

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

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S.C. Supreme Court

COLVIN P. WASHINGTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT.....	1
APPLICATION FOR POST-CONVICTION RELIEF	30
RETURN	37
POST-CONVICTION RELIEF HEARING TRANSCRIPT	41
ORDER OF DISMISSAL	88
INDICTMENTS	99

1

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

State of South Carolina,

PLAINTIFF,

-VS-

Colvin Preston Washington,

DEFENDANT.

GUILTY PLEA

08-GS-32-2275, 2276
2277, 2278, 2280

BEFORE THE HONORABLE KNOX MCMAHON, JUDGE
JULY 9, 2009
LEXINGTON, SOUTH CAROLINA

A P P E A R A N C E S

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REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

I N D E X

PAGE NO.

Exhibit List	3
Sentence of the Court	26
Court Reporter's Certification	28

E X H I B I T S

PAGE NO.

(There were no exhibits introduced at this hearing.)

1 SOLICITOR:: Your Honor, there have been
2 negotiations as to each charge and the total amount, if
3 Your Honor is willing to consider that.

4 THE COURT: All right, what is the
5 negotiation, Solicitor?

6 SOLICITOR: A total of 28 years. Your Honor,
7 Mr. Duncan and I spoke about the attempted burg first,
8 the 28-year sentence; on the kidnapping a 28-year
9 sentence; on the attempted armed robbery, a 28-year
10 sentence; on assault and battery with intent to kill,
11 20-year sentence. On the pistol charge a five-year
12 sentence, all to run concurrent.

13 THE COURT: All right, thank you, Solicitor.
14 (Whereupon, the defendant was
15 sworn.)

16 THE COURT: Mr. Duncan, do you represent
17 Colvin Preston Washington?

18 MR. DUNCAN: I do, Your Honor.

19 THE COURT: Have you explained to him the
20 charges in the indictment and the possible punishment
21 and his constitutional rights including his right to a
22 jury trial?

23 MR. DUNCAN: We have, Your Honor.

24 THE COURT: In your opinion does he
25 understand these things?

1 MR. DUNCAN: He does, Your Honor.

2 THE COURT: How does he wants to plead to
3 attempted burglary first degree?

4 MR. DUNCAN: Guilty, Your Honor.

5 THE COURT: Attempted armed robbery?

6 MR. DUNCAN: Guilty.

7 THE COURT: Kidnapping?

8 MR. DUNCAN: Guilty.

9 THE COURT: Assault and battery with intent
10 to kill?

11 MR. DUNCAN: Guilty.

12 THE COURT: Possession of a fire arm during
13 the commission of a violent crime?

14 MR. DUNCAN: Also guilty, Your Honor.

15 THE COURT: All right.

16 Are you Colvin Preston Washington?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Mr. Washington, before I can
19 accept pleas of guilty it is necessary for me to
20 determine if your guilty pleas are being given freely
21 and voluntary. Therefore, I need to ask you some
22 questions.

23 THE DEFENDANT: Okay.

24 THE COURT: If you do not understand my
25 questions please let me know and I'll try to explain

1 them to you. If at any time you wish to talk to your
2 attorney if you would please advise me I will allow you
3 to do so. Do you understand?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: How old are you?

6 THE DEFENDANT: Twenty-four.

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

8 THE DEFENDANT: To the tenth grade.

9 THE COURT: Before you were placed in jail
10 what kind of work did you do?

11 THE DEFENDANT: I worked at a temp service.

12 THE COURT: And what kind of work did you do
13 for that temp service?

14 THE DEFENDANT: Banquet clean-up.

15 THE COURT: Today, are you under the
16 influence of any drugs or alcohol?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Are you today aware of any
19 physical, nervous or emotional problems that keeps you
20 from understanding what you are doing?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: You have heard your attorney Mr.
23 Duncan tell me that he explained to you the charges
24 against you, the possible punishment and your
25 constitutional rights and that you understand these

1 things. Is that correct?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: I have been handed up and you are
4 pleading guilty to five separate offenses and we are
5 going to go over the indictments separately and
6 distinctly.

7 The first indictment I come to is 2008-GS-32-
8 2275. It reads that Colvin Preston Washington,
9 together with co-defendants, did in Lexington County,
10 South Carolina, on or about January 22nd of 2007,
11 willfully and unlawfully attempted to enter the
12 dwelling of Laura McMikel and James Peebles at

13 in the town of Swansea without consent with
14 the intent to commit a crime of larceny therein.

15 And while attempting to effect entry or
16 immediate flight from the dwelling was armed with a
17 deadly weapon, to cause physical injury to a person who
18 was not a participant in the crime, or use or
19 threatened the use of a deadly instrument or displayed
20 what appeared to be in violation of 1611 of the Code of
21 Laws of the State of South Carolina, that's a charge of
22 attempted burglary in the first degree.

23 The potential sentences on that charge are
24 not less than 15 years and not more than life. It is a
25 violent and a most serious offense. Do you understand

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

COURT OF GENERAL SESSIONS

State of South Carolina,

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Colvin Preston Washington,

DEFENDANT.

GUILTY PLEA

08-GS-32-2275, 2276
 2277, 2278, 2280

BEFORE THE HONORABLE KNOX MCMAHON, JUDGE

JULY 2, 2009

LEXINGTON, SOUTH CAROLINA

April 26, 2010

Lisa A. Suber

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Enclosure

Remy Thomas

1 that charge and that potential maximum punishment?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: The next indictment is 89-GS-32-
4 2276 that alleges on the same date and same location
5 that you along with others while armed with a deadly
6 weapon, a pistol, or what appeared to be a pistol,
7 feloniously attempted to take in the person or presence
8 of the victims Laura McMikel and James Peebles, by
9 means or force and intimidation, various personal
10 property from the victims with the intent to
11 permanently deprive the victims of the property.

12 That's the charge of attempted armed robbery.
13 The potential maximum sentence on that is 20 years. It
14 is also a violent most- serious offense. Do you
15 understand that charge and that potential maximum
16 punishment?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: The next indictment 08-GS-32-2277
19 alleges on the same date and location that you along
20 with others did unlawfully seize, confine, inveigle,
21 decoy, kidnap or induct or carry away the victim Laura
22 McMikel and her two children without authority of law
23 and without the victim's consent.

24 And you and others did confront the victims
25 outside their residence as the victims were attempting

1 to leave and forced the victims at gunpoint back into
2 their residence in violation of 16-2-910. That's a
3 charge of kidnapping and carries a maximum potential
4 sentence of up to 30 years. That is also a violent and
5 most serious offense. Do you understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: The next indictment 08-GS-32-2278
8 alleges that you did in Lexington County on the same
9 date with malice aforethought committed an assault and
10 battery upon the victim James Peeples with the intent
11 to kill the victim, to wit, the defendant and or
12 codefendant and fired a pistol at the victim striking
13 the victim with a bullet in violation of 16-36-20.

14 That's a charge of assault and battery with
15 intent to kill, a violent most-serious offense for
16 which you can receive a sentence of up to 20 years. Do
17 you understand that charge and that potential
18 punishment?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: The next is 08-GS-32-2280 it
21 reads that you did in Lexington County on the same date
22 and time visible displayed with appeared to be a
23 firearm and or visibly displayed a knife during the
24 commission or attempted commission of a violent crime,
25 to wit, armed robbery and or burglary in the first

1 degree in violation of 16-23-490.

2 The charge of possession of a firearm or
3 knife during the commission of a violent crime to which
4 you can receive a sentence of up to 5 years. Do you
5 understand that charge and that particular maximum
6 punishment?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All these charges have been
9 before the Lexington County Grand Jury. They have all
10 been true billed and the also subject you to the DNA
11 registry. Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: When you plead guilty, Mr.
14 Washington, you give up certain important
15 constitutional rights. First you give up your right to
16 remain silent, that is you right against self-
17 incrimination, your right to say nothing at all. You
18 cannot be compelled to testify or provide evidence
19 against yourself.

20 Second, your give up your right to have a
21 jury trial. That is your right to have a jury decide
22 whether or not you are guilty beyond a reasonable
23 doubt.

24 Third, you give up your right to confront and
25 be confronted by the witnesses against you. That is

1 your right to see, hear and cross-examine any witnesses
2 that may be called against you during the trial and the
3 right to subpoena and call witnesses in your own
4 behalf. Do you understand these right?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand that when you
7 plead guilty you give up these very important
8 constitutional rights?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right, is that what you want
11 do to?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Mr. Washington, do you understand
14 that you won't get a jury trial on these charges if you
15 plead guilty?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Understanding then the nature of
18 the charges against you, attempted burglary in the
19 first degree, kidnapping, attempted armed robbery,
20 assault and battery with intent to kill, possession of
21 a firearm during the commission of a violent crime, and
22 realizing the potential maximum punishment of those
23 crimes you could receive a life sentence plus 75 years.
24 How do you wish to plead to these charges, guilty or
25 not guilty?

12

1 THE DEFENDANT: Guilty, Your Honor.

2 THE COURT: As to each and every charge?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you understand that when you
5 plead guilty you admit the truth of the charges that
6 have been made against you?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Mr. Washington, do you understand
9 that you might have defenses against these charges? I
10 don't know. I don't know whether you do or not. Do
11 you understand that when you plead guilty you waive or
12 give up any defenses you may have to any of these
13 charges?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: You may have given an
16 incriminating statement in this case. I don't know if
17 you have or not. If you enter a guilty plea do you
18 understand that you waive or give up the right to
19 contest or challenge whether such statement was given
20 freely and voluntary in accordance with your
21 constitutional rights?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And did you commit these
24 offenses?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right, Solicitor, again,
2 please state the full and complete negotiations into
3 the record.

4 SOLICITOR: Yes, sir. A total of 28 years
5 for the sentence, Your Honor. And 28 years on the
6 attempted burg first, 28 years on the kidnapping, 20
7 years on the attempted armed robbery, 20 years on the
8 assault and battery with intent to kill, 5 years on the
9 pistol charge, all to run concurrent.

10 Your Honor, just last month he got three new
11 charges and dismissing those. I failed to mention that
12 earlier. I am dismissing those in exchange for this
13 plea. There is a charge of escape, malicious injury to
14 a jail and conspiracy. I am dismissing those in
15 exchange for this plea.

16 THE COURT: Escape or attempted escape?

17 SOLICITOR: They have it charges as escape
18 but it was attempted escape, Your Honor.

19 THE COURT: All right.

20 Mr. Washington, has the Solicitor correctly
21 and completely stated the negotiations into the record?

22 MR. DUNCAN: Yes, Your Honor, the only lose
23 end, so to speak, is that Mr. Washington had about six
24 months of probation left in Richland County and he
25 understands that we are not taking care of that today

14

1 that we'll see to have it done administratively but he
2 had about six months left at the time of this offense.

3 THE COURT: All right, thanks.

4 Mr. Washington, has the Solicitor fully and
5 completely stated what you understand the negotiations
6 to be?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: In your mind, to your knowledge,
9 is there anything more to the negotiations?

10 THE DEFENDANT: Say that again.

11 THE COURT: Is there anything more to it
12 besides what you've heard the Solicitor say?

13 THE DEFENDANT: No, Your Honor.

14 MR. DUNCAN: Your Honor, one additional point
15 is that the Solicitor and I will stipulate that this
16 offense, the kidnapping did not involve any sexual
17 crime, any sexual crime of any nature so the kidnapping
18 charge should not be subject to any registration upon
19 completion.

