026

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§14-1 206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1 211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/each	\$
3% to County (if paid in installments)		\$ <u>3.00</u>

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

MP SCCA/217 (04/2018)

☐ Obtain GED

☐ Attend Voc. Rehab. Or Job Corp. _____

☐ May serve W/E beginning _____

☐ Substance Abuse Counseling

☐ Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ Certified - A True Copy Defender Fund

Other: _____

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

Presiding Judge: _____

Judge Code: _____

Sentence Date: _____

(0-15 years)

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort

STATE

VS.

Henry Edward Pinckney

AKA:

Race: Black

Sex: Male

Age: 30

DOB:

Address:

DL#

SID#

) INDICTMENT/CASE#:

2017GS0701027

) A/W#:

2017A0710200143

) Date of Offense:

06/28/2017

) S.C. Code §:

44-53-375(B)(1)

) CDR Code #:

3014

) SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Possession with Intent to Distribute Cocaine Base, 1st Offense

In violation of § 44-53-375(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3014

☒ NON VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ MANDATORY GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

 (Solicitor) *Joseph Stanga* 101118
 (SC Bar #)

 (Defendant) *Henry Edward Pinckney*
 (SC Bar #)

 (Attorney for Defendant) *Joseph Stanga*
 (SC Bar #)

(SC Bar #) 72418

 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____;
 plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of
 Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2017GS0701027; 2017GS0701123

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/each	\$
3% to County (if paid in installments)	\$	\$ 8.25

TOTAL

\$ 283.25

 Clerk of Court/Deputy Cl *Pam Barnes*
 Court Reporter: *M. Rebecca Hill*

MP SCCA/217 (04/2018)

☐ Obtain GED☐ Attend Voc. Rehab. Or Job Corp. _____☐ May serve W/E beginning _____☐ Substance Abuse Counseling _____☐ Random Drug/Alcohol Testing _____

Fine may be pd. in equal consecutive weekly/monthly

 pmts. of \$ _____ Beginning _____
 \$ _____ Certified - A This Court Paid to Public Defender Fund
Other: *Joseph Stanga*
Joseph Stanga
 Beaufort County, SC - Joseph Stanga

☐ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before any other fees.
Presiding Judge: *Joseph Stanga*Judge Code: *2122*Sentence Date: *7/24/18*