

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Florence County

Honorable Debra R. McCaslin, Circuit Court Judge

TIMOTHY C. TURBEVILLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001664

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) COURT OF GENERAL SESSIONS
) 2019-GS-21-00702
))
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))
))
State of South Carolina) TRANSCRIPT OF RECORD
vs.)
Timothy Christopher Turbeville)
DEFENDANT) January 9, 2020
) Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

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Attorney for the Defendant

KESHIA REED
Official Court Reporter

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I N D E X

(WHEREUPON, no witnesses were called.)

1 THE COURT: All right. Ladies and gentlemen,
2 if I can have your attention, those of you who were here
3 this morning and heard me go over the rights, if you all
4 just please bear with me. We've got some new folks here
5 that I need to go over the rights with. If you were not
6 here this morning and you think you might be entering a
7 guilty plea, I need to have your attention. I'm going to
8 go over your constitutional rights with you because if you
9 do decide to plead guilty, then you need to understand
10 these rights because for purposes of your plea if you go
11 forward with a guilty plea, you waive or you give up these
12 rights. So it's important you understand what they are.
13 I'm going to go over these rights with you as a group, so
14 that I don't have to repeat it, you know, 15 times because
15 these rights are the same for all of us. We all have the
16 same rights. It doesn't change, doesn't matter who you
17 are or what you're charged with or whether you're even
18 charged with anything. We all have these rights. So
19 rather than repeat it 15 times, I'm just going to go over
20 it with you once.

21 If you have any questions about anything I go
22 over, I will give you whatever time you need to talk to
23 your lawyer and have those questions answered. Also, the
24 fact that I'm going over these rights with you as a group
25 it does not bind you or commit you to do anything. In

1 other words, if after I go over these rights the State
2 calls your case and you've changed your mind and you do
3 not want to go forward, that's your decision. No one's
4 going to force you to do anything against your will, but
5 if you do decide that you want to go forward, it's
6 important that you understand these rights.

7 All of us have the right to remain silent. We
8 all have a right to a jury trial. If you decide to go
9 forward with a guilty plea, then for purposes of your
10 plea, you waive or give up those two important
11 constitutional rights. And when you give up your right to
12 a jury trial, you give up all the other rights that are
13 connected to it or associated with it. For example, if
14 you were to have a jury trial, you be presumed innocent of
15 the charge or charges that you're facing. That
16 presumption of innocence places the burden of proof on the
17 State to prove guilt. The way they would try to do that
18 is during that jury trial they would call witnesses to the
19 stand. Those witnesses would be placed under oath and
20 they would testify more than likely against your best
21 interest.

22 The Constitution of the United States says that
23 any person charged with a criminal offense has the right
24 to face their accusers or to confront their accusers.
25 What that means is during that jury trial through your

1 attorney, you would have the right to question the State's
2 witnesses or cross-examine them as to their testimony.
3 That's your right of confrontation under the constitution.
4 But when you plead guilty by entering that plea of guilt,
5 you waive or you give up that presumption of innocence and
6 you relieve the State of their burden of proof. And since
7 they don't have to prove your guilt, they don't have to
8 bring their witnesses into court and so you give up the
9 right to confront those witnesses.

10 Now, the State's not the only one that can call
11 witnesses in a trial. You could call witnesses in your
12 defense or you could take the witness stand and testify
13 yourself. You could do either one of those things or you
14 could do both of those things. But the important thing to
15 understand is is that you don't have to do anything. In
16 this country, a person charged with a criminal offense is
17 never required to prove themselves innocent. The burden
18 of proof is on the State to prove guilt. You could remain
19 silent. And if you chose to remain silent, I would tell
20 the members of the jury that that is your constitutional
21 right. And I would instruct them that the fact that you
22 chose to remain silent could not be considered by the jury
23 at all as to your guilt or innocence. As a matter fact, I
24 would tell them that the fact that you chose to remain
25 silent could not even be discussed in the jury room. They

1 are not to give it any consideration at all.

2 As I said earlier, the State has the burden of
3 proof. They have to prove guilt to a unanimous decision.
4 In other words, they have to convince all 12 members of
5 the jury that you are guilty or they could not convict
6 you. But if you did have a jury trial and if you were
7 convicted, you could appeal that conviction to a higher
8 court if you felt that was appropriate. We all have these
9 rights, but if you decide to go forward with a guilty
10 plea, then for purposes of your plea you waive or you give
11 up these rights, you will not have a jury trial and your
12 case will be resolved pursuant to your plea.

13 Now, you do have an appellate right with regards
14 to your plea. If you decide to go forward with a guilty
15 plea, if you wish to appeal this court's decision, you may
16 do that, but you would have to file a notice of intent to
17 appeal within ten days of today's date. Now, as I said
18 earlier, these are the rights that we all have. If you
19 have any questions about these rights at all, I'll give
20 you whatever time you need to talk to your lawyer and have
21 those questions answered. All right. So we're going to
22 take them one at a time, so guys if you'll follow them and
23 we'll bring you out one at a time.

24 (WHEREUPON, this begins the guilty plea.)

25

1 THE COURT: Yes, sir.

2 MR. TUCKER: Thank you, Your Honor. May it
3 please the Court.

4 THE COURT: Yes, sir.

5 MR. TUCKER: This is indictment 2019-GS-21-0702
6 State of South Carolina vs. Timothy Christopher
7 Turbeville. Mr. Turbeville is pleading guilty to one
8 count of attempted murder for which he can get up to 30
9 years. This is a negotiated plea with a negotiated
10 sentence of 20 years.

11 THE COURT: Thank you, sir.

12 THE CLERK: Sir, please raise your hand. Do you
13 swear to tell the truth, the whole truth and nothing but
14 the truth so help you God?

15 THE DEFENDANT: I do.

16 THE COURT: Sir, you are Timothy Christopher
17 Turbeville?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. Mr. Turbeville, indictment
20 2019-GS-21-702 that is a true billed indictment charging
21 you with the offense of attempted murder which carries a
22 maximum penalty of up to 30 years and is classified under
23 South Carolina law as a violent and a most serious
24 offense. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Sir, understanding the nature of the
2 charge against you and the possible punishment, how do you
3 plead to that charge, Mr. Turbeville, guilty or not
4 guilty?

5 THE DEFENDANT: Guilty.

6 THE COURT: Thank you, sir. Ms. Parrott, you
7 represent Mr. Turbeville?

8 MS. PARROTT: Yes, Your Honor.

9 THE COURT: Have you discussed with him the
10 charge that he's before the Court on and his
11 constitutional rights?

12 MS. PARROTT: Yes, Your Honor.

13 THE COURT: Thank you, ma'am.

14 Mr. Turbeville, am I correct, sir, you're 51
15 years of age?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And could you tell me how long you
18 been in jail on this charge?