20 THE COURT: Is that correct, Solicitor?

21 SOLICITOR: Correct.

22 THE COURT: Are there any other collateral
23 matters that he would be subjected to under this plea,
24 Solicitor, that you can think of? You or Mr. Duncan.

25

1 SOLICITOR: Not that I know of, Your Honor.

2 MR. DUNCAN: That's the extent of it, those
3 two matters, Judge.

4 THE COURT: All right.

5 You understand this is a negotiated plea and
6 what that means, Mr. Washington, is that I can accept
7 it or I can reject it. And if I reject it that would
8 mean I wouldn't sentence you to any more than 28 years.
9 I won't sentence you at all. I'd just allow you to
10 withdraw your plea, it being negotiated. Do you
11 understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you still wish to plead
14 guilty?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Has anyone promised you anything
17 or held out any hope or reward to get you to enter
18 these guilty pleas?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Has anyone threatened you or used
21 force to enter these pleas of guilty?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Has anyone used any pressure,
24 intimidation, to cause you to enter these guilty pleas?

25 THE DEFENDANT: No, Your Honor.

16

1 THE COURT: Have you had enough time to make
2 up your mind about whether or not you want to enter
3 these guilty pleas?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Are you pleading guilty of your
6 own free will and accord?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And standing to your left here,
9 your attorney, Mr. Duncan, I want to ask you a few
10 questions about him. Are you satisfied with the manner
11 in which your lawyer has advised you and represented
12 you?

13 THE DEFENDANT: Yes.

14 THE COURT: And have you talked to your
15 lawyer for as often and for as long as you felt
16 necessary for him to properly represent you?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you need any more time to talk
19 to Mr. Duncan?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Your response was?

22 THE DEFENDANT: No.

23 THE COURT: Have you understood your talks
24 with Mr. Duncan?

25 THE DEFENDANT: yes, Your Honor.

1 THE COURT: Do you feel like he has done
2 everything for you that he should have done or could
3 have done?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Has your lawyer done anything in
6 this case you feel like he should not have done?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Are you totally and completely
9 satisfied with your lawyer's services?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you have any complaints you
12 want to make about your lawyer, the Solicitor, or any
13 police officers involved in these cases?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Have you understood my questions,
16 Mr. Washington?

17 THE COURT: Yes, Your Honor.

18 THE COURT: Is there anything you would like
19 to ask me about what we have just been over?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Do you understand you have a
22 right to appeal your guilty pleas and the sentence of
23 this court and that you or your lawyer must do so
24 within ten days?

25 THE DEFENDANT: Yes, Your Honor.

18

1 THE COURT: All right, Solicitor, if you
2 would give me the facts, please?

3 SOLICITOR: Yes, sir. Your Honor, in the
4 very early morning hours of January 22nd 2007 Mr.
5 Washington got together with three other individuals,
6 Tucson Jones, Mike Robinson and James Pender.

7 The four of them got together for one
8 purpose, they were going to rob, break-in and rob James
9 Peeples the fellow that Mr. Pender knew and Mike
10 Robinson knew. They knew Mr. Peeples to be someone who
11 sold drugs. They suspected or believed that he had
12 drugs and money at his residence.

13 So around six o'clock in the morning they
14 drove to his apartment complex in Swansea, right off of
15 321, Your Honor. Living in that residence with Mr.
16 Peeples was his girlfriend Laura McMikel and her two
17 children, a two year old little girl--

18 THE COURT: What age?

19 SOLICITOR: Two years old, Your Honor.

20 THE COURT: Thank you.

21 SOLICITOR: And Jaquan , eight years
22 old. The routine in the household was Ms. McMikel
23 would wake up, this is wintertime, and go outside and
24 crank up her car and her boyfriend's car, Mr. Peeples's
25 car. She would let them warm out. She went out there:

1 probably about six o'clock and did that.

2 She went back up the steps to get the
3 children. And probably just before six thirty she was
4 walking down the steps with those children. She had
5 Jayla in her arms and her son by the hand and they
6 walked down the steps to the car.

7 She noticed the cars were cut off. About
8 that time she was approached by two men and by her
9 statement they had masks. They approach her, and Your
10 Honor, they have guns. They ask about Mr. Peeples, if
11 he is in the apartment, and if he has a gun.

12 They compel her and her children to walk with
13 them. One of the men that approached her was Mr.
14 Washington. The other man was Tucson Jones.

15 Mr. Washington was the one giving the orders
16 to Mr. Jones. He said, you walk in front of her and
17 I'll walk behind her and that way she doesn't get too
18 far ahead. He tells her, we're going back to your
19 apartment.

20 As they are walking up the steps and get to
21 the top of the steps, Tucson Jones stops and looks
22 around for more instructions. He doesn't know where
23 the apartment is. Mr. Washington says, step aside, let
24 her go to the apartment.

25 She goes to the door and starts to open the

20

1 door to her own apartment and right as she opens it up
2 Mr. Washington is looking at Mr. Peeples on the other
3 side. And he has a gun because he looked out the
4 window and saw there were two strange men walking off
5 with his wife. He has been in this business, selling
6 drugs, for sometime and people have tried to rob his
7 before so when that door opens there is an exchange of
8 gunfire.

9 There's a real question as to who fired what
10 gun first. Mr. Peeples is armed with a 40 caliber gun
11 and Mr. Washington is armed with a 45 caliber gun.

12 By testimony Mr. Jones is in possession of a
13 357. He never fires his weapon. Mr. Washington fires
14 into the apartment and Mr. Peeples fires out the
15 apartment in the direction of Mr. Washington and Mr.
16 Jones.

17 In the cross fire is the two-year old little
18 girl. She is hit when she is in her mother's arms.

19 Jayla died right there on the apartment steps,
20 right there in the threshold of her own house.

21 But before anyone knew she was hit in the
22 exchange of gunfire Mr. Washington and Mr. Jones run
23 out -- they never made it into the threshold of the
24 house. They run down the steps, they run back to the
25 car. Mr. Jones misses the car. He ends up having to

1 run and find his own way back.

2 Waiting in the car is Mr. Pender, probably
3 the mastermind behind all of this because he is related
4 to Ms. McMikel and also Mr. Robinson is in the car.
5 Mr. Washington gets in the car and they drive away and
6 go to Mr. Washington's sister's house. Mr. Jones meets
7 up with them sometime later.

8 Ms. McMikel -- and Your Honor, I failed to
9 point out she is in the courtroom next to Pamela Dukes,
10 our victim's advocate, she still has her child in her
11 arms while her boyfriend runs out after these
12 gentlemen, shooting at them.

13 She puts her child down and as she is putting
14 her child down her son starts trying to talk to his
15 sister saying, what's wrong, Jayla, what's wrong? His
16 sister was unresponsive.

17 About that time Ms. McMikel realizes when she
18 laid her child down she just kind of fell. She was
19 unresponsive, she opened her jacket up and it was full
20 of blood.

21 Law enforcement got there pretty quickly,
22 Your Honor. Swansea P.D. got there initially. They
23 called in Lexington County to come in and process the
24 scene. This child was dead, probably dead, bled out,
25 probably immediately. It was a large round and a small

1 child.

2 Your Honor, there was confusion for a while
3 and the investigation went on for quite a while. In
4 fact, Mr. Washington wasn't arrested until April. It
5 took a lot of leg work by Lexington County detectives
6 to talk to a lot of people who would not normally talk
7 to law enforcement.

8 But probably more people came forward because
9 a child had died. That upset a lot of people,
10 including a lot of people that are normally on the
11 other side of the wall.

12 Your Honor, when we had SLED look at the
13 bullet that actually came out of this child, fell out
14 of her coat, it was a 40 caliber round. DNA shows it
15 went through her and ballistics for firearms testing
16 shows it was her own father who shot her, coming go the
17 defense of his family, he shot his child.

18 But Mr. Peebles was also shot. He was grazed
19 and we believe by the testimony and statement given
20 later by Mr. Washington he said I'm the only one firing
21 into that apartment. I fired by 45 round. I fired
22 four rounds then and three rounds outside the
23 apartment. He said, I hit the father but I didn't hit
24 the baby. Your Honor, we believe that's true.

25 Your Honor, as I said, he was caught in April

1 and he has been in jail since April of 2007. His
2 partner Mr. Jones pled guilty some months back and he
3 received a 28-year sentence. Mr. Robinson and Mr.
4 Pender were prepared to cooperate and testify in a
5 trial next week. Absolutely no deals have been laid on
6 the table for them.

7 Mr. Peeples, even though he was a victim, was
8 also arrested because in his bedroom closet was crack
9 cocaine and cocaine. He was charged with two counts of
10 trafficking. He pled straight up to those charges
11 before Judge Kenny Goode and received a seven-year
12 sentence with no deals on the table.

13 Your Honor, as I mentioned, the only other
14 charges that Mr. Washington were charges he acquired
15 last month and we're dismissing those in exchange for
16 this guilty plea.

17 His record is not that bad, Your Honor. He
18 has a misdemeanor, failure to obey police command and
19 an unlawful carrying of a weapon from 2005. And then
20 he is on probation I believe for possession of a stolen
21 pistol and simple possession of marijuana from December
22 of 2005.

23 It looks like he had some charges dismissed
24 in Georgia but no convictions that I see. Those are
25 the extent of his prior charges, Your Honor.

24

1 Your Honor, I have talked with the family and
2 I think they understand that since this is a negotiated
3 plea no one is going to have to speak today.

4 THE COURT: What is their position concerning
5 the plea, Solicitor?

6 SOLICITOR: Your Honor, they understand the
7 plea, I believe they support it in exchange for not
8 going forward with a trial. They understand -- we've
9 talked at length about the issues going to trial, what
10 could happen if you go to trial, and although I think
11 there are some that are like in war time, they
12 understand they are not even a guarantee the time this
13 man is getting if we go to trial. So Your Honor, I
14 believe that everybody is on board with this.

15 THE COURT: And the victim's family
16 understand that regardless of if it's negotiated or not
17 I'll be glad to hear from any of them.

18 SOLICITOR: Yes, sir. Your Honor, I'll ask
19 them again.

20 Anybody wish to speak?

21 No, sir, Your Honor.

22 THE COURT: All right, Solicitor.

23 I find there is a substantial, factual basis
24 for these guilty pleas. The defendant's decision to
25 enter these pleas of guilty is freely, voluntarily,

1 knowingly and intelligently made, that he has had the
2 advice and counsel of a very competent and experienced
3 attorney which whom he says he is well and totally
4 satisfied and his guilty plea is therefore accepted.

5 Mr. Duncan?

6 MR. DUNCAN: Your Honor, I'll be very brief,
7 considering this is negotiated. I have discussed this
8 with Colvin. Your only job here is to decide yes or no
9 and the sentence cannot be varied. As such, I won't
10 have the testimony we ordinarily would have from his
11 mother, who is standing here with him and all his
12 family members who are here.

13 I would ask Your Honor to go along with the
14 negotiations. As Your Honor knows, in these situations
15 there are often two sets of victims, the family close
16 to the defendant and the victim in this case, as far as
17 being deprived of loved ones.

