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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable R. Lawton McIntosh, Circuit Court Judge

KENDALL DONYALE ARNOLD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000334

APPENDIX

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STATE OF SOUTH CAROLINA, PLAINTIFF,	
vs.	TRANSCRIPT OF RECORD
KENDALL DONYALE ARNOLD AND DEFONTE NEAL, DEFENDANT.	

March 4, 2019
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, JUDGE

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

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CHERYL A. SMITH
Circuit Court Reporter

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(SW) - Denotes State's Witness
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EXHIBITS

NO	DESCRIPTION	ID	EVD

There were no exhibits introduced.

PROCEEDINGS

(WHEREUPON, proceedings commenced at 11:11 a.m.)

THE COURT: I heard that there were -- I know we had some motions, but Mr. Cooke, there was some -- did you have an issue you needed to discuss with the Court?

MR. COOKE: Well, I don't think that I -- I don't want to bring up my issue right now until you see what you do about this continuance.

THE COURT: Okay. All right. Well, Ms. Henry, then you have a motion for continuance. Let's go ahead and call the case so there's no question about what we are tending to here, and it is the case of the State vs. Kendall Arnold, indictment -- the first indictment ending 3384, and the State vs. Defonte Neal, first indictment ending 5320, armed robberies.

Okay. Ms. Henry, be happy to hear from you.

MS. HENRY: Thank you, Your Honor. I apologize. Give me one second. Let me find ---

MR. COOKE: Can we wait for our clients to get in here, I guess?

(Pause in proceedings.)

THE COURT: All right. Yes, ma'am?

MS. HENRY: All right. Thank you, Your Honor.

I initially had a motion for a continuance. There's

a police officer, Brian Leister, who is with Greenville County who is a key and important witness to our case who is unavailable. I think he's been deployed. He's in active military duty. It's my understanding from Mr. Moore that he will be back potentially in September. I'm asking for a continuance because he is unavailable.

So it's my understanding from the reports and from my conversations with Mr. Moyer that they're going to have a witness, Jaquez Nesbitt, who is one of the victims in this case. But he's going to be testifying, and he has made an ID of my client, really the only reliable ID. They have a codefendant ID as well, but it is -- she's also ID'd several other people. This was her most recent ID. There are a lot of complications with that as far as her giving multiple statements and multiple interviews and naming multiple people as complicit in this.

So the really only solid ID that the State has is from Jaquez Nesbitt, one of the victims. And the only officer as far as I'm aware that interviewed him at the scene or spoke to him or saw him or any of his relatives, who I believe are also going to be potential witnesses, was Brian Leister. And Brian Leister put in his report that the parties were -- that he chose not to take their statements because they were so intoxicated, and I think that's going to have serious implications for the

believability of the ID. The ID was also taken, the six-pack was also done almost a month later.

The description that he gave doesn't match my client. There's some real problems with this ID, and I really think that without Mr. Leister here or without a really substantive stipulation, that at least the case against my client should be continued.

THE COURT: Okay. All right. And I know we did talk about that, about the stipulation as to the substantive -- the substance of that officer's potential testimony. Y'all weren't able to come to an agreement as to a stipulation?

MS. HENRY: No, Your Honor. I put in the stipulation what I believed I could elicit from the officer if I were to have him on cross or to be able to question him, and Mr. Moyer I believe was only able to -- only comfortable putting in exactly the sentence that was in the report, which I think is just really not enough.

THE COURT: All right. Good enough.

Mr. Moyer?

MR. MOYER: Judge, I think so the issue then would be this issue of intoxication of the witness. Just to give you a little background, what we're trying today, there were three different robberies that happened on the same night. This one that Ms. Henry is talking about was the

middle robbery. There were four or five people in a home, and it's alleged the defendant and -- or both defendants went to the home and robbed one of the people in that home. It's my intention to have two of those people who were there testify: the victim and then one other person who was present.

So this issue of intoxication, well, first off, the witness, not the victim but the witness is not going to attempt to identify her client. She didn't see him. So that, I don't think, is going to be an issue. I mean, she saw the vehicle they drove away in so she's going to be able to say, yes, that was the vehicle. She can identify it in the photographs and so forth.

The victim will identify Ms. Henry's client.

As far as this issue of intoxication, I think the jury will have enough information from the trial to make an assessment about that issue. I don't think it's going to be any question they were drinking. I mean, they're going to admit -- it was New Year's Eve. Everyone, there's alcohol involved with everyone in this case because it was -- again, it was New Year's Eve.

So we're also going to hear a 9-1-1 tape. We're going to hear both of these people talking on the 9-1-1 tape. I think that's going to help the jury assess whether or not they were too intoxicated to be able to

make any kind of identification. And, again, they themselves can be cross-examined.

So I would just argue that there's not enough substance to this particular witness to warrant a continuance. Once again, the officer's gone until September. He's been gone for quite a while. This case has been on the docket before, and we decided -- I just didn't think he was a necessary enough witness that we needed to postpone the trial from my perspective.

THE COURT: Sure. Yeah, yeah.

MR. MOYER: So, anyway, that would be our argument.

THE COURT: Yeah. And I think that's -- it's important to note that you don't think he's a significant witness from your perspective that is you don't need to prove your case. That sounds pretty clearly that you believe that.

My concern is whether it compromises the defense's ability to actually defend her client. We have four armed robberies, you know, potentially -- actually four armed robberies and one attempted armed robbery. Mr. Arnold -- or excuse me. Not Mr. Arnold. Mr. Neal, it's three armed robberies. It's still enough to put him in jail for most of the remainder of his life if not all of it.

So I'm going to err on the side of Ms. Henry affording him the best defense that she can possibly

afford him.

Now, here's the other question. If there are three, I mean, I don't know if they all have to be tried together, and this only concerns one of the armed robberies. And I wouldn't suggest that you should try it in any particular way and bifurcate the proceedings. That doesn't matter to me. But I am concerned about that witness.

MR. MOYER: Your Honor, at this time we would just prefer to move forward with the other defendant, Kendall Arnold, rather than try to split up those robberies due to the identification being an important part of the case against Defonte Neal. So with that being your ruling, Your Honor, at this time the State would just want to move forward with the first defendant, Kendall Arnold.

THE COURT: Okay. All right. So when is the officer going to be back?

MR. MOYER: He told me September.

THE COURT: September. Okay. And is he overseas, do you know?

MR. MOYER: I think he's been -- yes. He's been back and forth. He's out of Charleston, but he's off duty -- off duty is not the right word, but he's been granted release from Greenville County. And I know he's been back and forth, and I'm not sure where overseas, but he's been

in Charleston and overseas and back and forth.

THE COURT: Okay, okay. So he's probably in either the Air Guard or the Air Reserve, probably.

MR. MOYER: He's in the guard ---

THE COURT: He's in the Air.

MR. MOYER: --- according to ---

THE COURT: If he's in the South Carolina Army National Ground and he's in Charleston, then he works for me. So I can get him back here. But in any event ---

MR. COOKE: Judge, I would join that same motion. These are both -- both of these people involved out of that same alleged armed robbery, same witnesses, same everybody. You know, I mean, his availability to me is just -- I join all motions she made. Let me just mention that at the beginning of this thing. But I would make the same motion, Judge.

MR. MOYER: Judge, it's not ---

MR. COOKE: I don't see any difference.

MR. MOYER: I didn't mean to cut you off. I'm sorry.

MR. COOKE: I'm sorry. Understood.

MR. MOYER: And, Your Honor, that being the case, if Your Honor sees fit to grant it regarding Mr. Cooke as well, we can go forward with the other two robberies with Kendall Arnold. So we would just cut out that one.

THE COURT: And that's what I was suggesting for you.

I mean, that one identification as it relates -- if it just relates to one of the alleged robberies, then you can go forward on the other two. I'm not making any rulings with respect to that.

Okay. So with respect to the continuance because of a witness being absent, I'll continue that particular case, that particular case. And the State can elect to move forward on its other cases today, should it like to. So I don't know exactly how that works out entirely, whether that leaves us with one remaining defendant today or whether it leaves us with both defendants in two cases.

MR. MOYER: It leaves us one defendant, Your Honor: Kendall Arnold.

THE COURT: Okay. All right. Well, good. Then we'll proceed with Mr. Kendall Arnold today on which indictments?

MR. MOYER: If I can just have one minute. I have this written down.

THE COURT: Okay.

MR. MOYER: We will go forward with Indictment Numbers 2017-3386, 3385, 3389, and 3384.

THE COURT: Okay. All right. Well, good enough.

MR. MOYER: So that would be three armed robberies and one attempted armed robbery.

THE COURT: Okay. All right. Good enough. Okay.

So I presume, Mr. Neal, you can go back to the detention center, and Ms. Henry, you are excused unless you'd like to stay.

MS. HENRY: Thank you very much, Your Honor. I appreciate it.

Your Honor, may I talk to him just really briefly?

THE COURT: Sure. Yeah. Absolutely. Absolutely. Yeah. I'm going to go forward with Mr. Cooke while you're in there, okay?

All right. Mr. Cooke do you have any additional motions, sir?

MR. COOKE: Yes, sir. This is unusual. I have a situation here, Judge, where last week I received some additional discovery in my case which, to be quite honest with you, is very devastating evidence really because the evidence that they sent me is a clear picture of my client dressed in the same outfit that the alleged armed robber wore. And it's not like a black shirt and black pants. It's like a red jogging suit with red shoes, which is one of the robberies. That's the exact description they gave of the defendant. The other part of that collage was my client handling the gun -- two guns, as a matter of fact.

I think that the introduction of that, if Your Honor let it in, would have been pretty doggone devastating, and my client, quite frankly, did, too. He tells me after I

showed it to him last week -- and last -- I just got this last week. This case is a couple years old. My client told me, he said, "Mr. Cooke, I would have taken that plea, I would have taken that had I seen these pictures. If they're going to put that in evidence, I would have taken that plea." I mean, he said just, you know, "I would have."

We're in a position now where it's on the trial docket. I mentioned to Mark earlier that my client would plead to the original 15 years that was offered. Of course he wouldn't do it. It's on the trial docket. But my client, quite honestly, is mad at me because I didn't get that information, and he's missed out on what he thinks -- he's doing eight years now. So he said, "I would have taken that plea."

So anyhow, that's where I stand. I'm kind of in a jam on this thing myself.

THE COURT: Okay.

MR. COOKE: So that was kind of, I guess, to suppress the pictures would be about the only thing we could do.

THE COURT: Yes, sir. Yes, sir.

Mr. Moyer?

MR. COOKE: He's dying to plead guilty. I mean, this is crazy. I mean, this is crazy.

THE COURT: Okay. All right. Mr. Moyer?

MR. MOYER: Your Honor, that information was given years ago. What we have here is this defendant's phone was found in the vehicle that the armed robbers had jumped out of to do these armed robberies. It ends up in a high-speed chase in North Carolina. Defendants get out and run. The vehicle is seized. His phone was in the car. It was seized.

North Carolina took the phone just because they had numerous charges based on this 117 mile-per-hour chase in North Carolina. So they took the phone, they did a phone dump, they gave us a copy of the CD with that information on it. That phone was then sent down to South Carolina, and just so we wouldn't have to bring the technician from North Carolina down to testify about the phone, we had our own analyst examine the phone here, too. However, we gave the disc from North Carolina to the defense early on in the case in initial discovery. So you have this information all this time.

Leading up to trial, I had -- let me back up. When you pull up the photographs on this phone, it has numerous pictures of this defendant in the same clothing that was described by the victims of the armed robberies. It's very distinctive red Adidas jumpsuit with white stripes. There's pictures -- numerous pictures of him in that. There's pictures of him with guns matching the description

of the guns that the victims will say were used to rob them. Some of these were taken on the day of the incident, these photographs.

So what I did was I just, for ease in trial, I had -- I picked the ones that I wanted to use and I had those printed off, and then, you know, I gave those copies. So the information has been available all this time. I just want to make sure that was clear.

THE COURT: Okay. Now, when Mr. Cooke says the original offer was 15 years, was that on armed robbery charges or strong-arm robbery?

MR. MOYER: I believe the original offer was 20 years and I came down to 18.

MR. COOKE: No.

MR. MOYER: Isn't that not true? I'll have to look at my ---

MR. COOKE: The original offer was 18 years. Then I went back at you and I said, well, you know, how about 15 -- or 12? I think I said 12. Then you came back and offered 15. And that's kind of where we got hung up.

THE COURT: So was that on armed robbery or was it a reduced charge?

MR. MOYER: Yes. Armed robbery.

THE COURT: It was armed robbery. Okay. So that would have been a recommendation, correct, from the State?

MR. MOYER: May I have one minute to look at my paperwork?

THE COURT: Sure, sure. Yeah. Absolutely. Absolutely.

MR. MOYER: Okay. Mr. Cooke is right. My initial offer was 18 years ---

THE COURT: Yes, sir.

MR. MOYER: --- and I do remember Mr. Cooke asking for 12. And it's not in writing, but I think I very well did say I would do 15.

THE COURT: Okay. All right. So inasmuch as that was a recommendation to the Court, the Court could have elected to accept it or not accept it. And you're in the precisely same position now, that is, the same charges with the same maximum potential sentence. I understand what has happened because you've told me the history of the cases and the recommendations back and forth. I'll take that into consideration in any plea. That doesn't mean that I'll honor any plea deal, but you've essentially told me that you think a range is pretty fair of 10 to 20 and maybe even more definitely 18 to 12. And I'll consider it in that context. Now, that doesn't mean that he won't get the maximum and it doesn't mean he won't get the minimum. It just means I'll consider it as a straight-up plea.

But the only thing that I would do with respect to the pictures, and I'm not going to grant a continuance, but I will tell you that if I did think that it was a discovery abuse, I would grant a continuance. And all that would do is serve to put it off longer because the pictures would still be admissible and it would still be evidence that would be used against him in a jury trial. So it'd serve no prejudice on him.

The only thing that's serving any prejudice on him if, in fact, Mr. Arnold wants to plead guilty, is that he didn't get the benefit of a plea. Well, that's legal prejudice. That's PCR issue. But I'll consider it, and I'll consider what was put -- what the original recommendation was in sentencing in that context. It doesn't mean I won't sentence him to that. It just means I'll consider it just like if you came before me with a recommendation of 15 years. I could either take it or not, right?

MR. COOKE: Do you mind if I talk with my client?

THE COURT: Absolutely. I was going to suggest that you do that for a few minutes.

MR. COOKE: Thank you, Judge.

(WHEREUPON, a recess is taken at 11:30 a.m.)

THE COURT: Did we come to some determination, Mr. Cooke?

MR. COOKE: Yes, sir.

THE COURT: Okay. Yes, sir.

MR. COOKE: My client wishes to proceed to a guilty plea, Your Honor.

THE COURT: Okay. All right. Have we signed all the paperwork.

MR. COOKE: Yes.

THE COURT: Okay. Well, then you may come forward.

THE CLERK: Your Honor, this is Indictment Number 2017-GS-23-3384, State vs. Kendall Donyale Arnold, indicted for attempted armed robbery.

Mr. Arnold is also indicted in 2017-GS-23-3385 for armed robbery. I'm sorry. In the first case it's a true bill and he's pleading to the same. In 3385, this is a true bill, and he's pleading to the same.

Indictment Number 2017-GS-23-3386, Mr. Arnold is indicted for armed robbery and possession of a weapon during the commission of a violent crime. He is pleading to the same. This is a true bill.