19 THE DEFENDANT: Well, I was arrested in April of
20 2018.

21 THE COURT: Okay.

22 MS. PARROTT: Your Honor, he was arrested in
23 North Carolina and then was brought to South Carolina,
24 that's something that I plan on addressing with the Court
25 as part of my mitigation as well, but if you give him

1 credit for just the South Carolina time, it's 373 days,
2 but in North Carolina time included would be 635.

3 THE COURT: Well -- and, again, I guess, we
4 might as well address it while we're here.

5 MS. PARROTT: Okay.

6 THE COURT: While he was in North Carolina, was
7 under a hold or any type of a ---

8 MR. TUCKER: The warrant wasn't served on him
9 until he returned here to South Carolina on the 2nd of
10 January 2019. What happened, the offense date for this
11 particular situation was April the 15th 2018.
12 Mr. Turbeville was arrested in North Carolina driving the
13 victim's car on April the 23rd 2018. At that time he was
14 also charged with what would be the equivalent in North
15 Carolina of failing to stop for a blue light. He was
16 arrested for that offense and then he spent from April the
17 23rd 2018 in North Carolina until he was brought to South
18 Carolina on January the 2nd 2019 on that North Carolina
19 specific offense. So the State's position would be he
20 would not be entitled to any of that time. He was not
21 served with a warrant until -- there was a NCIC indication
22 put in for the warrant outstanding, but he wasn't actually
23 served with the warrant until January the 2nd of 2019 when
24 he was brought back to South Carolina pursuant to the
25 hold.

1 MS. PARROTT: And, Your Honor, if I may be
2 heard?

3 THE COURT: No -- I'm just kidding. Of course,
4 you can be heard.

5 MS. PARROTT: He's not free to leave obviously
6 whenever he's at that point. They transported him from
7 North Carolina from that incarceration there directly to
8 Effingham for the incarceration here. I think it's
9 discretionary, Your Honor.

10 THE COURT: I'm not -- well, I mean -- and I
11 would certainly appreciate any law that you all present to
12 me on this. It's always been my understanding that if
13 there is a hold placed on someone whether or not they have
14 been physically been served with the warrant or not, that
15 they get credit for that time. It's always been my
16 understanding. It's always been the way I've operated,
17 but I don't have any case law to support that.

18 MR. TUCKER: And the State's position would be,
19 Your Honor, that he was serving time in North Carolina
20 specific to a North Carolina charge. If he were to get
21 credit towards a South Carolina charge at the same time,
22 he's more less double dipping so to speak. He gets credit
23 for both offenses, the North Carolina specific offenses
24 the time that he served from April the 23rd until he was
25 returned ---

1 THE COURT: Well, if you served the warrant on
2 him, it be the same thing.

3 MR. TUCKER: Right. But he wasn't served the
4 warrant until he returned back to South Carolina. There
5 was a hold on him obviously, so that when he was released
6 in North Carolina he couldn't just hit the street and
7 would be returned back to South Carolina.

8 THE COURT: Correct. I guess, what I'm saying
9 though is -- I mean, there's no issue with somebody double
10 dipping. In other records, there wouldn't be an argument
11 if they had served the warrant on him and he was still
12 double dipping at that point.

13 MR. TUCKER: Right. I guess, the trigger
14 mechanism would be the actual service of the warrant in
15 North Carolina which didn't occur. In other words, they
16 just put a hold to keep him from being released, but he
17 wasn't returned to South Carolina until January the 2nd of
18 2019. And we would argue it was at that point that he
19 starts to accrue time towards whatever sentence he would
20 get here on this particular charge.

21 MS. PARROTT: Your Honor, if he's got a hold on
22 him, then they know it's because of a warrant that's
23 outstanding in South Carolina. This is just a matter of
24 somebody putting a piece of paper in his hand and he's not
25 able to do anything otherwise. I understand that that is

1 the difference between notice and knowledge, maybe the
2 difference between service of something, but he can't do
3 anything about making them serve that warrant on him.
4 We've had this argument with law enforcement before with
5 people in our department of corrections here. They put
6 the hold on them. They wait until they get them back in
7 the detention center and then they serve the warrant on
8 them, that's just more their issue of efficacy and whether
9 or not they want to travel up the road.

10 THE COURT: All right. On the South Carolina
11 time, no question but that he's got 373 days?

12 MS. PARROTT: Yes, Your Honor.

13 THE COURT: All right. And if I give him the
14 credit for the North Carolina time, that takes it to what?

15 MS. PARROTT: Your Honor, the Solicitor says
16 April 23rd that would take eight more days away from what
17 I had. That would be 627.

18 THE COURT: All right, let's see. I'll consider
19 it.

20 MR. TUCKER: And, Your Honor, if it may help,
21 Mr. Jepertinger was kind enough to hand me 24-13-40
22 computation of time serve by prisoners. There's -- when
23 you get down to the -- applies to us provided however that
24 credit for time served prior to trial and sentencing shall
25 not be given one when the prisoner at the time he was

1 imprison prior to trial was an escapee from another
2 pretrial institution or penal institution or when the
3 prisoner is serving a sentence for one offense and is
4 awaiting trial and sentence for a second offense in which
5 case he shall not receive credit for time served prior to
6 trial in a reduction of his sentence for the second
7 offense and I think that's what we have here. He was
8 serving time for a North Carolina crime for that period of
9 time from the 23rd of April 2018 until he was released to
10 come back to South Carolina. So I think 24-13-40 kind of
11 speaks to that.

12 THE COURT: Could you forward that to me?

13 MR. TUCKER: Yes, sir, I certainly will.

14 THE COURT: You got my number?

15 MR. TUCKER: Yes, sir.

16 THE COURT: All right. Well, let's -- we'll
17 proceed on and I'll address that in a little bit, but,
18 Mr. Turbeville, earlier this morning when I had everyone
19 here for the -- went over the rights with everyone were
20 you present for that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you understand those rights,
23 sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any question about those

1 rights or do you need any more time to discuss them with
2 Ms. Parrott?

3 THE DEFENDANT: Ms. Parrott's already explained
4 everything.

5 THE COURT: Okay. You understand that by
6 entering your plea here today then for purposes of this
7 plea you waive or give up those rights and that you will
8 not have a trial?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. The State has entered into
11 negotiations from my understanding in the -- are the other
12 charges being dismissed did you say that?

13 MR. TUCKER: It was just this one charge, Your
14 Honor.

15 THE COURT: Just this one charge, okay. That
16 the State has entered into negotiations and is -- if I
17 follow those negotiations would sentence you to 20 years
18 and give you credit for the time you've served and that's
19 currently in question as to how much that is, but is that
20 your understanding of the negotiation?

21 THE DEFENDANT: Yes, sir, that's what I was
22 told.

23 THE COURT: Okay. Now, let me ask you this
24 because I just want to make sure that we're on the same
25 page and there's -- nobody's throwing a curve ball at you.