18 I think Colvin knows he can get out when he
19 is 40-something. I think he can still contribute
20 something. He didn't think this through. All he
21 intended to do was to try to get some dope and that in
22 itself is a tragedy. I just ask Your Honor to go along
23 with the negotiations.

24 THE COURT: Thank you, Mr. Duncan.

25 Anything you'd like to say, Mr. Washington?

1 THE DEFENDANT: No, sir.

2 SENTENCE OF THE COURT

3 All right, 09-GS-32-2275, 2276, 2277, 2278,
4 2280, attempted burglary first degree, the defendant is
5 committed to the State Department of Corrections for a
6 term of 28 years.

7 Attempted armed robbery, the defendant is
8 committed to the State Department of Corrections for a
9 term of 20 years.

10 Kidnapping, the defendant is committed to the
11 State Department of Corrections for a term of 28 years,
12 not to be placed on sex offender registry.

13 Assault and battery with intent to kill, the
14 defendant is committed to the State Department of
15 Corrections for a term of 20 years.

16 Possession of a firearm during the commission
17 of a violent crime, the defendant is committed to the
18 State Department of Corrections for a term of five
19 years.

20 On all charges where appropriate no contact
21 with the victims or any member of the victim's family.

22 Thank you very much.

23 Good luck to you.

24 MR. DUNCAN: It goes without saying that is
25 concurrent?

1 THE COURT: I have checked it, it will be up
2 to the statute. Oh, it concurrent, correct. It is
3 concurrent, correct.

4 Thank you very much.

5 --End of Transcript of Record--

6

1

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF LEXINGTON)

3

COURT REPORTER'S CERTIFICATION

4

5 I, REMA K. GANTT THOMAS, OFFICIAL COURT
6 REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF
7 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING
8 IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
9 RECORD OF THE PROCEEDINGS HAD AND EVIDENCE
10 INTRODUCED IN THE ABOVE-CAPTIONED CASE ON JULY 9,
11 2009, IN LEXINGTON, SOUTH CAROLINA.

12 I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
13 NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
14 Action, NOR AM I INTERESTED IN ANY MANNER IN ITS
15 OUTCOME.

16 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
17 AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE FIRST
18 DAY OF APRIL, 2010.

18

19

20

21

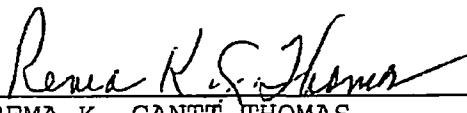
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REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

FORM 5

SCANNED ORIGINAL

STATE OF SOUTH CAROLINA

County of LEXINGTONCOLVIN P. WASHINGTON, #335820

full name and prison number (if any) of Applicant

v.

State of South Carolina
HENRY D. McMASTER, ATTORNEY
GENERAL, RESPONDENT.

IN THE COURT OF COMMON PLEAS

FILED

2008 DEC 22 P 4: 04

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON SC

POST-CONVICTION RELIEF

WW

2009CP3205746

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION, 4460 BROAD RIVER ROAD, COLUMBIA, SOUTH CAROLINA 29210
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSION LEXINGTON COUNTY COURTHOUSE, LEXINGTON, SOUTH CAROLINA
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-320-2275; 2276; 2277; 2278
 - (b) KIDNAPPING, ATTEMPT ARMED ROBBERY, ATTEMPT BURGLARY 1ST DEGREE

COLVIN P. WASHINGTON, #335820
 BRICI-MURRAY #180
 4460 BROAD RIVER ROAD
 COLUMBIA, SOUTH CAROLINA 29210

(c) ASSAULT AND BATTERY WITH INTENT TO KILL

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

(a) JULY 9, 2009

(b) _____

(c) _____

2009 DEC 22 P 4:04

6. Check whether a finding of guilty was made:

(a) after a plea of guilty GUILTY PLEA

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

(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?

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) N/A

(b) _____

2009CP3205746

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: **FILED**
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL 2008 DEC 22 P 4:04
- (b) _____
- (c) BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) COUNSEL FAILED TO DO A THOROUGH AND COMPLETE INVESTIGATION
- (b) OF THE FACTS IN REACTION TO THE LAW.
- (c) I PRESERVE MY RIGHT TO AMEND UPON APPOINTMENT OF COUNSEL.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

2009CP3205746

(c) the disposition thereof:

i. N/A

FILED

ii. _____

iii. _____

iv. _____

2009 DEC 22 P 4:04

(d) the date of each such disposition:

i. N/A

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

ii. _____

iii. _____

iv. _____

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

i. NONE

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. NONE

ii. _____

iii. _____

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

i. NONE

ii. _____

iii. _____

2009CP3205746

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) POST-CONVICTION IS THE AVENUE TO RAISE THESE ISSUES

(b) _____

(c) _____

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

(a) your arraignment and plea? YES

N/A

(b) your trial, if any? _____

YES

(c) your sentencing? _____

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

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

N/A

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. JOHN DUNCAN, LEXINGTON COUNTY BAR, LEXINGTON, S.C.

ii. _____

iii. _____

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

i. PLEA

ii. _____

iii. _____

FILED

2009 DEC 22 3:40:04

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

ORIGINAL 35

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

PLEA VACATED/ TRIAL

FILED

20. Are you now under sentence from any other court that you have not challenged? 2009 DEC 22 P 4: 04

NO

BETH A CARRIGG
CLERK OF COURT
LEXINGTON SC

2009CP3205746

STATE OF SOUTH CAROLINA)

County of LEXINGTON)

VERIFICATION

I, COLVIN P. WASHINGTON, #335820, 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.

Colvin P. Washington 335820
COLVIN P. WASHINGTON, #335820

SWORN to and subscribed before me this 7th
day of December, 2009
Susan J. Johns (L.S.)

Notary Public My Commission Expires
March 5, 2018

My Commission Expires: _____

2009CP3205746

ORIGINAL

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

FILED

I, COLVIN P. WASHINGTON, #335020, hereby 2009 DEC 22 4:04
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.

BETH A. CARRIGG
CLERK OF COURT
WASHINGTON SC

Colvin P. Washington
Applicant

SWORN or affirmed to and subscribed before me this
24 day of December, 2009

Susan J. Johnson
Notary Public My Commission Expires
March 5, 2018

My Commission Expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
	)	2009-CP-32-5746
	)	
Colvin P. Washington, #335820,	)	
Applicant.	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 22, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the July 2008 term of the Lexington County Grand Jury for Assault and Battery with Intent to Kill (2008-GS-32-2278), Kidnapping (2008-GS-32-2277), Attempted Armed Robbery (2008-GS-32-2276), and Attempted Burglary—1st Degree (2008-GS-32-2275). He was represented by John Duncan, Esquire. On July 9, 2009, the Applicant pled guilty as charged. He was sentenced by the Honorable R. Knox McMahon to confinement for an aggregate period of twenty-eight (28) years. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of counsel;
 - a. "Counsel failed to do a thorough and complete investigation of the facts in relation to the law."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland.

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

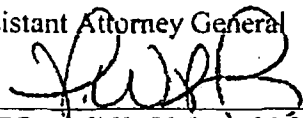
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

April 20, 2010.

ORIGINAL

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

Colvin P. Washington,)
))
PLAINTIFF,) PCR HEARING
) 2009-CP-32-05746
-VS-)
))
State of South Carolina,)
))
DEFENDANT.)
_____)

BEFORE THE HONORABLE WILLIAM P. KEESLEY, JUDGE

MAY 16, 2011

LEXINGTON, SOUTH CAROLINA

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

Elizabeth Zeck, Esq.
For the Plaintiff

Kaelon E. May, Esq.
For the State

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

I N D E X

	PAGE NO.
Exhibit List.	3
Testimony of Witnesses	
Colvin Presley Washington	
Direct.	6
Cross	22
Redirect.	24
Recross	26
John Earl Duncan	
Direct.	27
Cross	37
Redirect.	43
Closing Remarks	44
Court Reporter's Certification.	47

E X H I B I T S

THERE WERE NO EXHIBITS MARKED TO THIS PROCEEDING.

1 (The defendant, together with counsel, was
2 personally present in the courtroom.)

3 THE COURT: All right, which case is next?

4 MS. MAY: Your Honor, this is Colvin
5 Washington v. State, Case Number 2009-CP-32-5746.
6 The case comes from a PCR application filed December
7 22, 2009, by Colvin Washington.

8 Mr. Washington came before Judge
9 McMahon on July 9, 2009. He was charged with
10 assault and battery with intent to kill, kidnapping,
11 attempted armed robbery, attempted burglary first
12 degree.

13 He pled guilty to all the charges and
14 was sentenced to confinement for an aggregate period
15 of 28 years. There was no appeal, and now I'll turn
16 it over to Ms. Zeck, who is representing Mr.
17 Washington.

18 THE COURT: Yes, ma'am.

19 MS. ZECK: Thank you, Your Honor, may it
20 please the Court. We have with the agreement of the
21 State a brief trial amendment. This case was
22 originally filed based on a theory of ineffective
23 assistance of counsel based on an inadequate
24 investigation.

25 It has since come to light that

1 there's another issue involving the adequacy of the
2 advice given with respect to the sentences that Mr.
3 Washington potentially faced with respect to had he
4 chosen to go to trial as opposed to accepting a
5 negotiated plea.

6 And that's the basis that -- primary
7 basis upon which we're going to be proceeding today.
8 And that is a slight change from the originally
9 filed PCR, and the State knows about this. We've
10 discussed this, and she has no objection to us
11 proceeding on this basis.

12 THE COURT: Is that correct?

13 MS. MAY: Yes, sir.

14 THE COURT: All right, the application is
15 so amended. You may continue.

16 MS. ZECK: We would call Colvin
17 Washington.

18 THE COURT: Come around, please, sir.

19 (The witness was sworn.)

20 CLERK OF COURT: Have a seat and state
21 your name for the record, please.

22 MR. WASHINGTON: My name is Colvin Presley
23 Washington.

24 COLVIN PRESLEY WASHINGTON,
25 having first been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. ZECK:

3 Q Mr. Washington, the charges that you faced
4 that gave rise to this proceeding, they all arose
5 out of an incident that occurred on what date?

6 A January 22nd.

7 Q Of 2007?

8 A 2007.

9 Q So everything happened -- everything that
10 you were charged with all arose out of that one
11 incident, correct?

12 A Yes, ma'am.

13 Q Okay. And I believe the State had decided
14 that charges that you were faced with included
15 attempted burglary, correct?

16 A Attempted burglary.

17 Q Assault and battery with intent to kill,
18 attempted armed robbery, kidnapping, and possession
19 of a firearm during a felony, correct?

20 A Yes, ma'am.

21 Q Who was your attorney in the course of
22 that proceeding?

23 A When I first had got incarcerated, I had
24 numerous attorneys.

25 Q Okay.

1 A First, I had counsel out of the Public
2 Defenders. That was Ari Bax.

3 Q Okay.

4 A And it was a conflict of interest because
5 my co-defendant had counsel out of the Public
6 Defenders. Then I got appointed Jack Duncan -- John
7 Duncan.

8 Q Jack Duncan?

9 A Yes.

10 Q Okay, Mr. Duncan, all right. And so he
11 was -- at the time that this case got all the way to
12 potentially either going to trial or pleading, who
13 was your attorney at that time -- Mr. Duncan?