Mr. Arnold is indicted in 2017-GS-23-3389 for armed robbery. This is a true bill. He's pleading to the same.

And lastly, Indictment Number 2017-GS-23-3400, Mr. Arnold is indicted for armed robbery and possession of a weapon during the commission of a violent crime. This is a true bill, and Mr. Arnold is pleading to the same.

MR. COOKE: You can strike that possession of a weapon during the commission of a violent crime.

MR. MOYER: He's just pleading to the armed robberies, Your Honor. I was not going forward at trial with weapons.

THE COURT: Okay. I've got you. She was just reading off the indictment. I've got the sentencing sheets, and they don't reflect that.

THE CLERK: Please raise your right hand.

(WHEREUPON, KENDALL ARNOLD is duly sworn.)

THE COURT: Okay. All right. Mr. Cooke, do you represent Mr. Arnold in this proceeding, sir?

MR. COOKE: Yes. I do.

THE COURT: You had the opportunity to discuss with him all of his valuable and important constitutional rights and the consequences of his plea?

MR. COOKE: I do. Yes, I have.

THE COURT: After your conversations with him and your review of the evidence in this case, do you agree with his decision to waive his rights and plead guilty?

MR. COOKE: Yes, I do.

THE COURT: All right. Good morning, Mr. Arnold. How are you, sir?

DEFENDANT ARNOLD: I'm fine, sir. How are you?

THE COURT: I'm fine. I'm going to ask you a series

of questions. First I'm going to tell you about your constitutional rights and then I'm going to ask you questions, make sure you understand and appreciate those rights and that you are voluntarily waiving the same. So if at any time during my explanations to you or my questions, if you don't understand what I'm saying, just let me know and I'll rephrase the question so that you and I both understand each other, okay?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: You have a right to a jury trial on the charges that are before the Court, and if you were to have a jury trial, the State would have the burden of proving you guilty beyond a reasonable doubt to a jury of 12 of your peers. In that proceeding, you would not have the burden of proving yourself innocent because under the Constitution you have the right to remain silent, a right against self-incrimination. What that means is in this proceeding and in any proceeding before a jury, you would not be compelled to do or say or prove anything. You could require the State to meet its burden of proving each and every element of each of these offenses beyond a reasonable doubt you wouldn't be compelled to offer any evidence or any testimony.

Now, do understand that if you elected to have a jury trial, that you could waive your right to remain silent in

that proceeding, you could take the stand and testify, tell the jury your side of the story, you could present evidence and witnesses in your defense, you can make motions to protect your rights and interests, you could cross-examine any of the State's witnesses including those persons who are testifying against you, and you also have the right to present any legal defenses that you may have or enjoy under the Constitution or the law. You also have the right to have all of these indictments presented to a grand jury for a true bill. I believe that has already been done in each of these cases. However, do you understand, Mr. Arnold, all of these rights as I have explained them to you, sir?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: And do you wish to waive those rights and plead guilty today, sir?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: All right. You have one count of attempted armed robbery. Do you understand -- what's the maximum possible? Is that a ---

MR. MOYER: Attempted, 0 to 20.

THE COURT: Okay. You understand that you could receive up to 20 years for that offense, sir?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: And you also understand that it is

classified as both violent and most serious, sir?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: And you realize that, because it's classified as violent, that it could affect the manner and method by which you're housed in the Department of Corrections on any sentence that you receive, and it could affect the calculation of your max-out date. Do you understand that?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: And you understand that because it's most serious, that it is a strike against you which means that at a later date and time, if you are convicted of a serious or most serious offense, then you could potentially be subject to a sentence of life without the possibility of parole. Do you understand that?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: And how do you wish to plead to that attempted robbery, sir?

DEFENDANT ARNOLD: Guilty.

THE COURT: Okay. Now, you have four additional armed robberies. What's the maximum on armed robbery?

MR. MOYER: 10 to 30.

THE COURT: Okay. You understand that you could receive on each of these between 10 and 30 years, and you understand that all of that time could run consecutive in

addition to one another. So on all of these, you're looking at 40 to 120 years in prison. Do you understand that?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: And you understand that that can also be in addition to and consecutive to the time that you receive on the armed robbery, which is an additional 20. Do you understand that, sir?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: You also understand that all of these offenses are also listed as both violent and most serious, sir.

DEFENDANT ARNOLD: Yes, sir.

THE COURT: And knowing that, how do you wish to plead to these armed robberies, sir?

DEFENDANT ARNOLD: Guilty.

THE COURT: Has anyone forced or pressured or made you in any way enter into these pleas?

DEFENDANT ARNOLD: No, sir.

THE COURT: Are you pleading guilty of your own free will because you are, in fact, guilty, sir?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: Has anyone promised you anything in exchange for your plea?

DEFENDANT ARNOLD: No, sir.

THE COURT: Are you under the influence of any drugs or alcohol today, sir?

DEFENDANT ARNOLD: No, sir.

THE COURT: Do you suffer from any mental sickness that would affect your ability to understand and appreciate what you're doing today?

DEFENDANT ARNOLD: No, sir.

THE COURT: Have you had the opportunity to discuss this matter with Mr. Cook as much as you needed to?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: And have you asked him all the questions that you have, and has he done everything that you've asked him to do?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: Are you satisfied with his services?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: Have you understood all the questions and explanations that I've offered you today?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: Do you have any questions at this point that you would like to ask me or Mr. Cooke regarding your rights or this proceeding?

DEFENDANT ARNOLD: No, sir.

THE COURT: All right. You've got ten days to appeal the sentence that I hand down this morning.

Now, I'm going to ask Mr. Moyer to tell me the facts on this case, so you listen, because after I listen to Mr. Moyer, I'm going to ask you if that's what happened, okay?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: All right. Mr. Moyer?

MR. MOYER: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

MR. MOYER: The incidents happened on December 31, 2016. As you've heard, there were three different incidents. There were five victims in total. It's my understanding one of those victims would like to address the Court when Your Honor sees fit.

The first incident happened just shortly after 6:00. Two ladies who were friends, worked together, they went out for an early dinner. They were coming back to -- they stopped at a store. They were coming back just to spend the evening together at the home and celebrate the new year.

As they were getting out of their vehicle, a distinctive looking Ford Escape drove up, parked nearby. This defendant jumped out of the vehicle, was wearing all red, like a red Adidas, like a sweat suit with distinctive white markings on the sleeves, holding a gun. He pointed

the gun at one of the victims, the one who was closest to him, demanded her purse. He got her purse which had her phone and keys in it. He then pointed the gun over the top of the hood to the other victim who was on the other side of the vehicle, told her to give up her purse as well. She acted as if she didn't have one, and that's how we came to the attempted armed robbery charge with her.

They drove off. The defendant was not the driver in that incident. He got into one of the other seats. The vehicle drove off.

The second incident happened later that evening that began when the victim of that case was at a gas station, and he ran into this defendant. He actually knows him. He actually was very close to him. The defendant actually lived in his home or was back and forth. When they were in high school, the defendant was very good friends with this victim's brother. So he knew him very well, ran into him. He said, "Hey, we're getting together at my aunt's house, having a few drinks for the new year, why don't you come over?"

So the defendant -- at that time, that victim saw the other two people, another man and a woman in this vehicle, the Ford Escape. They came over to his house, apparently came back and forth a couple of times. On the final time, defendant came up to the door, asked the victim to step

outside. When he did, this defendant and the codefendant both had guns. One was a pistol, one was a long rifle-like gun. They stole his phone and wallet with contents.

The next incident happened about ten minutes later, and it was right on Anderson Street down by the West End of Greenville. It was about 9:30 at this point. The two victims were going to a house party. They had to park about a block away, were walking down the street. The man had a bottle of Jack Daniels and a bottle of Prosecco that he was taking to the party, the woman had a purse. All of a sudden, they heard from behind them, "Get down." They heard the people yell again to do so. They looked back, and here were two men with guns.

So they got on their knees. Defendants came up to them. Once again, one had a pistol, the other one, this defendant, had the long kind of rifle. And they stole the liquor and the Prosecco from the male and they stole a purse from the female which contained numerous things like her keys and also some gift cards.

About two and a half hours later, right before midnight, a trooper in North Carolina was watching traffic when a vehicle drove by, a 2009 Ford Escape, 100 miles an hour. He got behind the vehicle. The vehicle stopped. The trooper went up to the window, began conversing with

the driver, who the evidence will show was this defendant. The defendant gave a false name. He actually gave his real birthday and close to his real -- the last digits of his Social Security number, which helped identify the defendant.

And the defendant kept saying he didn't have his driver's license or registration. It was in the back. So the trooper stepped back away from the vehicle and told the defendant to get out and get his driver's license. At that time the defendant took off. And there's about a seven-minute car chase, speeds up to 117 miles an hour, went through red lights, stop signs. Eventually, apparently they hit a tree or something, and it caused them to have to stop.

At that point this defendant and codefendant got out and ran. The female who was in the car was caught. She initially gave fake names for the people who were with her. She was dating this defendant. She eventually came around and gave their real names.

Also, the evidence that would be presented at the trial was we found a BB gun, a rifle that was in the car. All the evidence is the pistol that was used was real, the rifle was a BB gun. We also had this defendant's fingerprints in the car. Stolen property from all three robberies were in the car and returned to the victims.

We've got this defendant's fingerprints on a Panera gift card which was a stolen piece of property. In addition, you've already heard us talk about the cell phone which defendant left in the vehicle which has pictures of him wearing that distinctive red and holding the pistol that was identified by the victims.

That's essentially in a nutshell the evidence that would come forth at trial.

THE COURT: Okay. All right. Mr. Arnold, you heard those allegations, sir. Is that what happened?

DEFENDANT ARNOLD: Yes, sir.

THE COURT: I understand why you want to plead guilty now. That's a lot of evidence, a lot of evidence.

Mr. Moyer, I'd be happy to hear from the victim.

Sir, if you would identify yourself on the record, I'd be happy to hear from you.

MR. McALLISTER: Yeah. My name is Matt McAllister.

THE COURT: Yes, sir.

MR. McALLISTER: And so I'm from Greenville. I'm actually born here. I've lived here my whole life. I love Greenville, love telling people that I was mugged in Greenville. Kind of puts a bit of a stain on, you know, talking about the town in talking about all this.

We were going to a party, you know. Was just a New Year's party. And we were -- you know, we were mugged

essentially a block away from where some of our friends lived. We had to go into that party right after that happened, and all the cops coming in and everything.

So our -- you know, the effect on our lives was, you know, obviously extremely inconvenient, and what was stolen was not worth very much by comparison. The only set of keys that we had to the car was stolen. We had to get it towed on one of those gigantic, you know, kind of tow trucks, and it had -- it was -- it cost us probably over $2,000 to replace all the things that were stolen. The value of what was taken was probably a couple hundred bucks in gift cards.

Our friends, the house we were going to, they've moved now. Don't know how much of a role that played, but it kind of makes you feel weird when you know your friends got mugged just right outside your own doorstep.

And, you know, it's been two years now. We've moved on. And, you know, it's -- a lot of terrible things happen in the world. It would have happened worse.

And it's just, it continues. Obviously, we're here. We're taking time out of our lives. I'm back in school. I had to move tests around. Had to do that in December, but -- so it continues to be an inconvenience just the way these kind of things cascade down, you know. A couple of decisions just lead to all of us having to be here.

So I don't -- that's what I've got.

THE COURT: Okay. All right. Thank you Mr. McAllister. Appreciate you being here, and I appreciate you addressing the Court, and I'm sorry this happened to you. Thank you.

Okay. All right. Anything further from the State?

MR. MOYER: Not at this time Your Honor.

THE COURT: Okay. All right. Mr. Cooke?

MR. COOKE: Thank you, Judge. Judge, my client is 24 years old. He was born in Columbia, South Carolina. They moved to Greenville at a young age, so he's pretty much been here all of his life. He completed the 10th grade, but he has taken some college courses since then.

Your Honor, he was working -- he has no medical problems. He was working for a landscaper at the time this all happened. He was separated from his wife. He has twin girls, age 4. He has one son, age 3. And, Your Honor, he, back in -- back in 4/6 of 18, he went before Judge Gravely and had his probation revoked. He's presently doing -- I think it was eight and a half years he received on that. I happened to be in the courtroom that day, and I got appointed on these cases at that time.

Your Honor, as far as I know, he's been a good inmate. He's been down at Lee Correctional Institution where he's probably been in lockdown most of the time down

there because of the problems that they had there some time ago with a riot. And he just got -- he just got out of that sort of confinement, Your Honor. And he's cooperated. He certainly is sorry that this all happened. It all happened one night, this period from about four or five hours.

So, Your Honor, I would ask you to take that into consideration, that he does have children. He would like one day to be able to get out and take care of them and at least watch them grow up to a certain extent. They are young, so he would have a chance to maybe pay a lot of attention to them as they get into high school, maybe that sort of thing, if Your Honor does not give him the limit of a possible sentence.

And certainly, he apologize to all those people here that he has caused them all this hurt and all this trouble.

He's had a long time to think about this, Judge. And, you know, these young fellows, when they do crazy things, they don't think, they don't understand the possibilities of being caught and having to go to prison for such a long period of time. These laws are strict in South Carolina, and I've explained to him that the minimum sentence he could receive on armed robbery is ten years. So I would ask Your Honor to take that into consideration

and give him a chance to do something with himself while he's in prison, get out and take care of his children. He's just awful young to spend 40 or 50 years in prison, Judge.

THE COURT: Yeah. It's a shame.

MR. COOKE: Thank you.

THE COURT: How much time has he been in jail and prior record?

MR. MOYER: Okay. Please the Court, he initially -- he was arrested on February 14, 2017. He spent 510 days in jail. Then he was sent to the Department of Corrections, as Mr. Cooke stated, on the probation revocation. That was 229. So that's 739 days all told. I don't know how you much you want to give him credit for.

THE COURT: I'll give him credit from the day he was first arrested. So it sounds to me like that count is 739?

MR. MOYER: Yes. Yes, sir.

And then his criminal history, 2011 shoplifting; 2012 possession of marijuana, false information, no driver's license and loitering; 2013, defrauding an innkeeper; 2016, two counts of assault and battery second degree, criminal domestic violence of a high and aggravated nature, malicious damage.

Your Honor, the final thing I would say, Mr. Cooke

made a comment about the defendant cooperating, and I know there was some talk and I believe the record is protected now about previous plea negotiations. Along those lines, part of our offer was that the defendant cooperate, that he, if needed, to testify against his codefendant, if he do so. So now that he is under oath, now that his attorney says he's going to cooperate, I'd like to give him the opportunity to state on the record under oath who his codefendant was in this case.

MR. COOKE: Well, we decline that because that's not part of the plea, not part of my conversation with you, as a matter fact. That's your standard offer in every case I've ever had with you, if they stay out of trouble and cooperate, we'll offer 15 years. But that's not the case here, and I don't intend on getting him in that sort of situation. He's doing eight and a half years at Lee Correctional Institution. It would be a death sentence to him, Your Honor.

THE COURT: He doesn't have to offer an allocution if he doesn't want to.

MR. COOKE: Yeah. Right. No, sir, we don't.

THE COURT: Okay. All right. Anything else?

What was he on probation for? For the CDV? Or for . . .

All right. Okay. Mr. Arnold, I'd be happy to hear

from you, sir.