1 I'm going to look at the law and determine whether or not
2 you're going to get credit for the North Carolina time as
3 well.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: But you understand that with regards
6 to the 20 year sentence, I only have two options. I can
7 follow the negotiation and do that, but if I don't feel
8 like I can do that, then I would allow you to withdraw
9 your plea. In other words, I don't have the authority to
10 sentence you to 30 years. In other words, you get the
11 benefit of the negotiation or I'll let you withdraw your
12 plea.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Now, so that we don't have
15 any issue regarding that, the credit for time served has
16 anyone -- has anyone promise you that you're going to get
17 credit for the 600 days plus or that's something that you
18 all are just asking me to consider?

19 THE DEFENDANT: That's just something we're
20 asking you to consider, Your Honor.

21 THE COURT: Okay.

22 THE DEFENDANT: I was actually pulled in North
23 Carolina because of this charge. They BOLO the vehicle,
24 that's why I was ---

25 THE COURT: Right. You got a traffic stop and

1 then this came up in the NCIC.

2 THE DEFENDANT: Yes, sir. And they held me for
3 it and then extradition back here after I finish the time
4 there.

5 THE COURT: Got you. Okay. All right. So
6 whether I give you the credit for the 600 plus days or
7 give you just the credit for the South Carolina time, does
8 that affect your decision to go forward with your plea?

9 THE DEFENDANT: No, sir.

10 THE COURT: Okay. And I'm going to look at the
11 law because I want to make sure that I'm following the law
12 obviously.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, other than the negotiations
15 that we just talked about, has anyone promised you
16 anything, held out any hope of reward or threaten you in
17 any way to get you to enter this plea?

18 THE DEFENDANT: No, sir.

19 THE COURT: Are you satisfied with the
20 representation and the advice that Ms. Parrott has
21 provided?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you, Mr. Turbeville, today as
24 you stand before the Court, are you under the influence of
25 any substance that would affect your ability to understand

1 what you're doing?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you entering your plea on this
4 charge of your own free will, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And are you guilty of this matter?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. I'm going to ask Mr.
9 Tucker to go over the facts for me. If you listen
10 carefully, I'll get back with you in just a moment.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Tucker.

13 MR. TUCKER: Thank you, Your Honor. May it
14 please the Court. Your Honor, before I begin with
15 recitation of the facts, I wanted to make the Court aware
16 that the victim in this matter Ms. Crystal Lane Gandy she
17 is present in the courtroom, but does not wish to address
18 the Court. But I did want to make the Court aware that
19 she is in fact present.

20 THE COURT: Okay.

21 MR. TUCKER: Date of this incident, Your Honor,
22 is April 15th 2018. The time is around 8:14 p.m. or a.m.
23 rather. The incident location is 5235 East Palmetto
24 Street room nine, which is the Economy Inn located in
25 Florence County. On that date and time, deputies

1 responded to an assault complaint at that particular
2 location. When they arrived, they made contact with the
3 hotel manager who indicated that the female occupant that
4 was later identified as the victim in this case Ms.
5 Crystal Lane Gandy had come to the manager's door and
6 indicated that she been stabbed and she wanted the manager
7 to call 9-1-1.

8 When deputies arrived, they were able to look at
9 Ms. Gandy who had suffered some rather horrific knife
10 wounds that they could tell. She wasn't able to give a
11 whole lot of information right then and there, but
12 ultimately was able to tell them that she been in a room
13 staying with an individual who she identified as this
14 defendant Timothy Christopher Turbeville. She indicated
15 that Mr. Turbeville and she had a relationship, that she
16 had picked him up in Columbia about two weeks prior to
17 that. They been in Florence County, but they were staying
18 at the hotel at that present time.

19 She indicated that the morning of the assault
20 occurred Mr. Turbeville had borrowed a car, had gone to
21 get some breakfast and come back. She was still in the
22 bed. She further indicated that at some point Mr.
23 Turbeville asked if she wanted anything to eat. She said
24 no. And Ms. Gandy indicated that when she got out of the
25 bed and was walking and standing up, Mr. Turbeville came

1 up behind her and started to attack her with a knife. She
2 indicated that she was stabbed several times. One of the
3 stab wounds was in the left back of the deltoid muscle.
4 She indicated that to this day she still has problems
5 raising her left arm.

6 The more horrific wounds were wounds to the
7 throat. She received a large laceration from what looks
8 to be the point of the right jaw, down the throat and
9 almost to the back of the neck. And, Your Honor, just for
10 context purposes, I like to show you a picture of the
11 wounds as they appeared that day. You kind of get an idea
12 of how serious the wound was.

13 At any rate Ms. Gandy was able to make a full
14 recovery however thankfully. And she received follow-up
15 treatment after she was released from the hospital with
16 regards to the injury to her neck and to the other
17 injuries that she sustained as a result of being stabbed
18 by Mr. Turbeville.

19 When law enforcement began an investigation,
20 they were made aware that there was an ATM at a convenient
21 store located within a short distance of the hotel. What
22 drew law enforcement to that location was that several
23 people who had come in that morning who had used the ATM
24 made the convenient store manager aware that there appear
25 to be a large amount of blood there at the ATM. And they

1 were, of course, concerned a crime had been committed
2 there. They were able to ascertain that Mr.
3 Turbeville had actually used a ATM card taken from Ms.
4 Gandy in addition to her car, but at any rate the blood
5 from the assault was all over the ATM machine itself and
6 so they were able to ascertain that no crime occurred
7 there, but in fact that's where Mr. Turbeville had used
8 her cards shortly after stabbing her.

9 At any rate, Your Honor, as you heard, he went
10 up into North Carolina. He was arrested up there after a
11 chase involving Ms. Gandy's car that he was still driving.
12 As was told to you, there was a be on the look out for
13 that particular vehicle that was taken from Ms. Gandy by
14 Mr. Turbeville after he stabbed her. And he was arrested
15 there on April 23rd. This offense having occurred April
16 the 15th here in Florence County. At any rate, he was
17 charged with again increasing speed to allude, which is
18 the same as failure to stop for a blue light here and
19 served up there in North Carolina on that specific offense
20 from April the 23rd until he was released on January 2nd
21 2019 returned back here to South Carolina.

22 In terms of a prior record, Your Honor, he has
23 -- just hit the general sessions offenses. Looks like in
24 2002, possession of a schedule two substance, looks like
25 five years for a forgery, looks like those were about the

1 same time within a month or two of one another. Looks
2 like multiple counts of forgery, fraudulent checks in
3 2002, 2003 failure to stop for a blue light looks like a
4 six month sentence for that. And then there are breach of
5 trust with fraudulent intent 2004 looks like he received a
6 five year sentence for that. Assault and battery high and
7 aggravated which looks to be under the old scheme of the
8 common law assault and battery high and aggravated nature
9 looks like he received a sentence of ten years suspended
10 to four years, that was in 2009. And then again there was
11 some other magistrate level offenses. And then I think
12 his next general sessions offense is 2014 grand larceny
13 more than two but less \$10,000 looks like he was given a
14 30 month sentence for it. I think that maybe it in terms
15 of general sessions offenses.