14 A Yes.

15 Q Okay. Did Mr. Duncan discuss the
16 sentences you would potentially be facing if you
17 went to trial on the five charges that you were
18 looking at?

19 A Yes, ma'am.

20 Q All right.

21 A But I also had another attorney. I don't
22 know the exact date that he was hired. But he was
23 hired up to April 27th, '09.

24 Q Okay.

25 A And the reason being, all right, I hired

1 him is for the preliminary hearing, which he did do
2 the preliminary hearing, bond hearing, and trial
3 strategy.

4 Q And that was Mr. Joe Nathan --

5 A That was --

6 Q -- Joe Nathan Chaplin?

7 A Jonathan S. Chapman.

8 Q Chapman, all right. And your family had
9 paid him some money to provide the services that you
10 just described, correct?

11 A Yes, ma'am.

12 Q Now, there was a hearing, and he contended
13 that he was not engaged to provide representation
14 through the final trial of the criminal charges, is
15 that correct?

16 A Well, Jonathan S. Chapman said that my
17 family hadn't paid him enough funds to take me to
18 trial for the charges that had been against me. So
19 he tried to take me to court on November 13th of '08
20 for -- to plead out to two charges, which was
21 attempted burglary and attempted robbery.

22 I told Mr. Chapman I wanted to go to
23 trial. He said he was not going to take me to trial
24 because I didn't have enough funds. So I relieved
25 him off the case on April 27, 2009.

1 Mr. Duncan shows up, and Mr. Rick Hubbard,
2 the Solicitor, had record of this as well as the
3 Clerk of Court. But --

4 Q Okay, let me stop you for a second, sir.
5 Now, it's true, is it not, that there was a period
6 where Mr. Duncan was representing you and there was
7 also a Mr. Nathan -- Mr. Chapman also had some kind
8 of --

9 A Yes.

10 Q -- involvement in the case?

11 A Yes. But I had communication more with
12 Chapman than Duncan, all the way up to -- basically
13 to May, I want to think -- I want to say May.

14 Q Well, the order that I believe you're
15 referring to is in April of 2009, is it not, sir?

16 A Yes, it's --

17 Q So at least from the period from April of
18 '09 going forward to your plea hearing that I
19 believe was heard on July 9, 2009, correct?

20 A Say that again?

21 Q Okay. You ended up -- the plea hearing
22 was on July 9, 2009, correct?

23 A The plea -- yes.

24 Q Okay. And then the order that clarified
25 whatever confusion there had been about who was

1 representing you, that was in April of 2009, right?

2 A It was in April, which I had a trial
3 scheduled for May 25th, you know what I'm saying.
4 And on that date, the Judge, Michael G. Nettles, had
5 told me that if I retain another lawyer that it
6 should not be a basis for continuance for a trial
7 schedule.

8 Q Well, Mr. Duncan had been working on your
9 case up through that point in addition to whatever
10 Mr. Chapman had been doing, correct? It's not like
11 Mr. Duncan shows up on --

12 A No, no.

13 Q -- April of '09. He had been involved
14 since --

15 A He'd been involved since December '07.

16 Q Yes. He'd been involved. And so there
17 was just the confusion over whether or not it was
18 Mr. Chapman -- what Mr. Chapman's role was in this
19 process. And that April order clarified it and said
20 Mr. Chapman has no more role in going forward with
21 Mr. Duncan, correct?

22 A Yes, ma'am.

23 Q Okay. Had there been plea negotiations
24 prior to the April order which clarified that Mr.
25 Duncan was in charge of the case?

11

1 A Yes, ma'am, after Judge Michael Nettles
2 had ordered him to continue with the case, continue
3 on with the case for the trial schedule for May
4 25th.

5 Q My question, though, sir, was, had there
6 been plea negotiations that had been communicated to
7 you --

8 A Oh, no, no, no.

9 Q -- before that?

10 A No, no, none.

11 Q So the plea negotiations were just sort of
12 at the end when everybody was looking at trial,
13 which I guess is very typical, correct?

14 A Yes, ma'am.

15 Q Okay. So we're in the period April --
16 between April and --

17 A April and July 13th, which was supposed to
18 be my trial date.

19 Q Right.

20 A Which I had wanted to go to trial.

21 Q Okay. So had you had any discussions with
22 Mr. Duncan about the sentencing you might
23 potentially face if you went to trial and you were
24 found guilty of the charges that were against you?

25 A Yes, Mr. Duncan told me I would get a

1 consecutive sentence and be facing life plus 75.

2 Q Okay. And do you know how he came up with
3 that?

4 A I don't know nothing about no law as far
5 as guidelines and what I could have been facing, you
6 know what I'm saying, the statute for none of the
7 charges besides what he had told me, 15 to life for
8 burglary, and --

9 Q Okay, all right. Let me just -- you don't
10 have you to try to memorize it.

11 A Yes.

12 Q See if this refreshes your recollection.
13 So that you were looking at 15 to life on the
14 burglary, zero to 20 on the assault and battery,
15 zero to 20 on the attempted armed robbery, zero to
16 30 on the kidnapping, and another five for the
17 possession of a firearm, does that sound about
18 right?

19 A Yes, ma'am.

20 Q So if we add all those up, that gives you
21 life plus 75?

22 A If convicted.

23 Q Yes, if you're convicted.

24 A If you're guilty.

25 Q And you can present any contention?

13

1 A That's what he said.

2 Q That's what I'm trying to understand. And
3 I apologize if that was a confusing question.
4 That's what you understood from what Mr. Duncan told
5 you, is you were looking at life plus 75 with all
6 those sentences -- the sentences on each of those
7 charges --

8 A Yes.

9 Q -- would add up?

10 A Yes, if you add them up, yes.

11 Q Okay, all right.

12 A It come out to life plus 75.

13 Q All right. Did you ultimately decide to
14 go to -- was there a discussion at some point where
15 a specific negotiated plea was -- a deal was
16 presented to you?

17 A Say that again?

18 Q Okay. Did there -- was there ever a point
19 in time where there was a specific negotiated plea
20 deal that if you plead guilty, you will get "x"
21 number of years? Did that ever happen?

22 A Yes, less than a week before my trial
23 schedule.

24 Q Okay. And what was the amount that was
25 offered at that time?

1 A A negotiated 28 years.

2 Q Okay. And did you have any discussions
3 with Mr. Duncan concerning the difference between
4 the 28 years that was being offered and his
5 prediction that you might be looking at life plus
6 75?

7 A Yes, and that's what scares me.

8 Q So did this -- and I guess maybe that kind
9 of gets to my next question. What effect did this
10 discussion of "I might be facing life plus 75" --
11 did this have on your decision on whether or not to
12 go to trial or plead guilty?

13 A Well, there was numerous things that had
14 made me -- first, Mr. Duncan, how he coerced me into
15 this involuntary plea by -- by saying that if I were
16 to went to trial, what the Solicitor would have did,
17 would have made the jury react in this way, you know
18 what I'm saying, basically talking from a third
19 party, you know what I'm saying.

20 Don't know what really they would have did
21 or, you know what I'm saying, how it would have
22 played out at trial.

23 Q But you were scared as a result of this,
24 and you thought, "Oh, my God, I might get life plus
25 75"?

15

1 A It was basically a scare tactic, you know
2 what I'm saying.

3 Q Okay, all right. Did you ever come to
4 learn that in fact the sentences would probably not
5 -- given that they all rolled out of the same
6 transaction, that they would not in fact have been
7 in a consecutive manner but would have been
8 sentenced concurrently?

9 And I apologize. That was a terrible
10 question. Shall I try that again? Shall I try that
11 question again?

12 A Yes.

13 Q All right, sorry about that. Did you ever
14 come to learn that in fact since all of these
15 charges arose out of the same factual circumstance
16 that you were not actually going to be facing
17 consecutive sentences, that it really was going to
18 be concurrent?

19 A I didn't know that till the negotiated
20 plea was on the table.

21 Q Okay.

22 A Before that -- before that, Mr. Duncan was
23 like, "You go to trial, you'll get a consecutive
24 sentence. You'll face life plus 75," all right.
25 Mr. Duncan using false language and conduct made me

1 act in a certain way, putting fear in my heart,
2 which caused conflict when we had meetings, you
3 understand.

4 We wasn't seeing eye to eye on things. It
5 was like Mr. Duncan was there at the crime scene
6 with me when I'm telling him -- presenting what had
7 happened. And Mr. Duncan said, "Well, in your
8 statement you wrote an incriminating statement."

9 Well, I said, "Mr. Duncan, I need you to
10 suppress the statement because I was under the
11 influence at the time." And Mr. Duncan was like,
12 well, he was not able to help me at trial with the
13 written statement.

14 So the investigator coerced me into
15 writing why I was under the influence, making it out
16 to an incriminating statement, which Mr. Duncan said
17 it was going to be difficult since I wrote it. I
18 told Mr. Duncan -- I showed Mr. Duncan two different
19 sentences to prove the intoxication I was in. So --

20 Q Okay, let me get back for a second to the
21 question of the consecutive versus the concurrent.
22 Did you understand from statements that were made
23 after you pled guilty that in fact the sentences
24 should have been done in a concurrent fashion?

25 A I basically didn't understand nothing,

17

1 because what I had requested Mr. Duncan to do, he
2 did not do. So it was like I was -- he was playing
3 me like a puppet. I mean, it was nothing -- the
4 things I had requested, nothing had got done. He --
5 the answer to that is no.

6 Q So were you surprised to hear during the
7 hearing -- and I'm on page 26, line 24 and
8 continuing. Were you surprised to hear at the end
9 of the hearing Mr. Duncan say, "Well, it goes
10 without saying that these sentences will be
11 concurrent."

12 And then the Court says, "I have checked
13 it. It will be up to the statute." "Is concurrent
14 correct?" "It is concurrent." Were you surprised
15 to hear that?

16 A No, ma'am, I wasn't surprised, because he
17 already knew that. He already knew that the
18 negotiated plea was going to be a concurrent
19 sentence. But what he did not know was it going to
20 be a concurrent or consecutive sentence at trial.

21 Q All right. What defense did you want to
22 present that you were precluded from doing as a
23 result of your guilty plea?

24 A Well, due to the fact that I couldn't hire
25 another attorney, the abused power of Mr. Michael

1 Nettles had -- Judge Michael Nettles, excuse me --
2 told me on April 27th that if I do retain another
3 attorney that it was not going to be a basis used as
4 a continuance for the trial schedule, which is a
5 month away.

6 So when trial was pushed back to July,
7 which I had no reason why it was pushed back, but it
8 was, then July 7th or something Mr. Duncan came to
9 Lexington County Detention Center to visit me,
10 saying that he had talked to the Solicitor, and they
11 were willing to negotiate after 27 and a half months
12 of me sitting in the county jail with no bond or
13 none of that.

14 And things like I had requested for a bond
15 and things like that, I feel I had -- it's nothing I
16 could have done besides plead, because that's going
17 along with his experience saying that just in theory
18 -- I mean, he made me feel like he belittled me, you
19 know what I'm saying, because I didn't know the law.