DEFENDANT ARNOLD: I just want to say that I apologize for all the people that I hurt, for being wrong and doing the wrong thing. I felt like I grew up and that's like all I knew. Like I just want to apologize for the people -- to the people I hurt.

SENTENCING

THE COURT: All right, Mr. Arnold. Well, I'm sorry that it took this type of event for you to realize that that's not the right thing to do and it's not the right type of life to lead.

On each of these cases, Mr. Arnold, the sentence of the Court is you be committed to the Department of Corrections for a period of 18 years on each, concurrent with one another, credit for time served of the 739 days.

Good luck to you, Mr. Arnold.

MR. COOKE: Thank you, Judge.

(WHEREUPON, proceedings concluded at 12:06 p.m.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 4th day of March, 2019.

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

September 4, 2019

Cheryl A. Smith

Cheryl A. Smith, CVR-M
Court Reporter

17-3386

THE STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE THE STATE	))))	IN THE COURT OF GENERAL SESSIONS THIRTEENTH JUDICIAL CIRCUIT Warrant/Indictment Nos.: 2017A2320600093; 2017A2330200045; ~~W23161150~~; 2017A2330200645; 2017A2320600089; 2017A2320600090; 2017A2330200483; 2017A2330200482; 2017A2320600091; 2017A2320600092; 2017A2330200646; 2017A2330200046; 2017A2330200484; 2017A2330200047
v. KENDALL DONYALE ARNOLD, DEFENDANT.	))))))	**MOTION TO RECONSIDER GUILTY PLEA SENTENCE**

'19 MAR 12 PM 2:48
Paul Wickensimer CDC SNL SC

COMES NOW the defendant, **Kendall Donyale Arnold**, by and through his undersigned counsel, and, pursuant to Rule 29 of the S.C. Rules of Criminal Procedure, respectfully moves this Honorable Court to Reconsider the Order of March 4, 2019, imposing the sentence of eighteen years in the South Carolina Department of Corrections.

This motion is based on the fact that the Defendant would have plead guilty to a previous offer of fifteen years had he been made aware that the State planned to introduce certain pictures that had not been shown to him prior to his cases being placed on the trial docket.

Respectfully submitted,

GREENVILLE COUNTY PUBLIC DEFENDER

By: _____

Larry Cooke, Esq.
Bar No. _____
Attorney for Defendant
305 E. North Street, Suite 123
Greenville, SC 29601
(864) 467-8522

Greenville, SC
Date: March 12, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
The State,	)	**ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER SENTENCE**
	)	
vs.	)	Warrant/Indictment Nos.: 2017A2320600093; 2017A2330200045; 2017A2330200645; 2017A2320600089; 2017A2320600090; 2017A2330200483; 2017A2330200482; 2017A2320600091; 2017A2320600092; 2017A2330200646; 2017A2330200046; 2017A2330200484; 2017A2330200047
	)	
Kendall Donyale Arnold,	)	
	)	
Defendant.	)	

'19 MAR 20 PM 12:00
Paul Hicksenlooper CPC GVL

This matter comes before the Court pursuant to the Defendant's Motion to Reconsider the Guilty Plea Sentence issued on or about March 4, 2019. The record in this matter is clear that, at the time of the plea, the Defendant and the Court knew that a plea offer had previously been extended by the State. That plea offer was to enter a plea to the very same offense to which the Defendant ultimately pled in exchange for a recommendation by the State for the minimum fifteen-year sentence. That, however, would simply have been a recommendation and not a guarantee of the minimum sentence. The Court is not bound by any recommendation and could have sentenced the Defendant, in its discretion, to the maximum sentence. The Defendant was in the same exact position on the date of his plea. He has suffered absolutely no prejudice as a result of his having failed to accept a plea offer. Claims to the contrary are simply without merit. It is also interesting to note that, apparently, the Defendant did not realize that he was guilty, as acknowledged in his

plea, until he saw the subject pictures. One may view that proposition with some degree of cynicism.

After having carefully considered the same, this Court elects to respectfully deny Defendant's Motion for Reconsideration.

AND IT IS SO ORDERED.

ROBIN B. STILWELL

2158

March 20, 2019
Greenville, South Carolina

FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
County of Greenville)

Kendall Dontale Arnold 352414)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)
Respondent)

2019-CP-23- 03410

APPLICATION FOR

POST-CONVICTION RELIEF

Memorandum of law in Support PCR Application

FILED CLERK OF COURT 2019 JUN 14 AM 10 46

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 Lee Corr. Inst 990 Wisacky Hwy Bishopville, SC 29010

2. Name and location of Court which imposed sentence Greenville County, General Sessions

3. Name(s) of co-defendant(s) (if any) Defonte Neal, Jasmyn Grey

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) Armed Robbery 2017GS2302389

(b) Armed Robbery 2017GS2302384

(c) Armed Robbery 2017 GS2303385

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

(a) march 4th 2019 Sentenced 18 years

(b) march 4th 2019 Sentenced 18 years

(c) march 4th 2019 Sentenced 18 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

(b) after a plea of not guilty

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

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

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

i. N/A

ii.

iii.

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

i. N/A

ii.

iii.

(c) the date of each such result:

i. N/A

ii.

iii.

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

i. N/A

ii.

iii.

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

(a) Counsel failed to advice me of my Right to file A Appeal on A Guilty plea.

(b)

(c) _____

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

(a) The 6th Ammendment

(b) The 14th Ammendment

(c) _____

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

(a) See memorandum of law support PCR Application

(b) _____

(c) _____

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

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

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

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

(d) any other petitions, motions or applications in this or any other Court? Yes

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. Motion of Reconsideration

ii. _____

iii. _____

iv. _____

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

i. Greenville County General Sessions

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Denied

ii.

iii.

iv.

(d) the date of each such disposition:

i. March 20, 2019

ii.

iii.

iv.

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

i.

ii. N/A

iii.

iv.

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

NO

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

(a) which grounds have been presented:

i.

ii. N/A

iii.

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

i.

ii. N/A

iii.

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

(a) N/A

(b)

(c)

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

(a) your arraignment and plea? YES

(b) your trial, if any? NO

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

NO

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

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

i. Larry Cooke, 305 E. North st. Suite 123 Greenville SC 29601

ii.

iii.

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

i. Guilty Plea

ii.

iii.

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

Vacate Sentence

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

NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Lee)

I, Kendall Arnold 352414, 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.

Kendall Arnold

SWORN to and subscribed before me this 3 day of June, 2019.

Debra Eastridge (L.S.)
Notary Public

My Commission Expires: 3/3/2024

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

I, Kendall Arnold, 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.

Kendall Arnold
Applicant

SWORN or affirmed to and subscribed before me this 3 day of June, 2019.

Debra Eastridge
Notary Public

My Commission Expires: 3/3/2024

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
KENDALL ARNOLD, APPLICANT. v.	)	AMENDED APPLICATION
THE STATE OF SOUTH CAROLINA, RESPONDENT.	)	CASE # 2019-CP-23-3410

This matter comes before the Court by way of application of post conviction relief filed June 14, 2019, alleging ineffective assistance of trial counsel. A Return was made on January 29, 2020. This application is intended to incorporate the prior allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution and add the allegations of:

1) ineffective assistance of counsel for failing to review discovery to find inculpatory photos until the plea offer, which applicant would have accepted had he known of the evidence, had expired; and

2) Due Process violations due to the plea offer expiring before applicant was shown inculpatory evicence.

Respectfully submitted,

Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 10 day of March, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	2019-CP-23-3410
KENDALL ARNOLD,	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE
	)	BY MAIL
THE STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am the attorney for the Applicant in the above-captioned matter.

2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Supplemental Application** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of the Attorney General
PCR Division
P.O. Box 11549
Columbia, SC 29211
Attn: Taylor Smith

Attorney for Defendant

This 10 **day of** March, **2020**

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS IN THE THIRTEENTH JUDICIAL CIRCUIT
Kendall Donyale Arnold, #352414, Applicant,	)	Case No.: 2019-CP-23-03410
v.	)	**RETURN**
State of South Carolina, Respondent.	)	

The State (Respondent), making its return to the application for post-conviction relief filed by Kendall Donyale Arnold (Applicant) on June 14, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its November of 2017 term, the Greenville County Grand Jury indicted Applicant for three counts of armed robbery (2017-GS-23-003385; -003386; -003389) and one count of possession of a weapon during the commission of a violent crime (-003386). On March 5, 2019, the State dismissed the indictment for possession of a weapon during the commission of a violent crime. Larry Holmes Cooke, Esquire, (plea counsel) represented Applicant and Assistant Solicitor L. Mark Moyer of the Thirteenth Circuit Solicitor's Office prosecuted the case. On March 4, 2019, Applicant appeared before the Honorable Robin B. Stilwell and pleaded guilty to all three counts of armed robbery. Judge Stilwell sentenced Applicant to imprisonment for eighteen years for each of three counts with the sentences running concurrently and credit for Applicant's time served. Applicant did not appeal his pleas or sentences.

II. Current Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully because plea counsel did not advise him of his right to appeal his please or sentences and that he did not knowingly and voluntarily waive his right to a direct appeal.[1] Applicant requests relief in the form of a vacated sentence. Attached to this return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's plea hearing, and the post-conviction relief application. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Applicant's Request for a Belated Appeal

In White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that even though the post-conviction relief court may find that an applicant did not voluntarily and intelligently waive his right to appellate review of the conviction and sentence, the PCR court does not have jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal

[1] The application notes that readers should refer to a memorandum of law in support of its claim, but Respondent has not received a memorandum from the Greenville County Clerk of Court and the public index does not show that such a memorandum has been filed.

when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Flores-Ortega, 528 U.S. at 478 (emphasis added). In order to establish he was prejudiced by counsel's failure to file an appeal, Applicant must show he would have appealed absent counsel's deficient performance. See Flores-Ortega, 528 U.S. at 484.

Although Applicant alleges plea counsel failed to inform him of his right to appeal his pleas and convictions, this is likely of no consequence because Judge Stilwell informed Applicant during his plea hearing of his right to appeal and the requirement that he do so in writing within ten days of the imposition of his sentence. Cf. Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (concluding any alleged deficiency in plea counsel's advice to Holden was cured by a colloquy from the plea court that corrected any incorrect advice from counsel) (citations omitted), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Respondent submits Applicant cannot meet his burden in showing he is entitled to a belated appeal pursuant to White; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV. Denial of All Other Allegations

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

V. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRCP. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed October 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

VI. Conclusion

WHEREFORE, Respondent requests that an evidentiary hearing be held on Applicant's claims.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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

January 29, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2019-CP-23-3410
KENDALL D. ARNOLD, #352414,	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this 29th Day of January, 2020

Eva Cook, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
	2019-CP-23-03410
COUNTY OF GREENVILLE	
KENDALL DONYALE ARNOLD, APPLICANT,	
vs.	TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA, RESPONDENT.	

December 2, 2020
Via Video Conferencing

B E F O R E:

THE HONORABLE R. LAWTON McINTOSH, JUDGE

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

SUSANNAH CONYERS ROSS, ESQ.
Attorney for the Applicant

TAYLOR ZANE SMITH, ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

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(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

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EXHIBITS

NO	DESCRIPTION	ID	EVD

There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 12:09 PM.)

THE COURT: Let me make sure, Ms. Ross, with you that the only issue that I see raised is that counsel allegedly failed to advise Mr. Arnold of his right to appeal. Are there any other issues that are being pursued?

MS. ROSS: Yes. Also that he -- it's in the transcript, but he wanted the 15-year original plea offer and that, I guess, some photographs weren't shown to him, so he didn't get a chance to see those photographs prior to -- oops. I'm sorry. Am I muted? No. Okay.

THE COURT: Yeah. I hear you.

MS. ROSS: He didn't get a chance to see the photographs. So it's almost a Davey issue that the plea offer was not effectively extended because he didn't have all the discovery to balance in his consideration of the plea offer.

THE COURT: Well, let me ask you your opinion and then I'm going to come back to Mr. Smith and ask him his. Mr. Arnold pled guilty to three counts of armed robbery, but there was either four -- I think there were three counts of armed robbery, one attempted armed robbery, and one possession of a weapon during the commission of a violent crime that the possession and the attempted were dismissed at the plea; is that correct?

MS. ROSS: That sounds correct to me, yes.

THE COURT: So, I mean, the reason I'm asking is if you looked at the failed to advise his right to appeal, unless I'm just misunderstanding it, if he's given that right, that would not necessarily implicate him being subjected to the total time on all charges. But if he's pursuing the failure to accept the offer based on the late -- alleged late production of some photos, I think those are the ones showing the red shoes and the red Adidas outfit, that he would have accepted the offer sooner, that does potentially make him exposed to the full amount of all charges including the dismissed charges; is that not correct?

MS. ROSS: Well, I believe if we pursued it under sort of the State v. Davey or -- I'm getting those -- or Davey v. State issue, that the plea offer wasn't effectively extended, we would ask for the remedy to be specific performance of that plea offer of the 15 years.

THE COURT: Well, okay. But is that a recognizable remedy or does it make everything go back to him either having a new trial, or does -- the Davey case, I have to tell you, I'm not familiar with it. Does that allow him to have that option of not being exposed to, according to my calculation, a potential 115 years?

MS. ROSS: Yes. My understanding of Davey is that

the remedy could be specific performance of the plea offer, so he goes back and gets that 15-year plea offer. And I have seen orders where, essentially, the sentence of the plea offer is ordered in place of the sentence that was received.

THE COURT: I've got you. All right.

And, Mr. Smith, do you agree with Ms. Ross's interpretation? Because I'll be honest with you, I have to research it. I don't know the answer.

MR. SMITH: Well, Judge, this is sort of a sticking point. I don't believe that even if Mr. Arnold won today that he would be entitled to specific performance. In the Davey case, the Supreme Court just remands for resentencing. And it's a little -- not exactly on point because it's dealing with whether the attorney shared with his client the existence of a plea offer.

So I think if you look at the U.S. Supreme Court cases that are cited in Davey, I think they actually say that specific performance is not the remedy. The remedy is is that the Court goes back and reconsiders his sentence in light of the initial plea offer. So it's not a specific performance. As a matter of fact, when you look at the prejudice analysis that the State lays out, part of it is then deciding looking at whether he would have benefited from it.

So I disagree that he'd be entitled to specific performance if he prevails. I think he would be entitled to like, essentially, a new sentencing hearing where the judge decides to either stick with the original sentence or deviate from it in light of the circumstances.

But I have to say, too, I think that when you look at the cases dealing with this or similar issues, there's actually an issue of perhaps mootness here. Because I think Judge Stilwell did essentially what the Court would do on remand during the plea hearing. So I think that that's another issue to consider, too.

THE COURT: Well, I guess the point that I'm trying to clarify, and I think from what you're -- from what I'm hearing from your response is that you don't necessarily disagree with Ms. Ross. Although you may not characterize it as specific performance, you seem like you agree that Mr. Arnold would not be subjected to potentially the maximum on all these other charges, that being 115 years, which would include the weapons charge and the attempted robbery charge, if he is successful with his application. In other words, your position would be either the 18 stays and the question of appeal is separate and distinct, or he gets -- the Court may reconsider whether or not to give him 15.