16 THE COURT: All right. Mr. Gandy (sic), the
17 facts surrounding this charge are those facts correct,
18 sir?

19 THE DEFENDANT: No.

20 THE COURT: All right. Well, tell me how ---

21 THE DEFENDANT: I didn't just attack her. We
22 had a verbal altercation and we were both really
23 intoxicated, been up like seven days smoking crack,
24 drinking heavily. I got cut in the altercation. I don't
25 remember the whole thing, but for the most part, yeah. I

1 mean, but I didn't just attack her. I mean, we had been
2 together since 2015. And I love her very much even to
3 this day. I wish this stuff didn't even happen. I don't
4 even remember what triggered everything or what happened
5 because I was really intoxicated.

6 THE COURT: You don't deny the assault, but it
7 wasn't simply out of nowhere just bam.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: It was as a result of an argument or
10 whatever?

11 THE DEFENDANT: Yes, sir. It was -- whatever, I
12 mean, it was an argument.

13 THE COURT: Okay. All right. Well, now, you
14 understand that when anyone pleads guilty that when you
15 plead guilty you waive or you give up any possible
16 defenses you may have?

17 THE DEFENDANT: Yes, sir, I understand.

18 THE COURT: So if you were to feel that you were
19 reacting or responding in self-defense, you understand
20 that that is a defense, but you understand that you waive
21 or you give that up when you enter a guilty plea?

22 THE DEFENDANT: Yes, sir. Yes, sir.

23 THE COURT: Okay. All right.

24 THE DEFENDANT: I just wanted you to be aware
25 that I just didn't attack her out of the blue.

1 THE COURT: Okay. Sure. I understand.

2 THE DEFENDANT: Okay.

3 THE COURT: All right. I find that the State
4 has provided a substantial factual basis to support the
5 charge that Mr. Turbeville has pled guilty to. I believe
6 that his decision to enter this plea has been done freely,
7 voluntarily and intelligently. He has had the advice and
8 counsel of an outstanding attorney in Ms. Parrott.
9 Mr. Turbeville has indicated to the Court that he is
10 satisfied with that representation and the advice that Ms.
11 Parrott has provided and I'm going to accept his plea.

12 Ms. Parrott, I'll be happy to hear from you,
13 ma'am.

14 MS. PARROTT: Thank you, Your Honor. May it
15 please the Court. Your Honor, this is a negotiated
16 sentence and we are asking that you go along with the
17 negotiated sentence of 20 years. As you already -- we've
18 already talked about it quite a bit here. The only
19 question is exactly how much time to give him credit for.

20 I would note also Your Honor that if you look
21 on his NCIC from North Carolina, it shows the arrest on
22 April the 15th of 2018. So they did catch him the same
23 exact day that this incident occurred up in Cumberland
24 County North Carolina. It's not until April the 23rd that
25 law enforcement here in South Carolina finds out about the

1 fact that he has been arrested up there. So from April
2 the 23rd on would be when they could have served the
3 warrant, it's just up to them as to whether or not they
4 chose to do so, but they have that hold on him and he was
5 not free to go, Your Honor.

6 Now, regarding the rest of this Your Honor and
7 more to the point on all of this, he has been extremely
8 honest about this, Your Honor. He hadn't been out of
9 prison for too long, he met up with her again. As he says
10 they've known each other since 2015. They started doing
11 cocaine -- crack, Your Honor, and had been doing it for 16
12 days. He says they probably gone through \$3,000 worth of
13 cocaine in that time. So I think it is a horrible
14 situation Your Honor. And we're certainly glad that she
15 is still alive and has made it through this Your Honor.
16 And I know he is extremely sorry. He's written her
17 letters telling her that he is extremely sorry for
18 everything that has happened and he wish it never
19 occurred. So I know he is extremely remorseful for his
20 actions in regards to this Your Honor.

21 As for the rest of it Your Honor, he and I have
22 talked about the fact that this is a violent offense. So
23 he knows that he will have to do at least 85 percent of
24 this offense. More than likely, he may end up doing 100
25 percent of the offense if he gets into trouble, but he

1 won't even get credit for anything until he has done at
2 least 80 percent because of this offense being what it is.

3 He and I have also talked about the fact that
4 this is a most serious offense and so this is a strike on
5 the two strike scheme. And that if we was to get either
6 another most serious offense or if he was to get serious
7 offenses after this and those on the three-strike scheme
8 or the combination of the two, the right combination of
9 the two could end up in a life sentence for him regardless
10 of any of those situations, Your Honor. So he is aware of
11 all of the implications of doing this plea. And we are
12 still here asking for you to accept this as a negotiated
13 sentence, Your Honor.

14 THE COURT: Okay. All right. Mr. Turbeville,
15 anything further, sir?

16 THE DEFENDANT: I just want to say that I'm
17 really sorry about everything that happened and I wish I
18 could take it back and I try every day to take it back,
19 but I can't take it back. And I just stand before broken.
20 And I just beg you to take this plea and not give me any
21 more time. And I just want to tell Crystal I'm sorry and
22 her family and my family.

23 THE COURT: Okay. All right. Thank you, sir.
24 Anything further?

25 MR. TUCKER: No, Your Honor.

1 THE COURT: All right. I'm going to take a
2 short recess, so that I can review this. And it's about
3 time for a break. We're going to take about a five or ten
4 minute and we'll get started back. And I'll look at this
5 and have a decision on that.

6 MS. PARROTT: Thank you, Your Honor.

7 (WHEREUPON, a break was taken.)

8 THE COURT: All right. I've reviewed the
9 statute or the -- what was sent to me. And I'm going
10 to -- it somewhat confuses me -- when you the read
11 statute, I'm not terribly confused except for the fact
12 that historically even the scenario Mr. Tucker mentions if
13 you look at just the statute, it doesn't even provide for
14 credit for time if they served a warrant on him. It's
15 like this statute doesn't address the serving of a warrant
16 at all or and whether that makes any difference at all.
17 And I know there's a case that talks about -- and this is
18 a little bit different. I can't remember if it's State
19 vs. Lane or something. Anyway, there's a case that --
20 where they talked about if someone is locked up in South
21 Carolina about the time frame where law enforcement must
22 serve warrants or there's some risk of the case being, you
23 know, affected. Having said all that, the way I view this
24 is when Mr. Turbeville was -- and we didn't go into any
25 detail so I don't know what happened up there, but when

1 Mr. Turbeville was arrested in North Carolina for the --
2 what is equivalent to our failure to stop and a hold was
3 placed on him, if he would have bonded out, he wouldn't
4 have gotten out because there was a hold on him. If he
5 posted a bond instead of resolving the case in North
6 Carolina, I don't know how that works. I guess, if you
7 posted the bond, then they would then extradite him down
8 here.