20 And I didn't know that I could have been
21 like -- well, when the Judge had asked me a question
22 and I answered to him if I was -- he like persuaded
23 me into doing it because he made me feel like 28
24 years was the less time I could serve in the
25 Department of Corrections for these charges, which I

19

1 never had a conviction of no most serious charges in
2 my life.

3 Q Okay. What defense -- had you gone to
4 trial, what were you going to use as your defense?
5 Did you have a defense about what you were intending
6 to do when you arrived at the scene?

7 A I had plenty of defenses at trial -- for
8 trial -- due to the fact everybody going off of your
9 co-defendant's going to testify against you. Well,
10 nobody knows that for a fact that they was going to
11 testify against me.

12 And I told Mr. Duncan that. He was like,
13 "Well, it don't look too good. They wrote
14 statements." Well, anybody could have wrote
15 statements to cover their behind, you know what I'm
16 saying, cover their own behind.

17 And knowing that they're convicted felony,
18 they know how to get on the stand and fool
19 everybody. I never been through this, you know what
20 I'm saying. This is my first time on -- you know
21 what I'm saying, taking the stand.

22 Q Okay. I guess what I'm trying to get you
23 to tell the Court here, if I may lead just a little
24 bit to kind of save time, that it was going to be
25 your testimony, what you wanted to come in Court and

1 tell the Judge and the jury, was that you weren't
2 guilty of attempted burglary or attempted armed
3 robbery because you didn't have any intent to steal
4 anything from anybody, is that correct?

5 A Yes, ma'am.

6 Q You came to the apartment where all of
7 these acts occurred because what you wanted to do
8 was you wanted to buy drugs, you didn't want to
9 steal drugs?

10 A Yes, ma'am.

11 Q You had money in your pocket, and you were
12 going to buy the drugs?

13 A Yes, ma'am.

14 Q And everything just got totally out of
15 control --

16 A I was going --

17 Q -- and you had no intent to do any of
18 these things you were charged with?

19 A No, ma'am. No, ma'am. I had no intent to
20 commit any kind of crime.

21 Q Okay.

22 A You know what I'm saying.

23 Q And what you were deprived of not being
24 able to tell the jury and the Judge -- because you
25 pled guilty, you were deprived of the opportunity to

1 tell the Judge and the jury about your lack of
2 intent to commit these crimes, correct?

3 A Yes, ma'am. But Mr. Duncan told me not to
4 say nothing, because he did not want the Judge to
5 get agitated or mad or whatever and go against this
6 plea.

7 He made it sound like he was, you know
8 what I'm saying, protecting me from getting life
9 plus 75, which I'm telling him I wasn't guilty for
10 all these charges, you know what I'm saying.

11 Q Do you have any other complaints about Mr.
12 Duncan other than what you already told us?

13 A I mean, I don't know if they would be
14 complaints or lack of duty, because due to the fact
15 of he was misinforming me on consecutive and
16 concurrent sentences.

17 And he was coercing me into going along
18 with this plea agreement, had me waive my rights on
19 behalf of he couldn't prepare for a trial strategy,
20 for a defense in my state charges against me,
21 coercing me into making an involuntary plea, not
22 wanting me to say anything to the Judge, not too
23 many questions.

24 Just wanted me to waive my important
25 constitutional rights because he didn't -- like I

1 said, we talked about suppressing the statement, and
2 knowing he could have challenged whether such
3 statement was given willingly and voluntarily and in
4 accordance to constitutional rights that are dealing
5 with my statement.

6 And it's a case called Deniro [sic] v.
7 Jackson with the under influence statement. But
8 persuading me to tell lies, just to go along with
9 the plea, you know what I'm saying. When the Judge
10 asked me a question, I had to lie, because I was not
11 guilty. I wasn't guilty, and just to go along with
12 the plea -- I mean, he coerced me into doing that.

13 Q And you understand that the relief you're
14 asking for in this PCR proceeding is for you to go
15 back and get a new trial, correct? That's what
16 you're asking the Court to give you?

17 A If that's the relief. I want to go back
18 to trial anyway to show my innocence.

19 Q That's all we have, thank you. Please
20 answer any questions that Ms. May has.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MS. MAY:

24 Q Mr. Washington, could you go back over how
25 Mr. Duncan coerced you exactly?

1 A Okay, I would happy to be. I'm glad you
2 asked. All right, without doing the things I had
3 requested him to do as far as a thorough and
4 complete investigation, he said that -- when I asked
5 him to interview co-defendants, and he said that he
6 simply couldn't go out and interview them because
7 they was represented by an attorney.

8 Since the charges are still pending, no
9 attorney is going to let him interview neither of
10 them. So I felt like, you know, if the prosecutor
11 can do it, he can do it.

12 So I found out he violated my right, my
13 Sixth Amendment right, because the Court agreed that
14 the Sixth Amendment upholds on counsel a duty to
15 investigate, because reasonable effective assistance
16 must be based on a professional decision. And
17 informed legal choices can be made only after
18 investigation.

19 Q Would you think that because he came back
20 and told you that your co-defendants did have
21 attorneys and that he couldn't speak to them, that
22 he did make an effort to go speak with them, but he
23 can't because they do have attorneys?

24 A I asked him to do that. He didn't do it,
25 or he says he didn't do it, because there's a letter

1 right here -- I've got it right here, Your Honor.
2 He said that he couldn't simply go out there and
3 interview them.

4 And that -- it doesn't matter if he would
5 have did it or not. I still wanted to go to trial.
6 But since after 27 and a half months, a week before
7 trial they come up with this plea, and it was a hard
8 pill to swallow.

9 And it wasn't nothing that any human being
10 could have thought about just jumping into pleading
11 overnight. But that's my date to go, and I felt
12 like I had no choice. I was scared.

13 I didn't know what to do after that. The
14 Judge told me that -- basically told me that if I
15 retained another lawyer, then it wouldn't be a
16 basis. So what else I'm going to do? I don't make
17 the law.

18 MS. MAY: Okay, I don't have any more
19 questions.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MS. ZECK:

23 Q Is there anything else that you want to
24 tell this Judge about your inability to go to trial
25 like you wanted to?

25

1 A I wanted to tell the Judge I had asked Mr.
2 Duncan to file an appeal on the guilty plea. And on
3 page 17 in my court transcript, on line 21, 24, he
4 said I had the right to appeal my guilty plea and
5 the sentence of this Court, that I or my lawyer must
6 do so within ten days.

7 Mr. Duncan refused to do so. Counsel's
8 function in representing me is to assist me. And
9 hence, counsel owed client duty of loyalty and duty
10 to avoid conflict of interest.

11 Q On what issue did you wish Mr. Duncan to
12 file an appeal?

13 A Well, due to the fact I made that crazy
14 involuntary plea, knowing I didn't have enough time
15 to dwell on the matter. My family didn't have
16 enough time to think about what I was pleading and
17 didn't know what could be done.

18 I was scared. I never knew all my rights.
19 I had been taken advantage of. And today I'm just
20 asking the Court to be lenient, because show error
21 planning in the fundamental miscarriage of justice
22 and prejudiced my right to a fair trial, not
23 allowing me or asking me before I went to court if
24 this is what I wanted. And when Judge Knox McMahon
25 questioned -- asked me them questions, after Mr.

1 Duncan and Judge Michael T. Nettles was all I could
2 think about and their decision.

3 They coerced me to make this involuntary
4 plea, thinking I had no other choice. I was coerced
5 by Mr. Duncan in some fashion, form, or way into an
6 involuntary plea. And I'm asking the Court to
7 correct this great difference.

8 MS. ZECK: That's all we have, Your Honor.

9 THE COURT: Recross?

10 MS. MAY: Just one issue.

11 RECROSS EXAMINATION

12 BY MS. MAY:

13 Q When did you ask Mr. Duncan to file an
14 appeal?

15 A I had got -- I had went to Kirkland. Mr.
16 Duncan responded back on my letter July 14. July
17 14, he said, "I received a call from your sister
18 requesting I file an appeal for you.

19 "I enclose a copy of Rule 203, which will
20 call your attention to section (b)(o)," which I
21 ain't -- I didn't understand that because I didn't
22 know the law at the time, until I got to the
23 Department of Corrections where they had legal
24 material where I can go in there and study the law.

25 He said he was not aware of any such issue

1 that could be raised in my circumstances, so he's
2 not filing any such appeal. He said that I have ten
3 days from last Thursday, July 9, if I wish to do so
4 on my own.

5 MS. MAY: Your Honor, no further questions
6 of this witness.

7 THE COURT: Thank you, sir. You may step
8 down.

9 (Whereupon, another proceeding was
10 had at this time.)

11 THE COURT: Do you any other witnesses?

12 MS. ZECK: We rest at this time.

13 THE COURT: All right. And does the State
14 have any witnesses -- Mr. Duncan?

15 MS. MAY: Yes, Your Honor. We would call
16 Mr. Duncan.

17 THE COURT: Come around.

18 (The witness was sworn.)

19 CLERK OF COURT: Have a seat and state
20 your name for the record, please.

21 MR. DUNCAN: My full name is John Earl
22 Duncan, otherwise known as Jack.

23 JOHN EARL DUNCAN, having first
24 been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. MAY:

2 Q Mr. Duncan, how long have you been
3 practicing law?

4 A Since 1976.

5 Q And how much of that has been devoted to
6 criminal cases?

7 A Right now, it's in excess of 50 percent.

8 Q Okay. And do you recall how the charges
9 arose that the applicant came to be arrested for?

10 A There was an incident at an apartment
11 complex in Swansea, and a lady went down at
12 approximately 7 a.m. to warm up her car. It was a
13 winter morning.

14 And she cut the car on, walked back up the
15 stairs. Mr. Washington and three other gentlemen
16 had decided they were going to -- this lady's
17 boyfriend or husband was a drug dealer.

18 And they had decided they were going to
19 rob him. So she has her, as I recall, her two-year-
20 old in her arms and her eight- or nine-year-old with
21 her. And when she goes back down to the car, she
22 notices that the car had been cut off.

23 And that's when Mr. Washington and Mr.
24 Tucson Jones, I believe, walked up. And she says
25 they flashed a gun at her, asked her if her

1 boyfriend had a gun, and asked her to go back up the
2 stairs with them.

3 When they got up to the top of the stairs,
4 the boyfriend opened the door. He had a gun. There
5 were shots fired. The boyfriend shot out the door.
6 Mr. Washington shot in the door four times.

7 The child ended up dead, the two-year-old,
8 and Mr. Washington and Mr. Jones fled the scene with
9 the other two individuals. The three other
10 individuals were arrested, and within the next week
11 -- two of the individuals were arrested within the
12 next week.

13 One of them was arrested -- Mr. Jones I
14 believe was arrested in New York and brought back.
15 Mr. Washington was arrested in April of the
16 following year, and he gave a confession to the
17 police at that time. I began representing him at
18 that point and begin investigating.

19 Q And you met with Mr. Washington about the
20 charges?

21 A Several times, went over the discovery
22 with him, provided him a copy of it, provided him
23 with copies of the statements of his co-defendants,
24 which incriminated him, and then the statements of
25 the lady whose child was killed, everybody -- I gave

1 him copies of all the statements.

2 We went out -- the investigator and I went
3 out to the scene, looked at the apartment complexes,
4 all the areas that were described. We attempted to
5 talk to Tucson Jones because he had been sentenced
6 to 28 years.