MR. SMITH: Okay. I think I understand your question

now. It's the State's position that he would go back to resentencing. He would be locked in on the crimes he'd already pled to. But he would still be exposed to the maximum possible penalty for each of those offenses, because as you know, the Court is not bound by sentencing recommendations. But I don't think he would necessarily be exposed to the charges that were dismissed as part of the plea agreement. But I have to say even those he pled guilty to I think is a very substantial maximum sentence there.

THE COURT: Yeah. It's 90 years.

All right. Let's go ahead and go forward. This is the case of Kendall D. Arnold, 3521414, v. The State, Caption Number 2019-CP-23-3410. Susannah Ross is appearing on behalf of the applicant, Mr. Taylor Smith is appearing on behalf of the State. The witnesses would be Mr. Larry H. Cooke, Mr. Arnold's trial counsel and plea counsel, and potentially Mr. Moyer who was the prosecutor on the case.

With that being said, Ms. Ross, are you ready to proceed?

MS. ROSS: Yes, Your Honor.

THE COURT: Okay. Would you call your first witness?

MS. ROSS: Yes. We call Kendall Arnold.

THE COURT: Okay. Mr. Arnold, would you raise your

right hand, please, sir.

WHEREUPON,

KENDALL ARNOLD

After having been duly sworn, testified as follows:

THE COURT: Okay. So, Mr. Arnold, you understand at this juncture there is some debate as to the limits of any potential sentence you could receive if you are successful with your application.

THE WITNESS: Yes, I do.

THE COURT: The State takes the position you can get up to 90 years, Ms. Ross takes the position you're capped at 18 or 15. Is that a fair statement, Mr. Smith, from the State's position?

THE WITNESS: Yes, sir.

THE COURT: Ms. Ross, is that a fair statement from your position?

MS. ROSS: Yes, Your Honor.

THE COURT: Knowing that, Mr. Arnold, do you still wish to proceed?

THE WITNESS: Yes, sir.

THE COURT: All right. Very good. All right. Ms. Ross?

DIRECT EXAMINATION

BY MS. ROSS:

Q Okay. Mr. Arnold, you've alleged that you didn't

receive the plea offer -- that you were not allowed to consider the plea offer of 15 years due to the fact that very -- you had not seen some very damaging photographs that were in evidence; is that correct?

A Yes, ma'am.

Q Okay. Can you tell the Court what happened there?

A I believe on the morning of my trial, the day my trial was supposed to start, I got to Greenville County. Mr. Cooke presented me with some photographs of the red Adidas suit, and there was another photograph of me had on a red Adidas suit, and I was holding a firearm. And by then my plea had expired. I didn't -- like the plea was already off the table. I didn't -- I didn't find out about the pictures until the day my trial started, so I wasn't able to accept the plea of the 15 years.

Q So had you seen the pictures at all prior to that -- the trial date?

A No, ma'am. The first time I had seen them was that morning.

Q And were you able to consider -- what did you think the pictures looked like? Would it have changed your desire to go to trial knowing of those pictures?

A Yes, ma'am. I would -- I would have pled guilty and received a lesser sentence.

Q And that, in fact, is what you did is you pled guilty

after viewing those photographs.
A Yes, ma'am.
Q If you had seen the photographs before you got the plea offer of 15 years, what would you have done?
A I would have pled guilty.
Q So you would have accepted that recommendation of 15 years if you had the photographs to consider before rejecting that plea offer?
A Yes, ma'am.
Q And can you tell the Court how that changed the outcome of your case, not accepting the 15 years?
A Not accepting the 15 years put me in a position where I could have -- like the judge said, I could have received 100 years because I wasn't prepared for trial not knowing that this evidence was stronger against me and would have convicted me if I would have went to trial.
MR. SMITH: Objection. That's a hypothetical.
BY MS. ROSS:
Q Well, you, in fact, received 18 years, correct?
THE COURT: Hang on for a second. Let me just -- I'm going to overrule that objection.
Go ahead, Ms. Ross.
BY MS. ROSS:
Q Mr. Arnold, you, in fact, received 18 years, correct?
A Yes, ma'am.

Q And that's three years more than the 15 years that was the original plea offer?
A Yes, ma'am.
Q Now, as far as any kind of collateral consequences, did you know -- did you understand that once you get out, you will be on community supervision of at least two-year parole?
A No, ma'am. I didn't know that either.
Q Okay. Now, as far as an appeal ---
MR. SMITH: Objection. Relevance. It's outside the issues pled.
THE COURT: I'll take that under advisement.
Go ahead.
BY MS. ROSS:
Q Just moving on to the appeal issue, did you want to appeal your plea?
A Yes, ma'am. I would have.
Q And why didn't you?
A Because at the time I wasn't aware that I was able to appeal my plea.
Q Now, is there anything else you'd like to tell the Court about your PCR application?
A No, ma'am.
MS. ROSS: Okay. And how are you doing -- well, okay. No further questions.

THE COURT: All right. Mr. Smith, cross-examination.

MR. SMITH: Thank you.

CROSS EXAMINATION

BY MR. SMITH:

Q Mr. Arnold, Mr. Cooke did go over the discovery with you in this case, didn't he?

A Could you repeat yourself? Because I didn't hear you.

Q Mr. Cooke did go over the discovery with you, didn't he?

A No, ma'am -- I mean no, sir. No, sir.

Q He never talked about discovery with you?

A No, sir.

Q So when Judge Stilwell asked if he talked about all the State's evidence against you, what did you tell him?

A I told him he did. But Mr. Cooke only discussed the State's evidence when Mr. Stilwell gave us that brief moment to go into the office to speak. But before that me and Mr. Cooke never discussed my motion and stuff.

Q Okay. Well, let me ask you this. You were aware that you had your cell phone on you when you crashed your Ford Explorer after the police chase, right?

A Yes, sir.

Q Okay. So it wasn't a surprise to you that the phone was in the car.

A Yes, sir, it was.
Q Why would you be surprised that the phone was in the car if you had it when you crashed?
A Because it was in my pocket, and the pants that I had on had zippers on them so I thought it was secured in my pocket.
Q And if it was your phone, surely you knew what pictures were on there, right?
A No, sir. Because the phone that -- that they got out of the vehicle, it was a -- it was a new phone, but it had my Gmail logged into it.
Q Okay. So you logged into your Gmail on the new phone, right?
A Yes, sir.
Q Okay. And your Gmail had these pictures on there, right?
A Yes, sir.
Q Okay. And they were pictures you knew about.
A Say it again?
Q And you knew that these pictures existed, right?
A Yes, sir.
Q Okay. And you were posing in them, right? Didn't you have the gun and you were posing?
A Yes, sir.
Q Okay. So if the pictures were on the phone and the

phone's in the car, how could you possibly be surprised that the police would have the pictures?
A I didn't -- I wasn't aware. I -- I didn't know that the police was going to have the pictures. I didn't know the police would be able to go into my Gmail and take the pictures out of my Gmail. I wasn't aware of it.
Q So if the fact that you knew that the -- there were these pictures in the car was so devastating, why weren't you devastated from the fact that the police pulled your fingerprints off of the stolen items found in the car? You weren't worried about that at all?
A Yes, sir, I was. But at the same time, when the robbery happened, I wasn't -- I didn't play a main victim -- I didn't play it like the main suspect in the robbery. The robbery was focused on something else.
Q Well, you were charged with armed -- with robbery, right?
A Yes, sir.
Q And that's what you were going to trial for.
A Yes, sir.
Q Okay. So these pictures concern you a whole lot, but the fingerprints on the stolen evidence did not concern you.
A No, sir, it didn't.
Q Okay. You thought you could beat fingerprint

evidence at trial?
A I felt that if Mr. Cooke would have listened to me and would have went on the defense that I was trying to go on then, we could have possibly won. But I didn't know about the pictures. That's the main focus. Like I didn't know about the pictures. And when I seen the pictures, I knew it was over.
Q Well, let me ask you about some other evidence the State had. You weren't concerned at all that one of the victims pointed you out as the robber and knew you personally?
A That was a separate case. That was a separate case. The case that you're talking about with the evidence with my fingerprints on them, I wasn't picked out of any photo lineup.
Q Well, they were all your armed robbery cases, so -- I mean, I'm asking you the fact that one of the victims knew you personally and knew that you were the person that robbed him, you thought you could beat that at trial, too?
A Yes, sir.
MS. ROSS: I object. I think this is outside the scope of the issue in this case. He, in fact, pled and didn't get a trial.
THE COURT: All right. Go ahead and move on if you would, Mr. Smith. I'm going to sustain that.

BY MR. SMITH:

Q Okay. Mr. Arnold, you testified earlier that you didn't know you had the right to appeal. But that's not true because Judge Stilwell told you that you had that right, didn't he?

A In the transcript, when I read through the transcript, he had said that, but I -- I still didn't understand quite like what he meant by the right to appeal. I didn't understand that I could appeal my plea. I thought that only I would be able to appeal if I would have had went to trial and lost.

Q You heard him say that, right?

A Yes, sir.

Q Okay. So you could have asked a question at that point, didn't you?

A Yes, sir. I believe so.

MR. SMITH: Okay. No more questions, Your Honor.

THE COURT: Any redirect, Ms. Ross?

REDIRECT EXAMINATION

BY MS. ROSS:

Q Mr. Arnold, do you recall whether your phone had a PIN on it?

A Yes, ma'am.

Q It did?

A Yes, ma'am, it did.

MS. ROSS: No further questions.

THE COURT: Very good. All right. Call your next witness, Ms. Ross.

MS. ROSS: That's our case, Your Honor. Thank you.

THE COURT: Very good. All right. Mr. Smith?

MR. SMITH: Yes, Your Honor. Our first witness will be Mr. Larry Cooke.

THE COURT: Mr. Cooke, would you raise your right hand.

WHEREUPON,

LARRY COOKE

After having been duly sworn, testified as follows:

THE COURT: All right. Thank you, sir.

DIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Cooke, how long have you practiced law?

A 50-plus years.

Q Okay. Were you appointed to represent Mr. Arnold?

A I was.

Q Okay. Do you remember the facts of the crimes?

A Most of them, I guess. It's been a long time ago. There were about -- originally, I was -- I was assigned six armed robberies, assault and battery first, possession with the pistol charge during the commission of a crime times three, conspiracy, kidnapping times two, and

violation of probation.
Q Okay. Do you remember how many times you met with Mr. Arnold about these armed robbery cases?
A I don't remember exactly how many times, but I have various notes here of some times that I talked with him, and that's about all I can tell you. I can't remember every single time, no.
Q Okay. Would it have been one to five? five to ten?
A I don't know. Seven or eight, I guess.
Q When you met with him, did you ever go over the discovery you received from the State?
A I did. As a matter of fact, most all that discovery was sent down to him by our investigator, Mr. Starks, and according to -- according to the notes, all of these encounters with my client were recorded here in notes made by the secretary at the Public Defender's Office. I think the -- I was looking here. On 7/13 of 2017, he'd like to know if he has a plea offer and would like a copy of his discovery sent to him, which we did. Mr. Starks took it down to him, and he had all the discovery I had in my possession. Most of that discovery we got was done online, and it was reduced to writing back in those days from the solicitor. And he had a chance to read it all just like I did.
Q Do you recall seeing ---

A Let me just mention this.
Q Sure.
A It was never a time in this whole case that my client didn't want to plead guilty. From the get-go, it was a matter of how much time. Every note I have, I'll take ten, I'll take 12, I ain't taking 18. Then we ultimately had gotten Mr. Moyer to please drop -- please drop this thing down from the 18, and he did. He knocked it down to 15. My client turned it down. And this is after he got all of the discovery.

There was never any doubt in my mind that Mr. Arnold thought he was innocent of these charges except the first interview I had with him, which was my initial interview, he denied everything. But after that, after he received his discovery, after he knew what was going on, it was a matter of how much time. He wanted to plead guilty and always thought that he would get more than one offer. And I told him, I said that's not the policy. I said you don't necessarily get two or three or four offers. Somehow down in our jail they think you get three offers.

And so what happened in this case, he turned the 15 down and he got put on the trial docket. No more offers. Everything's off the table. You either go to trial or you plead guilty to all the charges, which, as the judge says, was -- meant considerable jail time.

Fortunately, after telling the judge about all the negotiations, 15, 18, this, that, and the other, the judge knew that there had been some negotiations and knew that 15 had been on the table at one time. And fortunately, he, rather than loading my client with a lot of additional jail time, he gave him the 18 years, which was the original offer. Quite honestly, I was relieved, I really was, because he could have gotten a lot more time than that.

I don't think I ever saw Mr. Arnold again after he was -- after he was sentenced that day, I don't think I ever saw him again. There's no notes in my file that I discussed anything about an appeal because I was happy. To be quite honest with you, I thought my client was happy because he was facing a lot of jail time. And this ended all the -- everything was done, taken care of. He had no more worries. All he had to do was do the 18 years. He was already -- he had already been sentenced to eight years. He was serving eight years at the time we had this plea. He was given credit for -- it was backdated to run concurrent with that eight years of the probation, that that was revoked. So I thought it was a heck of a deal. Never, never in my mind did I ever assume that he wanted to plead guilty -- I mean he wanted an appeal. It just would have made no sense.

Anyhow, I don't recall that was discussed with him. There's nothing in my notes that says that I ever discussed an appeal with him. I don't think I ever saw him again. I never heard from him. Any phone calls that were sent to the solicitor's -- to the PD's office, I was part time, so if he -- if he called me and asked me to appeal a case, then they would have given me that information. There's nothing in these notes that I have right here that were made by the secretary, there's nothing in these notes that he ever called me or ever contacted me.

So that's -- that's pretty much it in a nutshell.

Q Okay. Well, let me talk -- we'll see about these photographs. Do you recall getting those photographs on the phone dump early on in the case?

A To be quite honest with you, there were a number of photographs that were dumped, and my secretary had copied everything. The particular photograph that they're talking about, Mark Moyer had a blow-up of it the day of trial. And I didn't recall having seen it, to be honest with you. I had seen so much or so many pictures in all these cases, and for some reason Mark had that blown up, and I'm thinking, well, how is this going to get into evidence? And I told my client, I said, now, I don't know whether they're going to try to get this into evidence or

not, but, I said, this is with you and a gun and red tennis shoes, everything that describes the defendant in one of the armed robberies, or in some of the armed robberies.

And he looked at it. And I said, well, you know, it's too late to do anything about it now. We're going to trial or you can plead guilty. And that's -- that's pretty much it. He never said at that time I'm going to take advantage of the plea offer. He never mentioned that. I told him we were on trial, and that was it.

Q Had you shown the photos from the cell phone to Mr. Arnold at any point?

A Honestly, I don't know. I just assumed he had everything. I mean, we gave him everything we had. He had the pictures, he had all the -- everything.

Q Okay. So if that photo was in discovery and you gave him all the discovery, he would have gotten it.

A Absolutely, yes.

Q Okay. It just may not have been ---

A Let me point this out. There are -- there is a possibility that he didn't -- he didn't see that because some of -- some of the photographs were on a disk. And when we give them the discovery down there, unless I'm there with them, there's no way that they can watch it or they can look at it. But I don't recall being there and

going over all of those pictures with him. So there is a good chance -- a good chance that that's the first time he saw that picture was in the courtroom, just like me. I didn't recall seeing it.

Q Okay. Well, even if you didn't go over the photos specifically, did you let him know that the State had the phone and had pulled things off the phone?

A He knew all of that.

Q Okay.