9 MR. TUCKER: Yeah, he would have returned here
10 for sure.

11 THE COURT: He would have been returned here.

12 MR. TUCKER: Yes, sir.

13 THE COURT: So there's that. The other thing is
14 if he would not have picked up a charge in North Carolina,
15 if it would have been just a regular traffic charge or
16 traffic stop and he didn't flee he stopped, there was a
17 BOLO on him, they would have taken him into custody and he
18 would have been returned here.

19 MR. TUCKER: Correct, Your Honor.

20 THE COURT: So having said all these things, I
21 think he's entitled to the time on 2019-GS-21-702. The
22 sentence of the Court is that you be committed to the
23 state department of corrections for a period of 20 years,
24 give you credit for the 627 days that you have served.
25 Good luck to you, sir.

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THE DEFENDANT: Thank you.

MR. TUCKER: Thank you, Your Honor.

MS. PARROTT: Thank you, Your Honor.

END OF REQUESTED TRANSCRIPT

FILED

20 20 CP 21 830

STATE OF SOUTH CAROLINA)

2020 MAR 16 PM 2: 24

IN THE COURT OF COMMON PLEAS

COUNTY OF)

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

Full name and prison number (if any) of Applicant

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention SCDC - Kirkland Rd E. Center, Columbia, SC. 29210
2. Name and location of Court which imposed sentence: 10th Circuit General Sessions
3. Name(s) of co-defendant(s) (if any) N/A Florence, SC. 29501
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2019-GS-21-00702
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 1-9-2020
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I was not held in custody unlawfully
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance to Counsel
- (b) _____
- (c) _____

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

- (a) My attorney Karen Parrot SC Bar # 15636
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

spent a total of five minutes with me on my case. From the start she had a nasty attitude toward me. My victim being a female had alot to do with the way Mrs. Parrot handled my case.

I had clear defensive wounds on both hands. My attorney could have used a Duress or stand your ground defense. When I asked her about these defenses she told me that the severity of the cut on my victim's neck that I couldn't use either one of those defenses. Which wasn't the truth.

She also coerced me into a plea stating that if I didn't accept the plea on Thursday 1-8-2020. That my trial would start on Monday 1-12-2020. And I would get 30 years.

My victim was a female in this case and I feel that Mrs Parrot worked with the solicitor to railroad me into a plea.

I was attacked by Krystal Gandy and during the struggle for the knife, she got cut on her neck. I didn't try and kill anyone. I'm asking that my case be handled by a another attorney.

The³⁴ solicitor Todd Tucker SC Bar# 13601 stated that the victim Krystal Gandy was cut side to side on her neck. This isn't so. She was bent forward toward me in a violent rage trying to get the knife back from me after I got cut on both hands trying to ward off her attack. During the struggle she was cut from the bottom of her neck up to her face.

We were both drunk and high on crack at the time. We had been up for several days. She attacked me over a text message from a year before.

Krystal and I had been together since Oct of 2015. If we would've been sober none of this would've happened.

my attorney didn't use any of this in my defense. I had poor legal representation from start to finish. I'm asking that this Post-Conviction Relief be granted me for the ineffective assistance to Counsel by my attorney.

I'm asking for a time reduction more inline with the charge I committed. Or a time served sentence for the time I've already done. Thank you sincerely. Timothy J. Jurek

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

A time reduction. more in line with the crime
of assault 1st Degree.

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

No

STATE OF SOUTH CAROLINA

)
)

VERIFICATION

County of

Timothy Christopher Turbeville

I, *Timothy Christopher Turbeville*, 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.

Timothy Christopher Turbeville

SWORN to and subscribed before me this 12th
day of March, 2020.

B Mangold (L.S.)
Notary Public

BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires: 8/10/2028

FILED
2020 MAR 16 PM 2:25
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

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

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

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

Timothy Christopher Turbeville
Applicant

SWORN or affirmed to and subscribed before me this
12th day of March, 2020

Beth A. Mangold
Notary Public

BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires 8/10/2028

My Commission Expires: _____

FILED
2020 MAR 16 PM 2:25
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

FILED

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

2020 JUL -8 PM 4: 38

Timothy Turbeville, #299569,

Applicant, DORIS POULOS O'HARA

Case No.: 2020-CP-21-830

v.

CCCP & GS
FLORENCE COUNTY, SC

State of South Carolina,

Respondent.

**RETURN
(Counsel Appointed)**

In response to Timothy Turbeville's (Applicant) action for post-conviction relief (PCR) commenced March 16, 2020, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the January 2020 term of the Florence County Grand Jury for attempted murder (2019-GS-21-0702). Assistant Public Defender Karen Parrot represented Applicant. Assistant Solicitor Todd Tucker prosecuted the case.

Applicant pleaded guilty, as indicted, to attempted murder on January 9, 2020, before the Honorable Thomas A. Russo. Applicant pleaded guilty with a negotiated twenty-year sentence. Judge Russo accepted Applicant's guilty plea and sentenced him as negotiated. Applicant did not appeal.

II. Facts

Applicant stabbed his girlfriend, Crystal Lane Gandy, at the Economy Inn in Florence County. Plea Tr. 17. On April 15, 2018, at about 8:15 a.m. law enforcement responded to an assault complaint from the hotel manager. Plea Tr. 17-18. The manager called in response to Gandy rushing to the manager's door, pleading that he call 9-1-1 because she had been stabbed.

Plea Tr. 18. Police observed horrific knife wounds on Gandy's neck and shoulder. Plea Tr. 18. Gandy explained she had shared the room with Applicant and they had stayed at the hotel for the past two weeks. Plea Tr. 18. Gandy informed police that Applicant borrowed her car earlier that morning to go get breakfast. Plea Tr. 18. When he returned, Applicant asked Gandy if she wanted something to eat; however, Gandy declined. Plea Tr. 18. Gandy got out of bed and as she was walking, Applicant stabbed her repeatedly from behind. Plea Tr. 18-19. One of Gandy's wounds was in the left back of the deltoid muscle, which she still had problems raising her arm at the time of the plea hearing. Plea Tr. 19. However, the worst stab wound Gandy endured was a large laceration from the point of her right jaw, down her throat, and almost to the back of her neck. Plea Tr. 19.

After the attack, Applicant left in Gandy's car and fled to North Carolina. Plea Tr. 20. When North Carolina law enforcement attempted to pull Applicant over, he led them on a chase. Plea Tr. 20. Applicant was charged in North Carolina for increasing speed to allude and was imprisoned for the offense from April 23, 2018 to January 2, 2019. Plea Tr. 20. Applicant was extradited to South Carolina immediately after completing his North Carolina sentence to face the underlying charges. Plea Tr. 20.