7 And we -- even though he was no longer in
8 the case, out of an overabundance of caution, we
9 called his attorney who had been representing him at
10 the plea, and he said he preferred that we not
11 discuss the case with him, even at that point.

12 And so we were stymied as far as that.
13 But we had several heart-to-hearts with Mr.
14 Washington, explained to him -- his version
15 basically was "Everybody else is lying on me. And
16 even though I confessed, I didn't mean it."

17 We told him that -- I told him I didn't
18 see a defense and that he was looking at life plus I
19 believe 70. Seventy-five years has been used, but I
20 believe I counted it as 70. And I think Judge
21 McMahon at the sentencing said the same thing.

22 My very, very big concern that I expressed
23 to him was Tucson Jones received 28. Tucson was not
24 the trigger man. He never fired his gun, and he got
25 28. So I was -- my thoughts were that Colvin would

1 get more time than that, and if he went to trial
2 that he was looking -- with the burglary first, with
3 the child dead, and just the horrendous facts that
4 he was looking at life -- a life sentence under the
5 burglary first.

6 I mean, the extra years would have been
7 surplusage, but that's what I expressed to him and
8 said, "If you want to spend the rest of your life,
9 this is what you're looking at. And I think that's
10 a very real possibility if you go to trial. A
11 guilty to the 28 years means you will get out when
12 you're in your forties.

13 Q Okay. So it is your practice with your
14 clients to advise them as to, you know, the
15 consequence of going to trial as well as versus
16 going to a plea?

17 A Oh, yes, no question. And I had
18 discussions with his family too. He has a very
19 large family. I had discussions with his mother
20 several times, with different sisters, and explained
21 to them that I saw no defense. You know, your lying
22 on me is not a defense.

23 Q Okay. I'm going to ask you to backtrack
24 for just a bit. I know you briefly described the
25 investigation that you conducted. Did you hire an

1 investigator?

2 A Yes, David McDougall, certified
3 investigator. He and I went out many times trying
4 to talk to people, to the scene, you name it, and he
5 did it or I did it, talked to Mr. Washington several
6 times, talked to the family a lot. We were trying
7 to keep everybody involved and informed.

8 Q And you discussed the investigator's
9 findings with Mr. Washington?

10 A Yes.

11 Q Okay.

12 A Gave him copies of the -- Mr. McDougall
13 gave a written report. We gave him copies of that.

14 Q Okay. And regarding the statement that
15 Mr. Washington wrote, when you were discussing the
16 possibility of going to trial, the plea, did you
17 discuss the statement and what would happen if y'all
18 went to trial with the statement, the viability of
19 it coming in?

20 A Well, it was handwritten by Mr.
21 Washington. And I told him my experience was -- I
22 asked him, "How are you going to get around this?"
23 And he didn't have an answer.

24 Q Would you have challenged it had you gone
25 to trial?

1 A Well, certainly. In fact, I'd even
2 written -- I think there's an e-mail in the file
3 where I had said if we were going to go to trial, we
4 needed a Jackson v. Denno hearing on the
5 voluntariness of his statement.

6 Q Okay. Can you go ahead and describe for
7 me when you started entering into plea negotiations
8 your discussions with Mr. Washington?

9 A Well, it was a little bizarre because Joe
10 Nathan Chaplin had been hired by the family to do a
11 bond reduction hearing without notice to me. They
12 had paid him \$5,000, and he never talked to me,
13 never contacted me, talked to the Solicitor as if he
14 were representing Mr. Washington on everything.

15 And the Solicitor's Office said they never
16 talked to me because they thought he had taken the
17 case over. And then apparently a plea had been
18 worked out, and Mr. Washington backed out.

19 Then I happened to be in the courthouse
20 and saw everybody together and said, you know, "I'm
21 sorry, boys, is something happening I don't know
22 about?" And that's when I found out that Mr.
23 Washington -- that Mr. Chapin had been involved, and
24 that led to the hearing in front of Judge Russo
25 where an order was issued. And then I want to say

1 within a couple of months, the trial was scheduled,
2 and the plea was entered.

3 Q Okay. And going back to the negotiated
4 sentence, was that you and the Solicitor?

5 A The 28 years I thought was -- I thought
6 that Mr. Jones had maybe set the bar a little high.
7 He had such gosh-awful psychiatric issues that I
8 thought his sentence was a little severe under the
9 circumstances but that seeing as Mr. Washington was
10 a worse actor, had more involvement, and was more
11 culpable that he was looking at more time than the
12 28, and that setting that bar that the 28 was the
13 best we could do.

14 Q Did Mr. Washington understand this? In
15 your discussions, how did you feel about it?

16 A I thought he did.

17 Q And you had no reason to believe or he
18 never told you that he didn't understand?

19 A I told him -- you know, we laid it out for
20 him and went through it step by step, and said that
21 Tucson didn't have a gun and didn't -- "He had a gun
22 maybe, but he didn't fire the gun, did he? And you
23 did. And you think you're going to get less time?"
24 And he says, "No, that's probably not accurate." So
25 he knew he was looking at more time.

1 Q The 28 years with the plea, do you
2 remember what he got?

3 A That's exactly what he got.

4 Q Okay. And you did talk -- did y'all talk
5 about possible defenses, or did he bring any
6 defenses up to you?

7 A Well, he kept saying he wanted me to talk
8 to the co-defendants. I said, "I can't do that.
9 They're represented."

10 Q And did you tell Mr. Washington not to say
11 anything to the Judge, just to go along with
12 everything?

13 A Well, what I told him was that if he got
14 into the guilty plea, and his sister had come to me
15 -- one of the sisters had come and said, "He's not
16 guilty." And I said, "That's not what he tells me."
17 And I told him that if he got in front of the Judge
18 and told the Judge "I'm not guilty," no Judge was
19 going to take that guilty plea, that you tell the
20 truth and you have to -- you know, you have to
21 answer the questions.

22 Q Was your advice to Mr. Washington based on
23 your experience about the case and your discussions
24 with him?

25 A Most definitely.

1 Q Did you coerce Mr. Washington in any way
2 into entering this plea?

3 A No.

4 Q Do you feel that -- were there any issues
5 preserved for appellate review?

6 A Not with a guilty plea, no.

7 Q And did you -- in your discovery that you
8 went over with Mr. Washington, did you have all the
9 co-defendants' statements and what they would say
10 had you gone to trial?

11 A Yes, we had all the statements. We had
12 the statements of the victim, the lady whose child
13 was killed. We had all that information. We talked
14 to the father of the child, who received a drug
15 trafficking sentence.

16 We talked to him. Everything -- all the
17 witnesses' statements and the facts, the evidence
18 corroborate each other. Only Mr. Washington's story
19 was different than the facts.

20 Q And whose decision was it ultimately for
21 him to plead guilty?

22 A It was his.

23 Q Okay, those are the only questions I have.
24 Thank you.

25 THE COURT: Cross-examination.

1 CROSS-EXAMINATION

2 BY MS. ZECK:

3 Q Mr. Duncan, when you were discussing about
4 the statement that had been made, the handwritten
5 statement by Mr. Washington upon his arrest, you had
6 said that you discussed that with him and you asked
7 him how was he going to get around the handwritten
8 nature of the document. And it was your testimony
9 that he didn't have an answer to that?

10 A That's correct.

11 Q But in fact, is it not true, sir, that
12 there were some very serious issues with respect to
13 the knowing, voluntary, intelligent nature of that
14 statement given his mental state at the time they
15 were given, that he related to you the circumstances
16 following his arrest when giving the statement?

17 A Well, he told me he was stressed, but I
18 said that's normal. I mean, under -- you know, he
19 had been arrested for these incredibly serious
20 charges, and he said, "Well, I was high."

21 And I said, "Well, you know, who's going
22 to corroborate that?" because the girlfriend didn't
23 corroborate that. No one would corroborate that he
24 said he was high.

25 Q Did you speak to the girlfriend?

1 A I believe Mr. McDougall did.

2 Q What's the girlfriend's name?

3 A I don't remember. I don't.

4 Q You very kindly in the course of this
5 proceeding gave me access to this black notebook
6 which I believe is your trial notebook, is that
7 true?

8 A That's probably true, yes.

9 Q Okay. It says "Colvin Washington" on the
10 front.

11 A Yes -- okay, yes.

12 Q Do you recognize it as the handwriting of
13 somebody in your office?

14 A Yes.

15 Q Okay. There's a statement in this that I
16 believe -- there's a statement taken by your
17 investigator, Mr. McDougall, of James Peeples?

18 A That was the fellow that -- the father of
19 the baby.

20 Q Okay. And in effect, the ballistic
21 reports were pretty clear that the father
22 unfortunately had shot the bullet that actually
23 killed the baby --

24 A Yes.

25 Q -- in the cross-fire?

1 A Yes.

2 Q So there was never any question that
3 either Mr. Washington or Mr. Jones had actually
4 killed the baby?

5 A No.

6 Q And that was apparently Mr. Peeples,
7 because they had Mr. Peeples' gun, and they were
8 able to do ballistics on the bullets?

9 A Right.

10 Q Okay. And so do you recall the statement
11 that Mr. Peeples gave to Mr. McDougall?

12 A I do not.

13 Q All right.

14 May I approach the witness, Your
15 Honor?

16 THE COURT: Yes, ma'am.

17 Q I only have one copy of it, so I want to
18 show it to you.

19 A Okay.

20 Q All right. Having looked at the statement
21 of James Peeples dated June 1, 2009, does that
22 refresh your recollection that Mr. Peeples was
23 prepared to come and testify that he did not believe
24 that Mr. Washington was the shooter?

25 A That's true, yes. I remember that.

1 Q All right. So in fact, your statement
2 earlier that all the statements corroborated the
3 State's view of the case that Mr. Washington was the
4 shooter was not correct, was it?

5 A No. The evidence corroborated the
6 statements that Mr. Washington was the shooter, that
7 his -- the bullets and the forensics showed that he
8 had fired his weapon -- Mr. Washington had fired his
9 weapon four times and that Mr. Jones had not fired
10 his weapon at all. And so Mr. Peeples' statement
11 was just not true.

12 Q Well, he's the person that got shot,
13 correct?

14 A I don't remember if he was shot or not. I
15 know that -- yes, that's right. Mr. Washington shot
16 him.

17 Q Well --

18 A Yes.

19 Q -- what Mr. Peeples says -- I mean,
20 presumably he was there.

21 A Yes, right.

22 Q And he says, "He," meaning Mr. Colvin
23 Washington, "is not the person who shot me."

24 A Okay. And the ballistics showed that was
25 not true.

1 Q But that's what he was planning to come
2 and testify, correct?

3 A Yes -- I mean, Mr. Washington still had
4 the problem that in his statement, he confessed, "I
5 shot the dude."

6 Q It's true, is it not, sir, that Mr.
7 Washington had some other theories about the
8 statement, how it could be explained?

9 A I don't remember those theories, no.

10 Q All right.

11 If I could have just a minute.

12 THE COURT: Yes, ma'am.

13 Q Do you recall me being a paralegal
14 associated with Mr. Chapman's office while you were
15 out at Lexington County to meet Mr. Washington?