A He knew everything. I mean, he had everything that I had. Everything was there. As a matter of fact, he had called the office, and we had sent him down the discovery. After he got it, he called the office and left a message or even told the secretary, he didn't tell me this, but he said that he didn't sleep after looking at ---

MS. ROSS: I object. Hearsay.

THE COURT: Overruled. Go ahead.

THE WITNESS: Okay. Did you tell me something, Judge?

THE COURT: Yes, sir. I said I overrule the objection. Go ahead, please.

THE WITNESS: Thank you.

THE COURT: Yes, sir.

THE WITNESS: He said he didn't -- he said he saw all the discovery and that he didn't sleep all night. So it

-- apparently, he saw how devastating it was.

I mean, there was never a question that -- that, you know, he wanted to plead guilty. He just wanted -- he just wanted ten years one time I talked to him, he wanted 12 years the next time I talked to him. And finally, I got the offer of 15, and he turned it down. So there was never a question he was going to plead guilty if we just got him the right amount of years.

BY MR. SMITH:

Q Was if your advice to him that he should plead guilty or that he should go to trial?

A Absolutely. It was -- it's -- it was the most overwhelming bunch of cases I've had in the 50 years of practicing law. I mean, the evidence was overwhelming in all the cases, every case I had in this -- in this particular instance.

Look, he knew, too, and I've told -- I know I told him this, I tell everybody this, that let's say that you walk out of the courtroom and they find you not guilty on the particular charge we're going to trial on right now. They've still got four or five more shots at you. I mean, they're going to get you on one of them. Sooner or later they're going to get you. So you'd better take advantage of a -- of a decent offer while you can. He didn't do it. We're on the trial docket.

MR. SMITH: Okay. No more questions. Thank you, Mr. Cooke.

THE WITNESS: Thank you.

THE COURT: All right. Ms. Ross?

MS. ROSS: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. ROSS:

Q Mr. Cooke, do you know when that discovery was handed over?

A Yeah.

Q We're talking about the phone data dump and disks.

A I think I can tell you here, at least some of this hearsay you objected to.

Q Or just was it fairly early on in the case?

A Yeah. Yeah, it was. Hold on just a minute. (Pause) I had written that down somewhere. Let me find it.

Q Well, I can move on, Mr. Cooke. I just was asking because I -- do you have a copy of the plea transcript, by any chance?

A Yeah, yeah, I do.

Q I'd refer you to page 11, Line 12.

A Okay. Page 11, Line 12. I've got it.

Q All right. And there you're addressing that this was an unusual situation where you received additional discovery in the case the week prior to the plea.

A Uh-huh. Okay. That was a picture ---
Q So just looking at that, would you agree that there was -- at the time you were saying there was some additional discovery that Mr. Arnold was not able to review until after his 15-year plea offer had expired?
A Hold on just a minute. Okay. He got the -- March the 21st, after he had turned down the 15 years, he wanted me to get him a ten-year sentence concurrent with the probation violation. I'm trying to find those dates for you, and I will find it if you'll just hold on one second.
Q Okay. But the plea was March 4, 2019, according to my transcript.
A Yeah, yeah.
Q Correct?
A Yes, yeah.

Here's -- here's a note. This is from -- this is from 8/2 of 2017. The defendant got his discovery and plea offer. Willing to take 10 years but he ain't doing no 18 years. Defendant got his discovery yesterday and hasn't slept since.

So I gave -- and then prior to that on 7/31 of 2017, I gave a copy of the discovery and plea offer to J.C. to deliver to the defendant at the jail per his request. So J.C., on 7/31, took the copy down to him. On 8/2, a few days later, he got it, the plea offer, he got the

discovery and left word that he's willing to take two years but ain't doing no 18 years. So he'd had that discovery that long.

Q Okay. But, Mr. Cooke, on the transcript on page 11, you state at Line 14 that you had received additional discovery in the case prior to that plea.

A Yeah. What I was really saying at that time, that's the first time I recall seeing it.

Q Okay.

A We may have had it -- we may have had it long before that, but I hadn't -- I -- I hadn't seen it. So I didn't know ---

Q What ---

A --- (cross talk) that evidence or not, to be quite honest with you. I didn't think it would.

Q Okay. Now, in my experience, when you get ---

A Go ahead. I'm sorry.

Q In my experience, when you get a phone data dump, it's a large amount of material on a disk, correct?

A Probably two or three different disks. I don't know. I've got two or three in here.

Q But -- but you can't say for certain whether Mr. Arnold had an opportunity to view those photographs prior to this guilty plea.

A You are correct about that.

Q And prior to him turning down that 15-year plea offer.
A And I'm sure -- I mean, the way he talked, the way he acted, he had not seen that picture. I had not seen that picture.
MS. ROSS: All right. Okay. I have no further questions.
MR. SMITH: Your Honor, may I ask one or two on redirect?
THE COURT: Yes, sir. You may.

REDIRECT EXAMINATION

BY MR. SMITH:
Q Okay. Mr. Cooke, when you referred there to additional discovery right before trial, did you actually mean new discovery or were you talking about discovery in sort of exhibit form that Mr. Moyer wanted to use at trial?
A Exhibit form. I had it. It's just a matter of whether I remembered seeing it or not. Out of all the stuff involved in this case -- in these cases, yeah, I had that picture I'm sure in there somewhere.
Q And, Mr. Cooke, even if you didn't specifically go over that photograph with Mr. Arnold, you did make him aware that the State had the phone and was pulling things off of them; is that right?

A Honestly, I don't -- I don't remember that.
MR. SMITH: Okay. Thank you. No more questions.
THE COURT: All right. Go ahead.
MS. ROSS: Thank you, Your Honor.

RECROSS EXAMINATION

BY MS. ROSS:

Q Mr. Cooke, on page 12, Line 8 . . .
A Okay.
Q So what you're saying there is that after seeing those photographs and talking -- and showing them to Mr. Arnold, you went to Mark and said he would have plead to the original 15-years offer at Line 9 and 10?
A Yeah. I was begging him to let us plead to the 15 years. And he said, as he usually says in all these cases, I can't do it. It's on the trial docket. All -- everything's off the table.
Q Right.
A Yeah. I mean, he wouldn't do it. And we wanted it. We begged for it.
Q Yeah. And on page 12, Line 10, you said -- you mentioned to Mark that he'd take the original 15 years, and then you say, "Of course he wouldn't do it." By that you mean Mark Moyer wouldn't agree to the 15 years now that it was on the docket again. Is that what you meant?
A That's what I -- Mark Moyer wouldn't do it.

MS. ROSS: All right. No further questions.

THE COURT: Very Good. All right. Mr. Smith, call your next witness.

MR. SMITH: Your Honor, I call Mr. Mark Moyer.

THE COURT: Mr. Moyer, will you raise your right hand please, sir.

WHEREUPON,

MARK MOYER

After having been duly sworn, testified as follows:

THE COURT: All right. Very good. Mr. Smith?

DIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Moyer, what evidence did the State have of Mr. Arnold's guilt?

A Well, I didn't go over the whole file today so I'm not sure I can remember every single thing. But I know we had -- we had the defendant's fingerprints on a lot of the stolen property that was found in the vehicle from which he ran after being on a high-speed chase in North Carolina. We had his fingerprints in the vehicle as well. We had a photo lineup from one of the victims in the case. We had -- we had all of the victims. And there were three robberies that happened on this particular night. All of the victims were able to describe the defendant being dressed in a particular way in this red Adidas jumpsuit.

And then when the defendant was in the high-speed chase in the Charlotte area of North Carolina later that same night, the officer was able to describe the person jumping out of the driver's seat being in a -- the clothing that matched that description. And we also had a video which showed that individual jumping out of the vehicle wearing those very distinctive clothing. The defendant got away that night, but he was identified by the fingerprints in the vehicle.

We also had the cell phone that was found in the vehicle. And there was a -- a phone dump was done on that. And there were photographs on that phone of the defendant wearing those clothing and also having a gun that matched the description.

The -- we provided the Property and Evidence sheet to the defense attorney early in the case that showed the phone was collected. So although the defendant may not have been able to actually view the contents of the phone dump, he would have had -- he would have known that we had the phone and that we had a download of the phone based on the Property and Evidence sheets.

We were prepared to use that phone in the trial. And just for ease of introducing those particular photographs of the defendant dressed in the way he was, we had those photographs printed off onto 8 1/2 by 11s. And as soon as

I had those done, I gave those to Mr. Cooke, which I guess is what pointed out that fact, sort of stressed that we were going to focus on those particular photographs.

So there may have been more, but that is what is coming to mind right now.

Q Okay. So I'm correct that the photo that you gave to Mr. Cooke as an exhibit shortly before trial was included in a smaller format in discovery you had already provided years earlier.

A It was. And I -- it was, yes. All the -- there were a lot of photographs on the phone, but those obviously stood out, which is what we were looking for when we went through the photographs. Yes. That was all provided. That was provided early.

Q Would you have sought a trial conviction for Mr. Arnold even if you had not had the phone -- the photograph from the phone in evidence?

A Yeah. I feel -- I feel very certain, based on all the evidence that we had in this case, that I felt very confident that we would have had a -- could have achieved a guilty verdict in the case whether we had those photographs or not.

Q Mr. Moyer, I don't know if you recall this specifically, but did one of the victims know Mr. Arnold personally?

A That is true. There was one of the three robberies from that night included somebody that the defendant knew. And there was a party going on at a house. And the defendant went into the home, and while he was there, he robbed the individuals who were there. And at least one of those persons in that home knew the defendant and was able to identify him.

MR. SMITH: Thank you. No more questions.

THE COURT: Ms. Ross?

CROSS EXAMINATION

BY MS. ROSS:

Q All right. Mr. Moyer, do you have -- on the P&E sheet it just says the phone's in evidence. It doesn't say what was on the phone or whether it's been unlocked or opened, does it?

A There was a Property and Evidence sheet that showed the phone. I am pretty confident that there was another Property and Evidence sheet that showed that there was a download dump.

The way that worked out, the defendant was charged with a number of charges in North Carolina as well based on this high-speed chase that was over 100 miles an hour and lasted, oh, maybe a good 15 minutes or so. So when North Carolina took the phone, they did their own download of the phone. Now, we got a copy of their download;

however, just for ease of using that in trial, we had Greenville County forensic personnel download the phone as well. So we actually had two downloads of that same phone: one from North Carolina, and then also one that was done here in Greenville County.

Q Okay. And those are in digital format, correct?

A That's correct.

Q And they're provided in digital format. And so those photographs would have been provided in discovery to Mr. Cooke or the Public Defender's Office in that digital format, correct?

A Yes, ma'am.

Q Now, you talked about photos printed off to Mr. Cooke.

A Yes.

Q When was that provided in discovery?

A Well, I pointed it out to Mr. Cooke. I sent him an email February 22, 2019. And I pointed out that we took some -- that we printed several of the photographs from the cell phone extraction, and these are the ones we plan to use in trial. That was in an email February 22nd.

Q Okay. And then the trial was March 4th. So that was what he was likely referring to in the plea transcript when he said I've been provided discovery a week or so ago, correct?

A I would think that's what he's referring to. Mr. Cooke sent me an email then February -- the following day, February 27th, in which he said my client insists that I advise you that he will plead guilty.
Q Okay. Now, one question you may or may not know, but you're familiar with defendant's access to digital discovery at the jail, correct, Mr. Moyer?
A I don't think fully, but in broad terms I think I understand.
Q Would you agree that it's difficult and highly unlikely that a disk could be viewed by an inmate at the Greenville Law Enforcement Center?
A I've heard that. I can't really say from my own personal knowledge about that. I've heard some people talk about that. I know there's some difficulty. Now, I don't know how difficult it is.
Q Well, if the lawyer isn't there to go over the discovery with them, wouldn't it be almost impossible for an inmate to view digitally provided discovery, for instance, a pro se inmate that's just provided disks?
A I'm not -- I'm really not sure. I tend to think you're correct, but I don't really know.
Q Okay. And I guess I was just talking about a recent inmate that I represented that they had to have Cass Gorton appointed to go over discovery with him because he

couldn't go over it himself.

MR. SMITH: Objection. Making a compete fact witness.

THE COURT: Say that again, please.

MR. SMITH: Ms. Ross is providing testimony outside this case.

THE COURT: Overruled. Go ahead.

BY MS. ROSS:

Q Mr. Moyer, I'm just trying to get to isn't it true that you're prosecuting a case right now where the defendant is pro se and there's a great deal of difficulty for him to view digital evidence, he cannot view that, so another lawyer had to be appointed to go over it with him at the jail?

A Yes, that is correct.

MS. ROSS: All right. No further questions.

THE COURT: Any redirect?

MR. SMITH: I have two questions, Your Honor.

REDIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Moyer, so the photograph that you provided to Mr. Cooke shortly before trial, now, even though that was an item that had been in discovery, it really wasn't discovery at that point. It was a trial exhibit that you were showing him as a professional courtesy.

A That's how I would characterize it. I wouldn't consider it discovery, per se, because it had already been provided. But out of an abundance of caution, I just wanted to give it to him as soon as I had it so he'd be aware of the format that I intended to introduce that photograph.

Q Okay. And I think this is my last question. The P&E sheets, would those have been provided on a disk or would those have been in a digital or physical hard copy?

A They would have been in a hard copy. That would have been paper form that would have been provided directly to the Public Defender's Office.

MR. SMITH: Okay. Thank you. No more questions.

THE COURT: Mr. Taylor, would you identify what that was in hard copy that was provided to the PD, please. Well, repeat what that was.

MR. SMITH: Your Honor, I was asking about the P&E sheet that Mr. Moyer and Mr. Cooke had testified to earlier.

THE COURT: I've got you.

MR. SMITH: Although the contents of the phone would have been on the disk, the P&E sheet listing that there had been a phone dump was provided separately.

THE COURT: All right. Thank you, sir.

All right. Anything further, Mr. Smith?

MR. SMITH: That's the State's case, Your Honor. But if you'd like, I would like to present argument, and I'm sure Ms. Ross would, too.

THE COURT: Well, let me give Ms. Ross the opportunity to tell me whether or not she has any reply to the State's case or defense.

MS. ROSS: If I could just briefly recall Mr. Arnold in reply.

THE COURT: Okay. Mr. Arnold, you're still under oath.

APPLICANT ARNOLD: Yes, sir.

THE COURT: Okay. Go ahead, Ms. Ross.

WHEREUPON,

KENDALL ARNOLD

Previously having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. ROSS:

Q All right. Mr. Arnold, did you see -- understand or see these photographs prior to the expiration of the 15-year plea offer that Mr. Cooke extended to you?

A No, ma'am.

Q So you had no idea that the State had that evidence in its possession when you turned down that 15-year plea offer.

A No, ma'am.

MS. ROSS: All right. No further questions.

THE COURT: Any cross-examination, Mr. Smith?

MR. SMITH: No, Your Honor.

THE COURT: All right. Very good. All right. Is that the applicant's case, Ms. Ross?

MS. ROSS: Yes, Your Honor.

THE COURT: All right. Very good.

I'm going to let you go ahead and argue first, Ms. Ross, if you would.

MS. ROSS: All right. Thank you, Your Honor. May it please the Court. Judge, I would just really refer you to the plea transcript at page 11, Line 12 where Mr. Cooke explains and sets out the situation that was there. You know, it says that he did not know of the photographs until he got them a week or so prior, and then on page 12 he goes on and says, you know, I'm kind of in a jam on this because I haven't shared this discovery with my client. Then the plea goes forward. There's some issues about that there was an original plea offer of 18 years, and then that went down to a plea offer of 15 years.