III. Current Application

Applicant timely commenced this PCR action on March 16, 2020. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. Attorney did not present duress or stand your ground defenses
2. Involuntary guilty plea
 - a. Attorney coerced me into a plea stating that if I didn't accept the plea on Thursday 1-8-2020. That my trial would start on Monday 1-12-2020. And I would get 30 years.

Applicant requests relief in the form of a reduction in time more in line with the crime of assault–first degree.

Attached herewith and incorporated herein are the Florence County Clerk of Court records regarding the subject conviction, Applicant’s SCDC records, the plea transcript, and the records of this PCR action. The State reserves the right to amend this Return upon receipt of any relevant materials

IV. Response to Allegation of Ineffective Assistance of Counsel

Applicant alleges ineffective assistance of plea counsel because plea counsel did not present duress or stand your ground defenses; however, Applicant’s allegations of ineffective assistance of plea counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant

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

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992).

In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689. Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014).

Here, Applicant pleaded guilty fully knowing his guilty plea meant he was giving up his right to present a defense. During the plea colloquy, Judge Russo informed Applicant that, by pleading guilty, Applicant was giving up any possible defenses he may have. Plea Tr. 22.

Judge: So if you were to feel that you were reacting or responding in self-defense, you understand that that is a defense, but you understand that you waive or you give that up when you enter a guilty plea?

Applicant: Yes, sir. Yes, Sir.

Judge: Okay. All right.

Applicant: I just wanted you to be aware that I just didn't attack her out of the blue.

Plea Tr. 22. Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Response to Allegation of Involuntary Guilty Plea

Applicant alleges his plea was involuntary because plea counsel coerced him into a plea stating if he did not accept the plea on Thursday January 8, 2020, his trial would start Monday, January 12, 2020 and he would get thirty years. This argument is without merit.

A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *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. United States*, 519 F.2d 347 (4th Cir.1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir.1976).

A defendant who pleads guilty on the advice of counsel may attack the voluntary, knowing, and intelligent character of the plea by showing that counsel's representation was below an objective standard of reasonableness. *Porter v. State*, 368 S.C. 378, 383–84, 629 S.E.2d 353, 356 (2006); *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). The “prejudice,” requirement focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). In other words, the applicant must prove prejudice by showing that, but for counsel’s inadequacy, there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial. *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007); *Wolfe v. State*, 326 S.C.158, 485 S.E.2d 367 (1997).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969); *Roddy v. State*, 339 S.C. 29, 33–34, 528 S.E.2d 418, 421 (2000). “A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.” *Pittman v. State*, 337 S.C. 597, 600, 524 S.E.2d 623, 625 (1999).

“[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). “When determining issues relating to guilty pleas,

[courts] consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing.” *Roddy*, 339 S.C. at 33. “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” *Dalton v. State*, 376 S.C. 130, 138-39, 654 S.E.2d 870, 874 (Ct. App. 2007); *Wolfe*, 326 S.C. at 165 (1997).

The State submits the record fully supports the knowing and voluntary nature of Applicant’s plea. Judge Russo conducted an extensive plea colloquy with Applicant prior to accepting his guilty plea. Additionally, Counsel told the court she had advised Applicant “of the ramifications of this plea, the penalties involved, the elements of this offense and his constitutional rights.” (GP Tr. 3.) It is clear from the record Applicant understood the charges and consequences of his plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the State requests an evidentiary hearing to fully resolve this issue. *See Sharper*, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

VI. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C.

231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VII. Any and All other Allegations

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

VIII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel and Applicant's claim of involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General

By: Michael D. Davidson
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

July 1, 2020

- (b) **The result in each such Court to which you appealed:**
- (c) **The date of each result:**
- (d) **If known, citations of any written opinion or orders entered pursuant to such results:**

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

- (a) Plea counsel did not explain the right to appeal.

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

- (a) Petitioner's guilty plea was not knowingly, voluntarily, or intelligently entered due to counsel's ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, when counsel failed to interview potential witnesses on behalf of the Petitioner for the purpose of establishing a defense of self-defense.

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

- (a) Petitioner advised his plea counsel that the injuries sustained by the purported victim, Crystal Gandy, were in self-defense as she attacked him while under the influence of drugs which were supported by defensive wounds/injuries sustained by Petitioner. Further, plea counsel did not inquire about, nor did she investigate, potential witnesses to support the Petitioner's defense of self-defense who would have testified of the volatile tendencies and violent behavior of the purported victim. Petitioner avers that had his case been fully investigated, he would not have pled guilty and would have proceeded to trial.

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

- (a) **Any petition in State Court under South Carolina Law: NO**

- (b) Any petition in State or Federal Court 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
- (b) The name and location of the Court in which each was filed:
- i. N/A
- (c) The disposition thereof:
- i. N/A
- (d) The date of each such disposition:
- i. N/A
- (e) If known, the citations of any written opinions or ordered entered pursuant to each such disposition:
- i. N/A

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. N/A
- (b) The proceedings in which each ground was raised:
- i. N/A

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) Petitioner's Application for Post-Conviction Relief is the first proceeding in which he may allege ineffective assistance of counsel.

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

- (a) Your arraignment and plea? YES
- (b) Your trial, if any? N/A
- (c) Your Sentencing? YES
- (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. Karen Parrott, Esquire, 180 N. Irby St., Florence, SC 29501.
- (b) The proceedings at which each such attorney represented you:
- i. Jury selection, plea and sentencing.

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

- (a) Vacate conviction and sentence and for a new trial to be ordered.

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

- (a) Petitioner is not under any other sentence.

Dated this 28th day of November, 2022, at Florence, South Carolina.

Respectfully submitted,



JOSHUA A. BAILEY
SC Bar No.: 76965
Attorney for the Petitioner

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1 State of South Carolina) **TRANSCRIPT OF RECORD**
 2 COUNTY OF FLORENCE) CASE NO. : 2019-CP-21-0830

3 -----

4 June 12, 2023

5 **BEFORE:** The Honorable Debra McCaslin

6 -----

7

8 Timothy Turbeville,)

9 Applicant,)

10 vs.)

11 State of South Carolina,)

12 -----

13 **APPEARANCES:**

14 Russell Barlow, II, Esquire
 15 Attorney for the State of South Carolina

16 Joshua Bailey, Esquire
 17 Attorney for the Defendant.

18

19 Julie A. Kevish
 20 Official Court Reporter

21

22

23

24

25

25

I-N-D-E-X

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June 12, 2023

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P-R-O-C-E-E-D-I-N-G-S

4

THE COURT: Do you want to call your case?