16 A Vaguely, maybe -- well, no, I don't
17 remember.

18 Q Terry Hagle -- Terrell B. Hagle, Jr.?

19 A That doesn't ring a bell. I don't.

20 Q So it's your testimony that you didn't
21 have any conversation with anyone from Mr. Chapman's
22 office prior to arriving at the courthouse and
23 seeing a bunch of Mr. Washington's family clustered
24 around?

25 A I don't remember any conversations with

1 anybody from Chaplin's office. It was -- he never
2 contacted me in any way. So I don't remember any
3 meeting at the jail.

4 Q What was the genesis of this hearing in
5 April of '09? Did you file a motion seeking --

6 A I don't remember who filed it, but this
7 was -- I saw everybody together sometime previous to
8 that.

9 Q Okay.

10 A That was not the motion. I saw people
11 together, and I said, "What's going on?" since I had
12 -- no, no, no, I'm sorry, I'm sorry, I'm wrong. I
13 saw -- the Solicitor's Office prepares a roster that
14 they distribute to the Public Defender's Office of
15 cases for the day. And I saw an entry for Mr.
16 Chaplin as Mr. Washington's attorney, and that's how
17 it happened.

18 And I was asking, I said, "Why is that
19 down there?" And that's -- Mr. Hubbard had told me
20 he thought Mr. Chaplin was representing Mr.
21 Washington, because that's the way he had presented
22 himself and that he had taken the case over from me.
23 And I had no knowledge of Mr. Chaplin's involvement
24 until I saw his name on that prepared sheet, that
25 daily roster sheet.

43

1 Q Do you know what, if any, deal was made --
2 you mentioned a deal that was apparently being
3 considered between the Solicitor and Mr. Chapman for
4 Mr. Washington?

5 A I don't know. I don't remember the
6 details. I may have been told it, but I don't
7 remember it now. I was told that Mr. Washington
8 backed out on it. That's all.

9 MS. ZECK: I believe that's all I have,
10 Your Honor.

11 THE COURT: All right. Any redirect?

12 MS. MAY: Yes, sir.

13 REDIRECT EXAMINATION

14 BY MS. MAY:

15 Q Mr. Duncan, going back to the statement
16 that you just read from Mr. Peeples --

17 A Right.

18 Q -- was Mr. Washington aware of this
19 statement? Did you share it with him?

20 A He had to have. I mean, yes, I would have
21 -- if it was part of the discovery, and that's the
22 only way we could have gotten it -- or, well, no.
23 If it was prepared -- if it was either discovery or
24 prepared by Mr. McDougall, it was given to Mr.
25 Washington.

1 Q And so he was aware of it?

2 A Yes.

3 Q And he still chose to plead guilty?

4 A Yes.

5 Q And you reviewed all the investigation
6 materials that you and Mr. McDougall, I believe it
7 was --

8 A Yes.

9 Q -- the investigator?

10 A Dave and I reviewed everything with him
11 together at least once, and I know Dave went back by
12 himself one time.

13 MS. MAY: I have no further questions.

14 THE COURT: Anything else of the witness?

15 MS. ZECK: No, Your Honor.

16 THE COURT: Thank you, sir. You may step
17 down.

18 Anything further from the State?

19 MS. MAY: No, Your Honor.

20 THE COURT: Any reply?

21 MS. ZECK: No, Your Honor.

22 THE COURT: All right. Do you wish to
23 make any closing, or would you just have me review
24 the record?

25 MS. ZECK: Just very briefly, Your Honor.

1 We would argue that Mr. Washington was -- that his
2 plea was not knowing, voluntary, and intelligent
3 because he felt coerced as a result of the threat of
4 the life plus 75, which was not warranted under the
5 circumstances, and that as a result he accepted the
6 lesser -- a plea for a lesser period of time, and
7 that his waiver of his right to go to trial was not
8 knowing, voluntary, and intelligent.

9 THE COURT: Anything from the State?

10 MS. MAY: Your Honor, the State would
11 submit that based on Mr. Duncan's testimony and Mr.
12 Washington's testimony that he was not coerced. An
13 attorney has a responsibility to tell the client
14 what potential sentences that he's facing should he
15 go to trial.

16 Mr. Duncan testified he didn't coerce
17 him, that he wanted him to be aware. He shared all
18 of the discovery with Mr. Washington, and Mr.
19 Washington still decided he wanted to plead guilty.
20 He knew that he -- going into the plea, he had a 28-
21 year negotiated sentence, whereas he could have
22 faced life plus 70, 75.

23 The State would submit that Mr.
24 Washington was well aware of all the possible
25 consequences, that he wasn't coerced, and that his

1 guilty plea was given voluntarily.

2 THE COURT: Thank you. I'll notify you of
3 my decision in writing.

4 MS. MAY: Thank you, Your Honor.

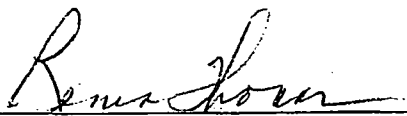
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND
NOTARY PUBLIC IN AND FOR 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
ABOVE-CAPTIONED CASE ON MAY 16, 2011, IN LEXINGTON,
SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
EIGHTH DAY OF DECEMBER 2011.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2009-CP-32-5746

Colvin P. Washington, #335820,
Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,
Respondent.

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WAC #1
This matter comes before the Court pursuant to an application for post conviction relief (PCR) filed December 22, 2009. Respondent made its return on April 20, 2010. An evidentiary hearing into the matter was convened on May 16, 2011 at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Elizabeth Zeck, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The State offered the testimony of John Duncan, Esquire (Mr. Duncan) Applicant's plea counsel. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the July 2008 term of the Lexington County Grand Jury for Assault and Battery with Intent to Kill (2008-GS-32-2278), Kidnapping (2008-GS-32-2277), Attempted Armed Robbery

(2008-GS-32-2276), and Attempted Burglary—1st Degree (2008-GS-32-2275). He was represented by John Duncan, Esquire. On July 9, 2009, the Applicant pled guilty as charged. He was sentenced by the Honorable R. Knox McMahon to confinement for an aggregate period of twenty-eight (28) years. The Applicant did not appeal his guilty plea or sentence.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
 - a. "Counsel failed to do a thorough and complete investigation of the facts in relation to the law."

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Applicant's Testimony

At the evidentiary hearing the Applicant testified that he had other attorneys representing him prior to Mr. Duncan's representation. Applicant testified his prior attorney, ^{JONATHAN CHAPLIN} Jonathan Chapman, was hired by him for a blair hearing and a bond hearing, and that ^{CHAPLIN} Chapman said at a hearing he would not represent the Applicant through a trial. Applicant testified that ^{CHAPLIN} Chapman presented Applicant with a plea offer, but the Applicant refused to plead because he wanted to go to trial. Applicant testified that Mr. Duncan advised Applicant that Applicant could be sentenced to life plus 75 years, and that this discussion scared the Applicant. Applicant testified his plea counsel coerced him into pleading guilty by not doing what Applicant asked of plea counsel. Applicant testified that he asked plea counsel to interview his co-defendant but that plea counsel told him he was unable to interview Applicant's co-defendant because the co-defendant was represented by counsel and the co-defendant's counsel

would not allow any interview with the co-defendant. Applicant testified that he learned that because his charges arose out of the same circumstances he could be sentenced to consecutive sentences. Applicant testified that if he had gone to trial it would have been his testimony that he did not have intent to steal, but that Applicant wanted to buy drugs. Applicant testified that plea counsel told Applicant he was not allowed to say anything to the plea judge during the plea hearing and that Applicant just lied to the plea judge when asked questions by the judge. Applicant testified that he asked plea counsel to file an appeal of Applicant's guilty plea and that plea counsel responded telling Applicant he received a call from Applicant's sister and told Applicant's sister he would not file an appeal because there were no grounds for an appeal per Rule 203. Applicant testified that he did not have enough time to dwell on this matter and that Applicant did not know all of his rights.

Mr. Duncan's Testimony

C. #3
At the evidentiary hearing Mr. Duncan testified that he began representing the Applicant in April 2009. Mr. Duncan testified that he reviewed the charges, statements of Applicant's co-defendants, and the witness statement of the victim with the Applicant. Mr. Duncan testified that all the statements by the co-defendants and the victim incriminated the Applicant. Mr. Duncan testified he went to the scene of the crime with his investigator he had hired. He testified that he contacted Applicant's co-defendant Jones, but that Jones' attorney would not allow Mr. Duncan access to Jones. Mr. Duncan testified that his investigator tried many times to talk with potential witnesses. Mr. Duncan testified that he discussed the investigator's findings with the Applicant and gave the Applicant copies of the report. Mr. Duncan testified that later he and his investigator reviewed all the materials again with the Applicant together. He testified that all the witness statements were consistent and that only the Applicant's statement was different. Mr. Duncan testified that he

discussed the handwritten confession the Applicant had given with the Applicant and that because the statement was handwritten it would be hard to challenge if they had gone to trial. Mr. Duncan testified that there was an issue concerning the Applicant's mental state at the time Applicant gave the confession because the Applicant advised Mr. Duncan he was stressed and that he was high. Mr. Duncan testified that the fact Applicant was stressed when he gave the statement was normal and that there was not any corroboration to support that Applicant was high when he gave his confession. Mr. Duncan testified that in the event he and the Applicant proceeded to trial Mr. Duncan would have challenged the statement by requesting a Jackson v. Denno hearing.

Mr. Duncan testified that in a statement given by James Peeples to Mr. Duncan's investigator, Peeples said he did not believe that Applicant was the shooter. Mr. Duncan testified that the evidence, which included a ballistics report, corroborated Applicant fired his weapon 4 times and that Applicant's co-defendant had not fired his gun at all. Mr. Duncan testified that the Applicant knew about the statement given by Peeples.