We would argue that under -- and I didn't do my final gathering it together, but under the Davies case, if you don't get a plea offer, I know I'm stretching here, but in Davies it says if a plea offer is not extended, then the remedy is to have that plea offer offered again so that it

can be accepted by the defendant. We'd argue that this happened by extension here because though the plea offer was extended, it was not able to be considered by the defendant with all the evidence in hand and with the knowledge of all the evidence that the State had in discovery.

As to sort of data dumps and photographs, I'm familiar with these. I get them all the time. And there can be thousands of photographs on a phone, that there is no evidence that Mr. Arnold knew of what those photographs were or that the State had access to them. There's a lot of case law out there about password-protected phones. He would have no way of knowing what exactly -- whether that had been accessed and whether that was in the State's possession or whether the State even had found that stuff in the phone or that he even actually knew of the pictures or took them himself. Therefore, we'd argue that the allegation that he somehow should have known about that discovery when clearly the testimony of Mr. Arnold and Mr. Cooke was that they flat-out did not know about those pictures until right before trial, and at that point, they wanted to change the plea to guilty.

As far as the appeal issue, I don't think the case law is really on Mr. Arnold's side, in all honesty, so I would just let that one go. But I do think initially in

my application I put in a possible due-process violation if, in fact, there was a Brady violation. I don't see that here. Mr. Moyer has said that he did hand over everything. The issue is Mr. Arnold didn't get to see it. And the defendants have a right to see all their discovery and consider it before they decide to turn down a plea offer.

THE COURT: All right. Thank you, ma'am.

All right. Mr. Smith?

MR. SMITH: Yes, Your Honor. I'll talk about the plea issue first briefly -- the appeal issue, I mean. Even if Mr. Cooke had not talked with Mr. Arnold about appealing his sentence, which I think he said that he had not, Judge Stilwell did inform him -- inform Mr. Arnold about that, so Mr. Arnold had awareness of it. He never brought it up again to Mr. Cooke, according to Mr. Cooke's own testimony and, I believe, Mr. Arnold's, too. And so I don't see any issue there. It seemed like he let that one go, and I think Ms. Ross is saying as much today.

On the issue about the plea offer, we still have to analyze this through Strickland, which means we have to have deficiency and prejudice. And deficiency is judged by the reasonableness of Mr. Cooke's having other prevailing professional norms. Although he testified that he doesn't think he ever sat down and went over the photos

from the data dump with Mr. Arnold personally in jail, he did give him all discovery which would have included the data scan PE -- P&E sheet that would have given anyone indication that the phone would be at issue in the case and its contents, too. And since that would be on a separate hardcopy that even if Mr. Arnold couldn't access the disk, he still would be able to see the sheet laying out that the State is pulling photographs and whatnot off of the phone. So I think on that, I think that there's reason to think he had -- or should have had awareness of the fact that the phone was in evidence. And I also think it's unreasonable for him to be surprised that the phone would be in evidence if it was on him and these photographs were on the phone in the car that he crashed in.

But as to the prejudice issue, when we look at the Davey case and another case in South Carolina, Collins v. State, I'll provide the cite for that, it's 422 S.C. 250, it's a 2018 South Carolina Supreme Court case, and it's not exactly on point because it discusses what -- how the Court should analyze prejudice if an attorney fails to extend the plea offer to his client that is then expired. But I think the way that the Court looks at prejudice there would apply the same way in this case. And in that case the Court says you have to look -- that Mr. Arnold

has to prove three things: first, that there is a reasonable probability that he would have accepted the 15-year plea offer if Mr. Cooke had not made the alleged error; second, Mr. Arnold has to prove that there's a reasonable probability that Mr. Arnold would have entered the guilty plea and that the prosecution would not have withdrawn it and the trial court would have accepted it; and third, that Mr. Arnold has to prove that there's a reasonable probability that the end result of the criminal process would have been more favorable to him through a sentence of lower prison time. And so I'll kind of go through each one of these in turn very briefly.

So the first, that Mr. Arnold has to prove a reasonable probability that he would have accepted the offer, I think that there are good credibility reasons not to believe that here. And reasonableness, when you look at all the evidence in the case, I just find it very hard to believe that the turning point was this photograph when you have eyewitnesses who were the victims, one of whom at least personally knew Mr. Arnold very well. You had victims picking Mr. Arnold out of a lineup. You had his fingerprints on the car. It was used in one of the robberies, and that he later crashed after a high-speed police chase. You have his fingerprints pulled off of the items stolen in the robbery that were found inside the

car. All of this together, the fact that he was in a -- he was caught on camera and described by witnesses as wearing this red Adidas jumpsuit and these red sneakers that matched up, I think that that's a good -- a good case of overwhelming evidence of guilt. And so to say that this photo of him wearing the jumpsuit was the straw that broke the camel's back I just think is unreasonable.

So to the second point-of-prejudice analysis under the Collins v. State, he has to prove that there's a reasonable probability that he would have entered the guilty plea without the trial court refusing to accept it. I think he can't show that here because Judge Stilwell clearly went beyond the 15-year recommendation. And if you look at the trial transcript pages 14 through 16, Judge Stilwell was clearly privy to the plea negotiations. He said he would take them into consideration. He would consider the 15-year recommendation in the context, quote, just like if Arnold came before me with a recommendation of 15 years, I could take it or not. So I think when you look at that, the fact that Judge Stilwell still sentenced him to more than the 15 years shows that there was not a reasonable probability that the Court would have accepted the sentencing recommendation.

Then third, Mr. Arnold has to prove that there is a reasonable probability that the end result of the criminal

process would have been more favorable. I think, again, if you go just back to the sentence he actually got, that tends to disprove that argument. It seems like we have the benefit of some reasonable calculation here in a way that these other Collins cases and Davey don't because I don't think in those cases the trial court who sentenced those defendants knew the situation here. And in this case Judge Stilwell clearly knew that there was this back-and-forth dispute about when Mr. Arnold wanted to plead guilty. And so he's sort of in the position of someone who would take up this same issue if Mr. Arnold would be sent down for resentencing again.

And, again, I'm pulling that prejudice analysis from Collins v. State, 422 S.C. 250, which loops me back around to the remedy point I brought up at the beginning of the trial. I think on this guilty plea issue, even if everything Mr. Arnold is alleging about it is true, that he didn't know, have any clue about these photographs, that that was the determining factor in whether or not he wanted to plead guilty and that he would have taken it, I think that what else can the Court give him?

If you follow the precedent here in Lafler v. Cooper, 566 U.S. 156, which I think goes hand in hand with this Davey case, what the Court says is that in these sort of situations, what happens is not specific performance. If

you were to grant PCR to Mr. Arnold, the correct remedy the U.S. Supreme Court said was that the later court should order the State to reoffer the plea agreement, and if Mr. Arnold accepts it, allow the trial court to exercise discretion in determining whether to vacate the convictions and resentence pursuant to the plea agreement, vacate only some of the convictions and resentence accordingly, or leave the sentence undisturbed. And if you look at that and what the South Carolina Supreme Court says to do in the Davey case, I think this is a moot issue.

If you grant this PCR to Mr. Arnold and it goes back over to General Sessions for a court to look at this and reconsider, what are they going to take into consideration anything except Judge Stilwell has already heard? So it's almost like redoing what he's already done. I mean, of course, the Court's going to -- if you follow that, they're going to hear that there was this dispute, that he did not get to plead guilty and get the State's 15-year recommendation and that he got a higher sentence, and then presumably by this authority, the Court would do the same thing that Judge Stilwell has done. I don't see what any court can do for him now.

It might be a different case if Judge Stilwell had not already gone through all of this and take in all of

this into consideration in his sentencing, but that's what we're left with. He sort of has done part of this job already. I think he's cured some of these issues that you would have that would justify a resentencing hearing. I mean, maybe if Ms. Ross can explain, but if you go by this precedent, what else could a court do on remand other than what Judge Stilwell already did when he went through all of this and took it into consideration?

So for that reason, I think it's a moot argument.

THE COURT: Thank you.

Any final comments, Ms. Ross?

MS. ROSS: Thank you, Your Honor. I would just state that Judge Stilwell was in a different position of a client pleading off the trial docket essentially with no recommendation.

He did in his sentencing consider the original 18-year offer, and he was told that there was a 15-year offer that was turned down. But this was a very different situation than someone who just goes in for a guilty plea with a recommendation of 15 years.

I think the transcript speaks for itself that if you're going through these Collins points that if he had known of that evidence, he would have plead, because that's exactly what happened. Also, he would have taken the 15, because, again, that's exactly what happened. It

set off what occurred. He discovers the photographs, tells Mr. Cooke I've got to plead guilty. Mr. Cooke says on the transcript, page 11 like around 18, Line 18, he says -- or even 16 that this is a clear picture of my client. It's not like a black shirt and black pants. It's like the exact description that was given by witnesses. So he's talking about how serious this photograph is compared to the other, you know, evidence. He's saying this is compelling. You know, a picture tells a thousand words, and that's what Mr. Cooke says in treating the strength of that evidence that Mr. Arnold hadn't seen prior to turning down a plea offer.

And I think the outcome would have been different. I think there's a reasonable likelihood that a judge would give 15 years if that was a recommendation by the solicitor going into a guilty plea. So that would be the basis of our argument.

As far as the remedy, I think I have seen this remedy before pursuant to plea offers going awry where the remedy is specific performance or to be put back at the plea level with that plea offer re-extended to the defendant. So I think that is a valid or a remedy I've seen used before.

And I've got nothing further.

THE COURT: All right. Thank you. Thank you for

both sides' presentation and giving me the information. I've read it all. In fact, I've read it several times because I've had plenty of time this week.

As to the appeal issue, clearly, at Line -- page 23, Lines 24 and -5, Judge Stilwell told Mr. Arnold he had a right to appeal. Ms. Ross acknowledges that. There's no evidence in the record where even having been told that by Judge Stilwell that Mr. Arnold asked Mr. Cooke to go ahead and do an appeal, and that was not done. So that -- those grounds thankfully have been withdrawn, but to the extent they haven't been, they are denied. There's no evidence that there was a request and failure to procure an appeal.

Interesting question. I agree with Ms. Ross in some degree that these photographs are not just inconsequential but are material evidence to the case, but at the same time, it seems clear that the State -- first, let me say this. The State did not do a late-minute dropping of evidence on defense counsel or the applicant in this case days or weeks before trial, but this information had been given to them in one form or another a substantial period before the trial date. Whether or not they looked at it is another matter, and I'll address that in a minute. But it's clear to me that there is overwhelming evidence that has been -- that was presented to defense counsel by way of discovery and that was shared with Mr. Arnold in this

case, which would include fingerprints on the vehicle, the stolen evidence, which I think was some kind of gift cards, as well as eyewitness reports, one that knew Mr. Arnold and had Mr. Arnold either stayed in his home or vice versa, but clearly, somebody who had a very distinct prior knowledge of who Mr. Arnold was and would have been a credible eyewitness. Well, I shouldn't say credible. Had good knowledge of him before.

I think that it's interesting what Mr. Cooke said early in his testimony is that it was never ever a situation where Mr. Arnold was not going to plead guilty. At all times he was going to plead guilty, and I believe that is probably because of the result of the overwhelming evidence in this case.

The bottom line is it looks like what he was doing was trying to get the best deal ultimately he could, and -- because the evidence is clear that the 18-year offer was extended, the 15-year offer was extended. At that time when it was extended, the State had given this information to Mr. Arnold. I have no doubts, based on Mr. Cooke's or Mr. Arnold's testimony, that maybe Mr. Cooke and Mr. Arnold had not actually looked at these actual pictures at the time he took -- he decided not to accept the 15-year offer, but it seems equally as clear to me that what he was hoping was to get an offer of under

15 years, closer to 12 years, as Mr. Cooke testified to earlier and in the transcript. And when that backfired on him, they did the best he can -- Mr. Cooke did the best he could to try to salvage the situation because there was going to be a plea at all times.

It may be somewhat deficient not to look at all the evidence in this case, but it seems to me that Mr. Cooke's testimony earlier that Mr. Arnold hadn't slept all night after reviewing State's evidence is clear that he knew there was overwhelming evidence in this case. He's no stranger to the system. I was looking at the background. He had prior charges. In fact, he had pled in July of 2016 to a CDVHAN, and that was revoked by Judge Gravely on April 6 of '18. And although he may not have actually looked at it, he could have had that information looked at. I think he knew there was overwhelming evidence of his guilt, because there was.

But if you look at Line 15 and 11 through 25, Judge Stilwell made it clear he was going to plead -- he was pleading straight up with him. But he went back and considered all of the different factors I thought that Mr. Cooke was right and correct that when he only got 18 years, faced with the number of charges that he had, that he got a good deal and he got off lucky in some sense of the word.

But regardless, I don't know that going back and having another plea hearing, if Ms. Ross is correct about the specific performance, that anything other than what would have been done would have been done, because it certainly was not a negotiated deal. This was either going to be a recommendation, which effectively was done on the record in front of Judge Stilwell, and he came pretty close to that. But I feel like that there's no prejudice that's been established. At best there may be somewhat of a deficiency by not looking over each and every piece of evidence. I don't know that that necessarily is the case. I think it's more of a recognition by Mr. Arnold that they had him, they had overwhelming evidence against him, and he was just trying to get the best he could do.

With that being said, I'm going to ask Mr. Smith to draft me an order. Include your arguments and include these findings on this transcript and provide that to Ms. Ross prior to sending it to me, if you would, please. And I'll sign off on it or we'll have it worked on from there.

Mr. Arnold, just so you'll know, so you've been advised, once I sign this order, you will have -- when it's filed, you'll have 30 days to appeal my order, okay, sir?

APPLICANT ARNOLD: (Cross talk.)

THE COURT: So just so you -- all right. Thank you.

All right. Anything further, Ms. Ross?

MS. ROSS: No, Your Honor. I'll just tell Mr. Arnold I will file the appeal for you if you want me to. Is that what you would like?

APPLICANT ARNOLD: (Nods head affirmatively.)

THE COURT: All right. Very good. All right. Thank you for your presentations from both sides. Y'all have a good day.

MS. ROSS: Thank you. You too.

MR. SMITH: Thank you.

(WHEREUPON, proceedings concluded at 1:25 PM.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 2nd day of December, 2020.

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

May 21, 2021

Cheryl A. Smith

Cheryl A. Smith, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
Kendall Donyale Arnold, #352414, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2019-CP-23-03410 **ORDER OF DISMISSAL** ENTERED COMPUTER

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, S.C.
2021 MAR 16 PM 2:15

This matter comes before this Court by way of an application for post-conviction relief filed on June 14, 2019, by Kendall Donyale Arnold ("Applicant"). The State ("Respondent") filed its return on February 10, 2020, requesting that the Court convene an evidentiary hearing. Applicant, through counsel, filed an amended application March 13, 2020. An evidentiary in the matter was held before the undersigned on December 2, 2020, with the parties appearing by WebEx due to the ongoing COVID-19 pandemic. Applicant appeared by WebEx from Lieber Correctional Institution and was represented by Susannah C. Ross, Esquire. Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office represented Respondent. Applicant testified on his own behalf. Larry Holmes Cooke ("plea counsel"), Esquire, and Assistant Solicitor L. Mark Moyer of the Thirteenth Circuit Solicitor's Office testified on Respondent's behalf. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet the requisite burden of proof and denies this application for post-conviction relief.