5

MR. BARLOW: Thank you, Your Honor. May it please

6

the Court?

7

THE COURT: Yes, sir.

8

MR. BARLOW: Russ Barlow on behalf of the State of

9

South Carolina. This is the post-conviction relief matter of

10

Timothy Turbeville versus the State, case number 2020-CP-21-830

11

out of Florence County. Applicant was indicted at the

12

January 2020 term of Florence County Grand Jury for attempted

13

murder, 2019-GS-21-0702. Assistant Public Defender Karen

14

Parrott represented Applicant and Assistant Solicitor Todd

15

Tucker prosecuted the case. Applicant pleaded guilty as

16

indicted to attempted murder on January 9, 2020 before the

17

Honorable Thomas A. Russo. Applicant pleaded guilty with a

18

negotiated 20-year sentence and Judge Russo accepted

19

Applicant's guilty plea and sentenced him as negotiated.

20

Applicant did not appeal. Applicant timely commenced this PCR

21

action on March 16, 2020 and alleging ineffective assistance of

22

plea counsel and the single claim that we have is that plea

23

counsel failed to interview potential witnesses on behalf of

24

the Applicant for the purposes of -- Your Honor, it's my

25

understanding they are withdrawing the amended application and

1 they are just moving forward on the original application on
2 failure to prepare self defense, and before this Court is the
3 Florence County Clerk of Court records, Applicant's records
4 from the South Carolina Department of Corrections, Applicant's
5 guilty plea transcript, and the records of this PCR action, and
6 at this time we would just ask Mr. Bailey to state for the
7 record which allegation he intends to move forward on.

8 MR. BAILEY: Thank you, Your Honor, may it please the
9 Court?

10 THE COURT: Yes, sir.

11 MR. BAILEY: Mr. Barlow is correct, Your Honor, that
12 we are withdrawing the amended application for post-conviction
13 relief which was filed November 30, 2022. We'll be proceeding
14 on the application filed by my client on March 16, 2020 which
15 contains about two and a half pages of his allegations. They
16 all stem from a self-defense issue in the representation, Your
17 Honor. That's what we'll be proceeding on today.

18 THE COURT: Okay. Mr. Turbeville, are you ready to
19 go forward with your post-conviction relief hearing?

20 THE APPLICANT: Yes, Your Honor.

21 THE COURT: You know if you win the only thing I can
22 do is send you back and have you retried?

23 THE APPLICANT: Yes, ma'am.

24 THE COURT: And if you had any outstanding charges --

25 THE APPLICANT: Yes, ma'am.

1 THE COURT: -- those would be brought back up, do you
2 understand?

3 THE APPLICANT: Yes, ma'am.

4 THE COURT: And if there were any negotiations there
5 would be no negotiations and you'd be looking at the original
6 sentence --

7 THE APPLICANT: Yes, ma'am.

8 THE COURT: -- that that charge would hold?

9 THE APPLICANT: Yes, ma'am.

10 THE COURT: Knowing all that you still want to go
11 forward?

12 THE APPLICANT: Yes, ma'am.

13 THE COURT: Alright. Call your first witness.

14 MR. BAILEY: Thank you, Your Honor. We'll call Mr.
15 Turbeville at this time.

16 **TIMOTHY TURBEVILLE WAS DULY SWORN AT THIS TIME AND**
17 **TESTIFIED AS FOLLOWS:**

18 **DIRECT EXAMINATION**

19 BY MR. BAILEY:

20 Q. Mr. Turbeville, can you give us your SCDC number,
21 please, sir?

22 A. It's 299569.

23 Q. And you have filed an application for post-conviction
24 relief dated March 16, 2020; is that correct?

25 A. Yes, sir.

1 Q. And you are seeking to have a new trial ordered on your
2 attempted murder charge?

3 A. Yes, sir.

4 Q. Now, according to your application you believe Ms.
5 Parrott, who is present with us in the courtroom, was
6 ineffective based upon your theory of self defense; is that
7 correct?

8 A. Yes, sir.

9 Q. Will you please go ahead and tell us, initially, let's
10 start with, what happened between you and the purported victim
11 that led to this conviction?

12 A. We had been partying for a few days, for a week, and
13 some money was missing. I was missing like \$2,000.00, and we
14 got in a little argument and the next thing I know she got a
15 little paring knife. I got hit, she stabbed me right there
16 between the fingers. She hit me there, it went all the way
17 across my hand. I got the knife from her, she come at me, I
18 popped her in the shoulder with it. It was little paring knife
19 like that, (indicating,) I popped her right there in the
20 shoulder with it and she grabbed my hands and when she did I
21 snatched the knife and I threw it. I didn't know she got
22 hit -- I didn't even know she got hit on the neck. She falls
23 down, I haul butt, I got in trouble by running and I was
24 scared, you know what I mean, I didn't know what was going on,
25 you know what I mean? I'm bleeding everywhere, and I told Ms.

1 Parrott that, the defense -- because when they arrested me they
2 took multiple pictures of the wounds and she told me 20 years
3 and on Monday they was going to give me 30.

4 Q. We'll get into that in a little more detail. Okay?

5 A. Okay.

6 Q. So about this partying that you all were doing, I know
7 you indicated with your hand, but how long was the blade on the
8 knife?

9 A. About like that (indicating.)

10 Q. So is that about like three inches?

11 A. Two and a half, three inches, just a little paring
12 knife, just a little paring knife. I don't even know where the
13 knife come from. I don't even know where it come from.

14 Q. And you said that the purported victim attacked you
15 first?

16 A. Yeah.

17 Q. And I know you indicated on your hands, but the
18 transcript can't see that, so will you please give a brief
19 description as to where the injuries were specifically?

20 A. I got stabbed right between my index and my middle
21 finger, right there, there's a little cross right there, you
22 can see it, and then I got hit on my left middle finger all the
23 way across. It was laid open where she hit me and once I
24 gained control of the knife she come at me again, I popped her
25 in the shoulder and then when she grabbed my hand I snatched

1 the knife, I threw it, I didn't even know she got hit on the
2 neck. I mean, I love her, I still love her to death. I mean,
3 we've been together almost five years.

4 Q. And when you say she suffered an injury to her neck, how
5 big was the wound?

6 A. I think it was like that, like, maybe three inches. It
7 was a surface injury. It wasn't deep. It was right on the
8 neck, but it laid it open pretty good.

9 Q. And so after you were charged you were represented by
10 Ms. Parrott?

11 A. Yes, sir.

12 Q. And Ms. Parrott works with the Public Defender's Office,
13 correct?

14 A. Yes, sir.

15 Q. How many times did you have an opportunity to meet with
16 Ms. Parrott before you entered your plea?

17 A. I saw her at the jail for about a minute. She told me
18 she ain't heard nothin' and a year later -- eight months later
19 they pulled me up to court, she said, they offer 20 years,
20 negotiated, you don't take it they gonna give you 30 Monday,
21 we're going to trial Monday. It was like a minute and a half
22 that I spent with her. In total I probably spent two and a
23 half minutes with her the whole time, and I was, like, well,
24 what about my defense wounds? Oh that, she kind of swept that
25 under the table and told me if I didn't take this 20 they was

1 gonna give me 30, and so I took the 20.