Mr. Duncan testified that he never met with a paralegal from ~~Chapman's~~ ^{CHAPLIN'S} office and that he was not aware of ~~Chapman's~~ ^{CHAPLIN'S} representation of the Applicant until he saw the solicitor's office roster that had ~~Chapman's~~ ^{CHAPLIN'S} name listed on it as counsel for the Applicant. Mr. Duncan testified that an Order was issued clarifying the status of ~~Joe Nathan Chapman's~~ ^{JOENATHAN CHAPLIN'S} association with Applicant's case. Mr. Duncan testified that he was aware that plea offers had been made during ~~Chapman's~~ ^{CHAPLIN'S} representation of the Applicant, but that Mr. Duncan could not remember what those plea offers entailed. Mr. Duncan testified that he was informed the Applicant had rejected those plea offers during ~~Chapman's~~ ^{CHAPLIN'S} representation. Mr. Duncan testified that he advised Applicant he did not see a defense, that he was concerned Applicant's co-defendant Jones got 28 years and the evidence proved

Jones didn't fire the gun, and that Applicant was facing more time if Applicant proceeded to trial because the case involved the death of a child. Mr. Duncan testified he advised the Applicant he was facing life plus 70 years and that the Judge advised the same at the plea hearing. He testified that he presented the Applicant a plea offer of a negotiated 28 year sentence. Mr. Duncan testified that he discussed the consequences of proceeding to trial versus pleading guilty with the Applicant. Mr. Duncan testified that the Applicant understood discussions about the plea offer and Applicant's co-defendant's sentence. Mr. Duncan testified that he advised Applicant that at the plea hearing if the Applicant denied his guilt to the Judge, then the Judge could not take Applicant's plea, but told the Applicant to tell the truth when answering the Judge's questions. Mr. Duncan testified he did not coerce the Applicant into pleading guilty. Mr. Duncan testified that there were no issues preserved for appeal.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

WPH
#6

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcript from Applicant's guilty plea, and legal arguments of counsel. Pursuant to S.C. Code Ann §17-27-80 (2003), this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

This Court finds that the Applicant has failed to meet his burden in proving plea counsel was ineffective in failing to investigate Applicant's case. The Applicant testified that counsel did not

conduct a thorough investigation. The Applicant also testified that counsel did not interview Applicant's co-defendants and that counsel did not challenge the Applicant's written confession. Applicant's plea counsel, Mr. Duncan, testified credibly that he hired an investigator and interviewed the witnesses whom plea counsel was allowed to interview. Counsel testified that he reviewed the statements of the witnesses and the co-defendants, and the findings of counsel's investigator with the Applicant. Counsel stated that the Applicant had given a handwritten confession, which the Applicant later attempted to retract, and that Applicant wanted counsel to challenge the statement because Applicant allegedly was high at the time he gave the statement. Counsel testified that there was nothing to corroborate Applicant's assertion that he was high when Applicant wrote the confession. Counsel further testified that the numerous attempts to come up with any defense were not fruitful and that counsel discussed this with the Applicant. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant could not point to any specific matters counsel failed to discover which would have caused him to proceed with a jury trial instead of pleading guilty. The Applicant offered no evidence at the PCR hearing that counsel could have found that would have been likely to have any outcome more favorable to the Applicant. The Applicant did not produce any witnesses or offer

any other evidence from which this Court could conclude that the outcome of the case would likely have been different, had that evidence been developed. Therefore, this Court finds that this allegation is denied and dismissed.

Wp
#8

This Court finds that Applicant's allegation that his guilty plea was involuntary and that Applicant was coerced into pleading guilty is without merit. Applicant testified that counsel coerced Applicant into pleading guilty by not doing what Applicant asked of counsel and that Applicant did not have enough time to dwell on the matter. The Applicant also stated that he did not know all of his rights. This Court finds and the record reflects that at the plea hearing the Applicant told the judge that Applicant was not coerced, that he was guilty, and that he was fully satisfied with his counsel. (Tr. p.12-16). Moreover, at the PCR hearing, the Applicant presented nothing more than a broad assertion that he was coerced into pleading. Applicant has the burden of proving that he was coerced by counsel. The assertion that Applicant felt threatened by the fact that Applicant was facing life plus 75 years is understandable, but it was the reality of the situation. Attorneys have an obligation to inform clients about the potential sentence and apprise them of the attorney's opinions related to likely outcomes. The attorneys do not make the facts and the Applicant's testimony that his counsel told Applicant that the sentence would be consecutive is not credible. Mr. Duncan testified that he did tell Applicant that the facts surrounding Applicant's case were very bad and that Applicant's co-defendant, who had not fired his weapon, got 28 years. This Court finds that even if counsel had indicated that it was his opinion that the Applicant would receive the maximum possible punishment, it is clear from the record that the Applicant understood that the judge was not required to run the sentences consecutively. This Court finds testimony to the contrary is not credible. The Applicant indicated that he only understood that when the negotiations took place, which was before

his guilty plea hearing. The Applicant also knew that the discussions were for the judge to give the Applicant 28 years on Applicant's sentence for the multiple offenses. This Court finds that the Applicant has failed to prove that there was any improper advice related to sentencing or that he was prejudiced by any such advice. This Court further finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that this allegation is denied and dismissed.

WPA #9
In regards to Applicant's allegation that he made his written confession while under the influence of drugs, this Court finds the Applicant produced no evidence that would allow this Court to determine that Applicant's statement was affected by being under the influence, other than Applicant's bare assertion of that claim, which does not meet the standard of proof. There is also no showing of prejudice, because Applicant's plea counsel testified credibly that there were numerous statements by witnesses and ballistic reports to corroborate Applicant's statement. While Applicant attempted to retract his confession, the Applicant at his guilty plea hearing told the plea judge that he was, in fact, guilty of the crimes charged. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The

Applicant showed no reason why he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

As to Applicant's allegation that plea counsel failed to file an appeal, that issue was not raised in Applicant's PCR application. If it were considered, this Court finds that the Applicant was advised of his right to appeal by the plea judge (Tr. p.17), and that Applicant clearly understood his right. Furthermore, this Court finds that there were discussions wherein the Applicant was advised about his right to appeal and that it was Applicant's counsel's opinion that there were no meritorious grounds for appeal from Applicant's guilty plea. This Court finds that Applicant's allegation related to plea counsel's failure to file an appeal is unsupported by the record and testimony presented at the PCR hearing, and without merit and dismissed.

V. CONCLUSION

WAC #10
This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds that plea counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that plea counsel's conduct does not fall below the objective standard of reasonableness. This Court also finds that the record in this case fully demonstrates that the Applicant understood the nature of his plea, and that his plea was made freely and voluntarily.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonable effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also

COPY

finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonable effective assistance.

Based on all the forgoing, this Court finds and concludes that the 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 for post conviction relief must be denied and dismissed with prejudice.

#11 This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 12th day of September, 2011.

William P. Keesley
William P. Keesley
Presiding Judge
Eleventh Judicial Circuit

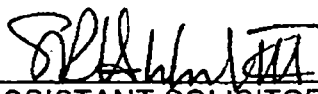
Lexington, South Carolina

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF LEXINGTON) ASSAULT & BATTERY WITH INTENT TO KILL
)
) § 16-03-0620

At a Court of General Sessions, convened on JULY 2008, the Grand Jurors of Lexington County present upon their oath:

That **Colvin Preston Washington** did in Lexington County, South Carolina on or about January 22, 2007, with malice aforethought commit an assault and battery upon the victim, James Peebles with the intent to kill the victim, to wit: the defendant and/or a co-defendant did fire a pistol at the victim, striking the victim with a bullet, in violation of the 16-3-620 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.



ASSISTANT SOLICITOR.

Jack Dunn cam.

WITNESSES

Lexington County Sheriffs Department

Roy Mefford

DVM

ARREST WARRANT NUMBER

J054057

ACTION OF GRAND JURY

TRUE BILL

Donald Leaphat
Foreperson of Grand Jury
Date: 7-14-08

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-32 2278

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2008

THE STATE
vs.

Colvin Preston Washington

As charged

CDR #: 0014

Indictment for

ASSAULT & BATTERY WITH INTENT TO
KILL ✓

§ 16-03-0620

DONALD V. MYERS, SOLICITOR

0 - 20 years
Violent / Most Serious
DNA Regis.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

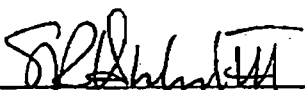
INDICTMENT FOR
KIDNAPPING

§ 16-03-0910

At a Court of General Sessions, convened on JULY 2008, the Grand Jurors of Lexington County present upon their oath:

That Colvin Preston Washington, together with a co-defendant did in Lexington County, South Carolina on or about January 22, 2007, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victims, Laura McMichael and her two children, without authority of law and without the victims' consent, to wit: the defendant, together with a co-defendant, while armed with pistols, did confront the victims outside their residence as the victims were attempting to leave, and did force the victims at gunpoint back to the victims' residence, in violation of § 16-3-910 of the Code of Laws of South Carolina, (1976), as amended.

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



ASSISTANT SOLICITOR

[Handwritten initials and markings in the bottom right corner]

Jack Duncan
WITNESSES
Lexington County Sheriffs Department
Roy Mefford

_____ DVM
ARREST WARRANT NUMBER
J054056

_____ ACTION OF GRAND JURY
TRUE BILL

_____ Donald Leapart
Foreperson of Grand Jury
Date: 7-14-08

_____ VERDICT

_____ Foreperson of Petit Jury
Date: _____

DOCKET NO. 2008-GS-32-2277

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS
JULY TERM 2008

THE STATE
vs.
Colvin Preston Washington

As charged

CDR #: 0095

Indictment for

KIDNAPPING

§ 16-03-0910

DONALD V. MYERS, SOLICITOR

0 - 30 yrs
Violent / Most Serious
DNA Registry

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
ATTEMPTED ARMED ROBBERY

§ 16-11-0330(B)

At a Court of General Sessions, convened on JULY 2008, the Grand Jurors of Lexington County present upon their oath:

That Colvin Preston Washington together with co-defendants did in Lexington County, South Carolina on or about January 22, 2007, while armed with a deadly weapon, to wit: a pistol, and/or what appeared to be a pistol, and/or what the defendant and co-defendants represented either by action or words to be a deadly weapon, and/or what a person present during the robbery would reasonably believe to be a deadly weapon, feloniously attempt to take from the person or presence of the victims, Laura McMichael and James Peeples, by means of force or intimidation, various personal property from the victims' residence at _____, with the intent to deprive the victims of the use of such property, in violation of Section 16-11-330 (B) 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.



ASSISTANT SOLICITOR

Jack Duncan

WITNESSES

Lexington County Sheriffs Department

Roy Mefford

DVM

ARREST WARRANT NUMBER

J054055

ACTION OF GRAND JURY

~~FRU BILL~~Donald Leapart

Foreperson of Grand Jury

Date: 7-14-08

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-32-2276

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2008

THE STATE

vs.

Colvin Preston Washington

As changed

CDR #: 0139

Indictment for

ATTEMPTED ARMED ROBBERY

§ 16-11-0330(B)

DONALD V. MYERS, SOLICITOR

0 - 20 yrs.

Violent / Most Serious

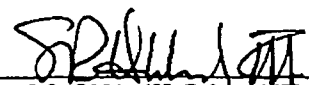
DNA Regis.

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	ATTEMPTED BURGLARY 1ST DEGREE
COUNTY OF LEXINGTON	)	
	)	§ 16-11-0311

At a Court of General Sessions, convened on JULY 2008, the Grand Jurors of Lexington County present upon their oath:

That Colvin Preston Washington, together with co-defendants, did in Lexington County, South Carolina, on or about January 22, 2007, willfully and unlawfully attempt to enter the dwelling of Laura McMichael and James Peebles at _____ in the Town of Swansea without consent and with the intent to commit the crime of Larceny therein, and while attempting to effect entry or in immediate flight from the dwelling was armed with a deadly weapon, or cause physical injury to a person who was not a participant in the crime, or used or threatened the use of a dangerous instrument, or displayed what appeared to be a pistol or other firearm, in violation of Section 16-11-311 (A) (1) and 16-1-80 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.



ASSISTANT SOLICITOR

ARP
ST

Jack Duncan

WITNESSES

Lexington County Sheriffs Department

Roy Mefford

DVM

ARREST WARRANT NUMBER

J054054

ACTION OF GRAND JURY

TRUE BILL

Donald Leaphart
Foreperson of Grand Jury

Date: 7-14-08

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-32-2275

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2008

THE STATE

vs.

Colvin Preston Washington

As charged

CDR #: 0079

Indictment for

ATTEMPTED BURGLARY 1ST DEGREE

§ 16-11-0311

DONALD V. MYERS, SOLICITOR

*15 yrs - Life
Violent / Most Serious
DNA Regis*