PROCEDURAL HISTORY

Applicant is presently incarcerated in the South Carolina Department of Corrections. During its November of 2017 term, the Greenville County Grand Jury indicted Applicant for three

counts of armed robbery (2017-GS-23-003385; -003386; -003389) and one count of possession of a weapon during the commission of a violent crime (-003386). Plea counsel represented Applicant and Moyer prosecuted the case. On March 4, 2019, Applicant appeared before the Honorable Robin B. Stilwell and pleaded guilty to all three counts of armed robbery. Judge Stilwell sentenced Applicant to imprisonment for eighteen years for each of three counts with the sentences running concurrently and credit for Applicant's time served. On March 5, 2019, the State dismissed the indictment for possession of a weapon during the commission of a violent crime.

Applicant did not appeal his convictions or sentences.

CURRENT PROCEEDING

In his application for post-conviction relief, filed on June 14, 2019, Applicant alleges he is entitled to post-conviction relief based upon his claims that (1) plea counsel did not advise Applicant of his right to appeal his convictions or sentences and (2) that Applicant did not knowingly and voluntarily waive his right to a direct appeal. In his amended application, filed through counsel on March 13, 2020, Applicant alleges he is entitled to post-conviction relief based upon his claims that (2) plea counsel was constitutionally ineffective for failing to review discovery to find inculpatory photographs until the assistant solicitor's plea offer, which Applicant would have taken had he known of the evidence, had expired, and (2) Applicant's due process rights were violated when the plea offer expired before he was shown inculpatory evidence. Applicant informed the Court at the evidentiary hearing that the remedy he was seeking was for this Court to order the specific performance of the sentencing recommendation so that Applicant would be resentenced in accordance therewith.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Greenville County Clerk of Court regarding Applicant's convictions, the records of the Greenville County Clerk of Court regarding the charge dismissed in accordance with Applicant's plea agreement with the State, the transcript from Applicant's guilty plea hearing, Applicant's records from the South Carolina Department of Corrections, and the filings made in this post-conviction relief action. Set forth below are the relevant findings of facts and conclusions of law with regards to each of the claims Applicant advanced at the evidentiary hearing, as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has failed to prove that he did not knowingly and voluntarily waive his right to direct appellate review of his convictions and sentences.

Applicant claims he is entitled to post-conviction relief because he did not knowingly and voluntarily waive his right to direct appellate review of his convictions and sentences. In White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that, even though a post-conviction relief court may find that an applicant did not voluntarily and intelligently abandon his right to a direct appeal, the PCR court does not have jurisdiction to grant a belated appeal. However, when an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40. Applicant seeks this relief.

This Court finds that Applicant has failed to prove that he did not knowingly and voluntarily waive his right to direct appellate review of his convictions and sentences. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason

to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Id. at 478 (underlining added). In order to establish that he was prejudiced by counsel's failure to file an appeal, an applicant must show he would have appealed absent counsel's deficient performance. See Id. at 484. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981).

At the evidentiary hearing, Applicant testified that he wanted to appeal his convictions and sentences, but that he was not aware at the time that he could do so. Plea counsel testified he did not have any notes in his file indicating that he discussed with Applicant his right to appeal. Plea counsel believed Applicant was happy with his sentence considering the greater potential sentences that Applicant could have received. Plea counsel testified he thought Applicant would have been aware of his right to appeal regardless of whether plea counsel told him of it because Applicant had been in prison before. Plea counsel never thought that Applicant wanted to appeal because it would have made no sense considering for Applicant to do so considering the significant prison time to which Applicant would have been exposed if his sentences had been vacated. Plea counsel affirmed that he would have filed a notice of appeal if Applicant had asked him to do so. Applicant admitted on cross-examination that Judge Stilwell informed him at the guilty plea hearing that Applicant had the right to appeal and had to do so within ten days, but testified that he did not understand what Judge Stilwell meant when he informed Applicant of that right.

This Court finds that Applicant has failed to prove that plea counsel had a constitutionally

imposed duty to consult with Applicant about Applicant's right to appeal the convictions and sentences. Applicant and plea counsel both agree on the fact that Applicant did not ask plea counsel to file a notice of appeal. Applicant's testimony was that he was not even aware of the right, which, putting aside for now the fact that that testimony is manifestly untrue, inevitably leads this Court to the conclusion that Applicant could not have invoked the right in his discussions with plea counsel. Plea counsel's testimony on the point was that his notes from his representation of Applicant did not indicate that he and Applicant had discussed appealing. Not only has Applicant failed to prove that he reasonably demonstrated to plea counsel that he wanted to appeal, but he has failed to prove that there was a reason for plea counsel to believe that Applicant wanted to appeal. Plea counsel testified that there was a never a time during his representation of Applicant that Applicant did not want to plead guilty. Plea counsel testified that he believed that Applicant had been happy with the outcome of the guilty plea hearing, especially since Judge Stilwell backdated Applicant's sentence so that it ran concurrently with an eight-year sentence that Applicant was serving for a different conviction. In addition, Judge Stilwell's eighteen-year, concurrent sentences would certainly be preferred by any defendant to the lengthier sentences Judge Stilwell could have imposed, which would have included an aggregate sentence of more than 100 years. Applicant would have been exposed to that risk again if he had been successful on appeal.

This Court finds Applicant was aware of his right to appeal his convictions and sentences because, even if plea counsel did not so inform him, Judge Stilwell did so at the guilty plea hearing. Plea Tran. 23; Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011) (citations omitted) (concluding that any alleged deficiency in plea counsel's advice to Holden was cured by the plea court's colloquy), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836

(2018). Applicant testified before this Court that he did not understand the right to appeal even after Judge Stilwell's colloquy, but this Court finds that that testimony is not credible. Applicant failed to prove that he did not understand that right or any other discussed at the guilty plea hearing. This Court finds that Applicant, after being made aware by Judge Stilwell of his right to appeal his convictions and sentences, waived that right knowingly and voluntarily by not requesting that plea counsel file a notice of appeal.

Applicant's claim that he did not knowingly and voluntarily waive his right to direct appellate review of his convictions and sentences is denied and dismissed with prejudice.

Applicant has failed to prove that plea counsel was constitutionally ineffective for not reviewing with Applicant inculpatory photographs until after the State's plea offer had expired.

Applicant claims he is entitled to post-conviction relief because there were inculpatory photographs turned over to plea counsel by the State in discovery that would have caused Applicant to accept the State's plea offer instead of proceeding to trial if Applicant had known of them before rejecting the offer.[1]

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008); Strickland v. Washington, 466 U.S. 668 (1984). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he 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

[1] At the hearing before this Court, Applicant stated that the claim in his amended application that his due process rights were violated when the State's plea offer expired before Applicant was shown the inculpatory photographs was really meant to be the same argument as the claim that plea counsel was constitutionally ineffective, so this Court will consider the two pleaded claims as a single ineffectiveness claim.

result." Strickland, at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, at 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, at 690). Applicant must overcome this presumption to receive relief. Cherry, 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, at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

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. 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. Strickland, at 670. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

"A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (S.C. Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). The South Carolina Supreme Court has instructed that:

> The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the

consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). "[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison, at 468, 765 S.E.2d at 129 (citations omitted).

Assistant Solicitor Moyer testified before this Court that law enforcement officers in North Carolina and with the Greenville Police Department downloaded the contents of Applicant's mobile phone, found in the crashed car after Applicant was arrested. Moyer testified that he initially provided the photographs recovered from that phone to plea counsel in discovery in a digital format only. Moyer testified that the property and evidence sheets that he turned over to plea counsel noted that Applicant's mobile phone had been recovered from the crashed vehicle and that law enforcement officers had downloaded the contents of the phone. Moyer testified that he provided hard copies of the photographs to plea counsel later on February 27, 2019, when showing to plea counsel, as a professional courtesy, the exhibits that Moyer intended to use during trial.

Plea counsel testified he met with Applicant on multiple occasions and has notes from those meetings saved in his defense file. Plea counsel estimated that he met with Applicant on seven or eight occasions. Plea counsel testified he went over the discovery with Applicant. Plea counsel had a letter in his file showing that he sent the complete discovery file to Applicant in July of 2017. Plea counsel testified that he was not sure if he gave a copy of the specific photographs to Applicant in hard copy but testified that he gave to Applicant a copy of everything that was in his defense file, including any documents that were in hard copy. Plea counsel testified he advised Applicant to plead guilty and accept the State's offer to make a sentencing recommendation for imprisonment for fifteen years because plea counsel believed that the evidence of Applicant's guilt was overwhelming. Plea counsel testified that it was possible that Applicant did not see the inculpatory

photographs because all of the photographs turned over in discovery were saved on discs, discs that he nevertheless forwarded to Applicant. Plea counsel did not recall personally going over the photographs saved on the discs with Applicant. Plea counsel testified that he did inform Applicant that the law enforcement officers had lifted Applicant's fingerprints, though. Plea counsel said that Applicant called him after receiving the discovery from plea counsel and said that Applicant had been unable to sleep that night after looking at the discovery, that Applicant wanted to plead guilty instead of proceeding to trial, and that Applicant rejected the State's offer of a fifteen-year sentencing recommendation but said he would only agree to plead guilty in exchange for an offer of ten or twelve years.

Plea counsel testified that, after Applicant rejected the fifteen-year plea offer, Moyer did not make another offer and put Applicant on the trial docket. Plea counsel testified that the inculpatory photograph that Applicant was concerned about was one that Moyer had enlarged so that the State could use it as an exhibit at trial. Plea counsel testified that he was unsure if the photograph would be admitted into evidence at trial, but testified that its admission would not be good for the defense because the photograph showed Applicant holding the firearm used in the robberies and wearing the clothing described by the witness. Plea counsel testified that he shared with Applicant his opinion that the admission of the photograph into evidence would be harmful to the defense.

Applicant testified before this Court that plea counsel did not talk about discovery with him. Applicant testified that he became aware of the inculpatory photographs downloaded from his mobile phone on the morning of his trial. Applicant admitted that he affirmed to Judge Stilwell at the guilty plea hearing that he and plea counsel had gone over the State's evidence. Applicant agreed on cross-examination that he had had his mobile phone in his pocket when he crashed the

vehicle and that it should have been no surprise to him that law enforcement officers would thereafter have been in possession of his phone. Applicant testified that the inculpatory photographs had been stored on his Google Gmail account, which was accessible through the mobile phone, but that he was nonetheless surprised that law enforcement officers had been able to download the photographs from Applicant's phone.

This Court finds that Applicant has failed to prove that plea counsel's performance was deficient based on Applicant's allegation that plea counsel did not show the inculpatory photographs to Applicant before the State's plea offer expired. This Court finds that plea counsel provided all of the discovery turned over to him by the State to Applicant, including the inculpatory photographs. The testimony from Moyer and plea counsel shows that the relevant photographs were provided to plea counsel by Moyer in a digital format initially. Moyer's testimony also established that he submitted hard copies of other documents to plea counsel that indicated that law enforcement officers were in possession of Applicant's mobile phone and that the officers had been able to download data and/or photographs from that phone. Plea counsel's testimony shows that he turned over everything in his file to Applicant, including the disc containing the photographs and the hard copies provided to him by Moyer. It is not clear to this Court whether Applicant was able to view the photographs saved on the disc or discs while in jail, but the documents sent to Applicant by plea counsel put Applicant on notice that the State was in possession of his mobile phone and evidence pulled therefrom. Applicant's own testimony indicates he knew of the existence of the photographs and knew that they were stored or at least accessible from his mobile phone. It could not therefore have been a surprise to Applicant that the photographs could or would serve as evidence of his guilt at trial. Applicant's reaction to seeing the evidence, his remaining awake all night, seems to have been the natural consequence of his

realization of the strength of the State's evidence. The only fault that this Court can find in plea counsel's representation is that plea counsel—perhaps—did not personally view the photographs with Applicant before Applicant rejected the State's fifteen-year plea offer; however, the evidence indicates that Applicant knew of the existence of the photographs and that they were in the State's possession before Applicant directed plea counsel to reject the State's offer and to make a counteroffer of ten or twelve years instead. Applicant's testimony to the contrary is not credible, while the testimonies or plea counsel and Moyer on this point is credible.

This Court finds that Applicant has failed to prove that he suffered prejudice from plea counsel's performance. For Applicant to prove that he has suffered prejudice, he "must demonstrate a reasonable probability that: (1) he would have accepted the earlier plea offer had he been afforded effective assistance of counsel; (2) the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it; and (3) the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." Collins v. State, 422 S.C. 250, 263, 810 S.E.2d 871, 878 (2018). Although our Supreme Court's opinion in Collins concerned a defense attorney's failure to request the reinstatement of a plea offer that expired before the attorney was appointed, the analysis and remedy discussion in that opinion indicate that this case is applicable in the present situation in which Applicant claims he would have taken advantage of a plea offer that he rejected had he been fully aware of a specific piece of evidence, especially in light of citations in Collins to cases like Missouri v. Frye, 566 U.S. 134 (2012) and Lafler v. Cooper, 566 U.S. 156, 174 (2012). Id.

Assistant Solicitor Moyer testified before this Court about the evidence that the State had of Applicant's guilt and provided much of the same information to Judge Stilwell at Applicant's guilty plea hearing. A victim identified Applicant as the robber from a photographic lineup; a

victim from the second robbery knew Applicant personally and was able to identify Applicant as the robber. Plea Tran. 25. A North Carolina law enforcement officer, after Applicant led him on a high-speed traffic chase, stopped Applicant for speeding on the night of the second and third robberies. Plea Tran. 25-26. A victim had been Applicant driving the vehicle during the second robbery earlier that night. Plea Tran. 25-26. Law enforcement officers found in the crashed vehicle a rifle and a BB gun that matched the description of those used in the robbery. Plea Tran. 27. The crashed vehicle contained property stolen during all three of the robberies. Plea Tran. 27. Law enforcement officers were able to lift Applicant's fingerprints from the inside of the crashed vehicle and from one of the gift cards stolen during one of the robberies. Plea Tran. 27-28. The vehicle also contained Applicant's mobile phone, from which law enforcement officers recovered photographs of Applicant wearing the same distinctive clothing—white shoes and a red Adidas jumpsuit with stripes—that he had been wearing and the same weapon he had been carrying during the first robbery. Plea Tran. 13, 28. Those photographs had been taken on the day of the robbery. Plea Tran. 14. Moyer also testified that a security camera recording showed Applicant jumping out of the vehicle wearing the distinctive clothing.

Plea counsel testified that there was never a point in his representation of Applicant that Applicant did not want to plead guilty. Plea counsel testified that he engaged in plea negotiations on Applicant's behalf and that, after Applicant reviewed the discovery that plea counsel sent to him, Applicant rejected the State's offer of a sentencing recommendation of fifteen years because, rather than wanting to go to trial, Applicant still wanted to plead guilty but wanted Moyer to agree to a sentencing recommendation of ten or twelve years instead. Plea counsel testified that Applicant told him that he had been unable to sleep through the night after seeing the discovery. Plea counsel testified that Applicant always believed that he would get more than one plea offer

from Moyer, despite the fact that plea counsel informed Applicant that that was not necessarily what would happen if he rejected the State's first offer. Plea counsel testified that, after Applicant rejected the State's fifteen-year offer, Moyer did not extend another offer.

Applicant testified before this Court that the photographs were so damning that he would have pleaded guilty and accepted the State's plea offer rather than rejecting it had he known about the photographs before the plea offer expired. While being cross-examined, Applicant testified that he had not wanted to plead guilty but instead had wanted to go to trial when he turned down the State's fifteen-year offer. Applicant testified that he was not worried about the strength of the State's evidence. When questioned about the facts that the State had a victim who personally knew Applicant and would testify that he was the robber, that the State had Applicant on a video recording wearing the distinctive clothing that the robber wore, and that the State had lifted Applicant's fingerprints from the car used in the robberies and the stolen property, Applicant testified that he thought he would somehow have been able to beat this evidence at trial; Applicant essentially testified that the only thing that worried him about his chances of being acquitted at trial was that the State had the photographs, downloaded from Applicant's mobile phone, that showed Applicant wearing the distinctive red jumpsuit.

This Court finds that Applicant has failed to prove that there is a reasonable probability that he would have accepted the fifteen-year plea offer if plea counsel had done more to make Applicant aware that the State was in possession of the inculpatory photographs and that Moyer intended to introduce them into evidence at trial. Applicant's testimony that he wanted to go to trial until plea counsel showed him the enlarged photographs from the mobile phone on the morning of his guilty plea hearing is not credible. Plea counsel's credible testimony proved that Applicant never wanted a trial, but was instead engaging in a sentence negotiation strategy by

rejecting the State's offer in the hopes that he would get a more favorable offer. Applicant's testimony that he believed that he would be able to overcome all of the State's evidence at trial up until he saw the photographs in trial exhibit format is not credible. Plea counsel believed that the evidence of Applicant's guilt was overwhelming and informed Applicant of that belief. The internal turmoil that Applicant told plea counsel about after seeing the discovery proves that Applicant was not as confident about the outcome of trial as his incredible testimony before this Court indicates. It is no wonder that Applicant was distressed at seeing the State's evidence because that evidence was overwhelming. Felder v. State, 427 S.C. 518, 528-59, 832 S.E.2d 591, 596 (2019) (citing Smalls v. State, 422 S.C. 174, 192, 810 S.E.2d 836, 845 (2018) ("For the evidence to be 'overwhelming' such that it categorically precludes a finding of prejudice . . . it must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the Strickland standard cannot possibly be met.")). This Court concludes that Applicant, despite being faced with so much evidence of his guilt, still rejected the plea offer because he wanted a better deal, that Applicant would have rejected the fifteen-year plea offer even if plea counsel had met with him to show him the photographs downloaded from the mobile phone, and that Applicant's testimony to the contrary is not credible.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that, if plea counsel had personally reviewed with Applicant the photographs downloaded from Applicant's mobile phone, the guilty plea would have been entered without the prosecution canceling it or the trial court refusing to accept it. Moyer's testimony gave this Court no reason to think that the State would have withdrawn its fifteen-year plea offer before Applicant's guilty plea was entered, had Applicant accepted the offer. But Judge Stilwell was made aware at Applicant's

guilty plea hearing that Moyer had offered a fifteen-year deal and that Applicant had rejected it. Judge Stilwell took the fact of that plea offer into consideration. In issuing an eighteen-year sentence, Judge Stilwell considered that offer just as he would have considered it if Applicant had come before him to plead guilty with the benefit of the fifteen-year sentencing recommendation, "just like if [Arnold] came before [him] with a recommendation of 15 years. [He] could either take it or not . . . ." Plea Tran. 14-16. Since plea counsel made attempts to get Judge Stilwell to sentence Applicant as if Applicant had accepted the State's fifteen-year sentencing recommendation and Judge Stilwell, in issuing the higher sentence, stated that he was taking that fact into consideration just as if Applicant had, in fact, accepted that offer, this Court concludes that Applicant has failed to prove that there is a reasonable probability that Judge Stilwell would have sentenced Applicant to imprisonment for fifteen years.

This Court finds that Applicant has failed to prove that there is a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time if plea counsel had personally reviewed with Applicant the photographs downloaded from Applicant's mobile phone. Plea counsel's testimony proves that Applicant was set on pleading guilty from the beginning of the representation, but was concerned only with negotiating a sentence that Applicant viewed as acceptable, which was ten or twelve years in prison. Moyer's testimony showed that he would have had no incentive to offer any deal to Applicant better than the fifteen-year deal; indeed, Moyer's decision to call the case to trial after Applicant rejected the fifteen-year deal and his decision to refuse to offer a sentencing recommendation when Applicant subsequently decided to plead guilty prove that the fifteen-year deal was the best that Applicant was going to be offered. Plea counsel informed Judge Stilwell at the time of Applicant's guilty plea hearing that he had told Moyer that Applicant wanted to plead

guilty and take the fifteen-year sentencing recommendation that had been offered by the State earlier, but that "[o]f course [Moyer] wouldn't do it. It's on the trial docket." Plea Tran. 12. Judge Stilwell knew of the back-and-forth of the parties' plea negotiations and took that into consideration. Plea Tran. 15. Judge Stilwell noted that, inasmuch as the fifteen-year plea offer was a recommendation from the State only and not a negotiated sentence, Judge Stilwell would have been free to go along with the State's recommendation or to reject it and issue some other sentence. Plea Tran. 15. Judge Stilwell said that, since the fifteen-year deal would have been a recommendation only, Applicant was in the same position without the benefit of a sentencing recommendation as he would have been without it: subject to the range of possible penalties allowed in the applicable criminal statutes and Judge Stilwell's discretion to sentence within that range. Plea Tran. 15. Judge Stilwell stated that he did not have to honor any plea deal worked out between the parties. Plea Tran. 15. Judge Stilwell stated that, even though Applicant was pleading guilty without the benefit of a plea agreement, that he would nevertheless consider that earlier plea offer when issuing a sentence. Plea Tran. 16. Judge Stilwell affirmed that he would "consider it just like if [Applicant] came before [him] with a recommendation of 15 years." Plea Tran. 16. Applicant has failed to prove that there is a reasonable probability that, even if Applicant had taken the State's offer and pleaded guilty with the benefit of a fifteen-year sentencing recommendation from the State, he would have ended up with a more favorable sentence than the one he received. Judge Stilwell indicated he took into consideration that Applicant had turned down the fifteen-year offer and later wanted to accept it and that he was treating Applicant just as he would have if Applicant had come before him having taken that deal. And Judge Stilwell's sentence was still higher than fifteen years. Applicant has given this Court no reason to find that his sentence would have been lighter had he not rejected the fifteen-year offer.

This Court finds that, even if Applicant had met his burden and proved that plea counsel was constitutionally ineffective with regards to this claim, Applicant's claim would dismissed anyway because it is moot. The South Carolina Supreme Court has held that "[a] justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract." Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25-26, 630 S.E.2d 474, 477 (2006) (finding that the litigation was moot when, among other things, Friends of Hunley, Inc., provided all documents requested by Sloan in accordance with the Freedom of Information Act) (citing Byrd v. Irmo High School, 321 S.C. 426, 468 S.E.2d 861 (1996)). Our Supreme Court has also held that:

> A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief.

Mathis v. South Carolina State Highway Department, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) (finding the Department's appeal from the trial court's order directing the Department to revoke its suspension of Mathis's driver's license was moot when Mathis became entitled to the return of his driver's license before the Supreme Court issued its opinion).

If this Court were to grant the application, it could offer no remedy to Applicant that would give him any benefit that he has not already received. In Lafler v. Cooper, 566 U.S. 156, 174 (2012), the United States Supreme Court instructed that a court in a situation as this should not order the specific performance of the original plea agreement between the applicant and the state. The correct remedy, according to Supreme Court, was for the state to reoffer the plea agreement and, if the applicant accepted it, for the trial court to exercise its discretion in determining whether to vacate the convictions and resentence the applicant in accordance with the plea agreement, vacate only some of the convictions and resentence accordingly, or leave the convictions and

sentence already imposed undisturbed. The Supreme Court left it to the trial court to determine how best to exercise its discretion in all circumstances of the case.

This Court finds that Applicant has failed to prove that plea counsel's performance was deficient and that Applicant suffered any prejudice therefrom. This claim is denied and dismissed with prejudice.

Applicant's request for specific performance is not one that this Court has the authority to grant, and Applicant assured this Court that he did not want his sentences to be vacated but wanted only to be sentenced anew with the benefit of the fifteen-year sentencing recommendation. The problem for Applicant, though, is that Applicant was afforded the same opportunity to make his case for a sentence of fifteen years at his guilty plea hearing before Judge Stilwell that he would have if this Court granted the application. Plea counsel and Moyer informed Judge Stilwell of the history of their plea negotiations and the details of the State's two previous offers: one for a recommended sentence of eighteen years and the final one for a recommended sentence of fifteen years. Judge Stilwell considered that history of plea negotiations and the State's previous plea offers and sentenced Applicant to imprisonment for eighteen years while treating Applicant just as he would have if Applicant had accepted the fifteen-year offer. What Judge Stilwell did was essentially what a court would do if it resentenced Applicant following any grant of post-conviction relief by this Court. In effect, Judge Stilwell took into consideration at the guilty plea hearing everything required by Lafler. A future court could do nothing that has not already been done. In a practical sense, Judge Stilwell conducted the guilty plea hearing in such a way as to cure any prejudice that resulted from the alleged deficiency in plea counsel's performance. If post-conviction relief were granted to Applicant with respect to this claim, any resulting hearing would be an academic exercise repeating what has already been done. The claim, therefore, is moot.

CONCLUSION

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

This Court notes Applicant, through counsel, must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, he must serve and file a Notice of Appeal. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 3rd day of March, 2021.

R. Lawton McIntosh
Presiding Judge

Anderson, South Carolina

Copy mailed to
Attorney General / S. Ross
on 3 / 16 / 2021.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on ✓ NOV 2 1 2017 the Grand Jurors of Greenville County present upon their oath:

That KENDALL DONYALE ARNOLD did in Greenville County, on or about the 31st day of December, 2016, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a purse and contents, a phone, and/or alcohol from the person or presence of ERIN COLLINS. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR BAR # 64155

WITNESSES

A S Smith JL 1-21-17

Greenville Police Department

2/14/2017

ARREST WARRANT NUMBER
2017A2320600089

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-23- LMM 003305

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2017

THE STATE

vs.

KENDALL DONYALE ARNOLD

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-0330

ENTERED
ACCT LGH

FILED
MAY 01 2017
Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
) ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
COUNTY OF GREENVILLE) THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on NOV 2 1 2017 the Grand Jurors of Greenville County present upon their oath:

COUNT I – ARMED ROBBERY

That KENDALL DONYALE ARNOLD did in Greenville County, on or about the 31st day of December, 2016, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a wallet, phone and/or alcohol from the person or presence of MATTHEW MCALLISTER. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

COUNT II – POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That KENDALL DONYALE ARNOLD did in Greenville County, on or about the 31st day of December, 2016, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: a handgun. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR BAR # 64155

WITNESSES

A S Smith JL 11-21-17

Greenville Police Department

2/14/2017

ARREST WARRANT NUMBER

2017A2320600090 and 2017A2320600093

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-23- 003386
LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2017

THE STATE

vs.

KENDALL DONYALE ARNOLD

Indictment for

0139/0549

ARMED ROBBERY AND POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

VIOLATION § 16-11-0330 and § 16-23-0490

ENTERED
ACCT LDH

FILED

MAY 0 1 2017

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on NOV 2 1 2017 the Grand Jurors of Greenville County present upon their oath:

That KENDALL DONYALE ARNOLD did in Greenville County, on or about the 31st day of December, 2016, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a purse and its contents from the person or presence of LATASHIA MILLER. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

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

Kelly Mc 72567 for LMM

SOLICITOR BAR # 64155

WITNESSES

Darrell S Kicklighter

Greenville County Sheriffs Office

2/14/2017

ARREST WARRANT NUMBER
2017A2330200645

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-23-3389
LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2017

THE STATE

vs.

KENDALL DONYALE ARNOLD

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-0330

ENTERED
ACCT. LBH

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
STATE VS.)
Kendall Donyale Arnold)
AKA:)
Race: BLACK Sex: M Age: 24)
DOB: [redacted]-1994 SS#: [redacted])
Address: [redacted] Shenwood Lane)
City,State,Zip: Greenville, SC 29605)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2303385
A/W#: 2017A2320600089
Date of Offense: 12/31/2016
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐PLEADS
TO: Armed robbery

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Moyer, Mark 64155 SC Bar# Kendall Donyale Arnold Defendant COOKE, LARRY Attorney for Defendant 01375 SC Bar# FID

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 20 days/months/years or ☐ under the **Youthful Offender Act** not to exceed ____ years
and/or to pay a fine of $ ____; provided that upon the service of _____ days/months/years and/or payment
of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 739 days.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

_____ days/hours Public Service Employment

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

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

Clerk of Court/ Deputy Clerk Paul D. Wickensimer
Court Reporter: C. Smith

Presiding Judge
Judge Code: 2550
Sentence Date: 5 MAR 2019

SCCA/217 (04/2018)

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
STATE VS.)
Kendal Donyale Arnold)
AKA:)
Race: BLACK Sex: M Age: 24)
DOB: [redacted]-1994 SS#: [redacted])
Address: [redacted] Shemwod Lane)
City,State,Zip: GREENVILLE, SC 09605)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2303389
A/W#: 2017A2330200645
Date of Offense: 12/31/2016
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐PLEADS
TO: Armed robbery

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐NON-VIOLENT ☒ VIOLENT ☐SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Moyer, Mark — 64155 SC Bar# — Kendall Arnold Defendant — COOKE, LARRY Attorney for Defendant — 01375 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 18 days/months/years or ☐ under the **Youthful Offender Act** not to exceed — years
and/or to pay a fine of $ —; provided that upon the service of — days/months/years and/or payment
of $ —; plus costs and assessments as applicable*; the balance is suspended with **probation** for —
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 739 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

_____ days/hours Public Service Employment

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

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

Clerk of Court/ Deputy Clerk Paul B. Wickensimer
Court Reporter: C. Smith

Presiding Judge _____
Judge Code: 2159
Sentence Date: 4 MAR 2019

SCCA/217 (04/2018)

14717652

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
STATE VS.)
Kendall Donyale Arnold)
AKA:)
Race: BLACK Sex: M Age: 24)
DOB: [redacted]-1994 SS#: [redacted])
Address: [redacted] Shemwood Lane)
City,State,Zip: Greenville, SC 29605)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2303386
A/W#: 2017A2320600090
Date of Offense: 12/31/2016
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Armed robbery

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ 64155 _____ _____ _____ 01375
Moyer, Mark SC Bar# Defendant COOK, LARRY Attorney for Defendant SC Bar# PD

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 18 days/months/years or ☐ under the **Youthful Offender Act** not to exceed ___ years and/or to pay a fine of $ ___; provided that upon the service of ___ days/months/years and/or payment of $ ___; plus costs and assessments as applicable*; the balance is suspended with **probation** for ___ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 739 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (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: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

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*Fine:		$
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§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
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§14-1-213 (Drug Court Surcharge)	$150	$
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3% to County (if paid in installments)		$ 3.75
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Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

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

Clerk of Court/ Deputy Clerk Paul B. Wickensimer
Court Reporter: C. Smith

Presiding Judge _____
Judge Code: 250
Sentence Date: 4-24-2019