2 Q. Let me back up on you. I know you're excited that it's
3 your day in court and you talk quick. Let's slow it up a
4 little bit, okay?

5 A. Yes, sir.

6 Q. When you got arrested for this did you make bond?

7 A. No. They didn't never give me a bond.

8 Q. So you stayed out in Effingham?

9 A. Yeah, yeah.

10 Q. And how many times did you say Ms. Parrott came out and
11 met with you?

12 A. One time.

13 Q. Did she ever bring any documents, pictures, anything?

14 A. She had my motion -- she didn't even have my motion of
15 discovery when seen her then. I wrote her several times, told
16 her about the defensive wounds, to check the tapes.

17 Q. Did she ever indicate to you that she had pictures of
18 your defensive wounds?

19 A. Yeah, she had the roll, she had the CD, I saw the CD on
20 the motion of discovery.

21 Q. And then you were transported to the courthouse one day?

22 A. Yes, sir.

23 Q. Is that correct?

24 A. Yeah.

25 Q. And how much time did you spend with her that day?

1 A. Less than two minutes.

2 Q. And did you all have any discussions about going to
3 trial?

4 A. No. She pretty much told me, you better take this plea.

5 Q. And she never told you how she could use the photographs
6 of the defensive wounds at trial?

7 A. No, sir. She pretty much blew it off, you don't have a
8 case. Yeah, yeah. I really feel -- I really -- looking back
9 on it, I wish I would have asked for another attorney.

10 Q. Well, if you knew she had the photographs of your
11 defensive wounds that's coincided with your version of the
12 events that happened on the night of the party, why did you
13 elect to plead guilty, Mr. Turbeville?

14 A. Because she was my lawyer. She told me they were giving
15 30 years, so you're gonna take this 20 today or you're gonna
16 get 30 Monday, I took the 20. Now looking back, I wish I
17 wouldn't have, but I mean, that was the advice of my attorney.

18 Q. And at no point did she ever tell you about the elements
19 to attempted murder or anything?

20 A. No. She didn't explain none of that. She told me I'd
21 get 30 years, your charge here is 30 years, very blunt, very
22 brief and very unhelpful. I feel like I'm telling you just how
23 I feel. I feel like the victim was a woman and she's a woman
24 and she done made her case, it was already in her head that I
25 was guilty, that I cut her up, but it didn't happen like that,

1 and I tried to explain to Ms. Parrott how it happened, but it
2 was like she wouldn't even listen to me. She was just sitting
3 there scribbling on paper.

4 Q. Had you prepared with Ms. Parrott for self defense,
5 would you have gone to trial?

6 A. Yeah. I mean, 20 years and 30, I mean, that ain't that
7 much difference, but I mean, I couldn't have won the trial with
8 her, she barely wanted to fight for the days I spent and
9 failed. I mean, they didn't even want to give me them days. I
10 didn't get out of jail, but she did give me them days. That's
11 the only thing, really, she got me was 600-some days.

12 Q. Okay. And you're here to ask the Court to vacate your
13 conviction and grant you a new trial; is that correct, sir?

14 A. Yes, sir.

15 Q. Is there anything else you'd like to tell the Court this
16 morning about the ineffective assistance of counsel?

17 A. I just want to say that, I mean, I understand they're
18 public defenders, but I just really feel like I was railroaded.
19 I feel like I was railroaded, I feel like that I was highly
20 unrepresented. I mean, I spent a total of two, three minutes
21 with the lady, and it was like very brief, blunt, and I just
22 feel like -- I feel like I deserve more, so.

23 Q. Well, thank you, Mr. Turbeville. Please answer any
24 questions that Mr. Barlow or the judge has for you, okay?

25 THE APPLICANT: Yes, sir.

1 THE COURT: Mr. Barlow?

2 MR. BARLOW: Thank you, Your Honor. May it please
3 the Court?

4 CROSS-EXAMINATION

5 BY MR. BARLOW:

6 Q. Good morning, Mr. Turbeville, how are you doing today?

7 A. Good morning, I'm alright, sir.

8 Q. Okay. We'll jump right in. Do you recall telling the
9 Court that no one forced you to plead guilty?

10 A. If you read that transcript, I told the judge that she
11 told me if I didn't take this 20 that I'd get 30 on Monday, and
12 that was on Thursday.

13 Q. And do you recall telling the Court that no one forced
14 you to plead guilty?

15 A. But I also told the Court that my attorney said that if
16 I didn't take the 20 years that I'd get 30 on Monday.

17 Q. Do you recall telling the Court you were satisfied with
18 your attorney?

19 A. Sir, I mean, you're in court, they pop the questions at
20 you, I could get 20 years in prison, I mean, I don't recall
21 that. I recall telling the man that she told me if I didn't
22 take this 20 I was gonna get 30.

23 Q. Do you recall not necessarily agreeing with the
24 recitation of the facts from the Solicitor?

25 A. No. What do you mean?

1 Q. That you did not agree with the entirety of the
2 recitation of the facts? Meaning, that you did not agree with
3 what the Solicitor was reading into the record in terms of that
4 you didn't just attack her?

5 A. Yeah.

6 Q. And do you recall the plea judge saying that if you had
7 a self defense case that you were waiving the right to self
8 defense as a defense?

9 A. I don't recall that, sir.

10 Q. Your Honor, that's page 22 of the record.

11 A. I've got it. Thank you.

12 Q. Do you recall asking the Court to accept the
13 negotiations and to not give you anymore time than the
14 negotiated 20?

15 A. Yeah. Yeah, I remember that, because I mean, I figured
16 I was gonna get 20, you know, I'm begging not to give me more.

17 Q. So 20 is different than 30, no?

18 A. Yeah, it's ten years, sir. I mean, that's not different
19 to you, 20 or 30?

20 Q. On direct examination, though, sir, you said 20 is no
21 different than 30.

22 A. I mean, it's ten more years. It's ten more years, that
23 is different, but I mean, it's ten more years of my life. I'm
24 55 years today, sir. Ten more years -- ten more years on top
25 of the 20, yeah, I'll be 75, 80 when I get out of jail.

1 Q. And this incident occurred on April 15th, correct?

2 A. Yes, sir.

3 Q. And what day were you picked up in North Carolina?

4 A. The same day.

5 Q. It wasn't April 23rd?

6 A. No. I got arrested the same day, that same afternoon.

7 Q. So you would not agree that the record indicates that
8 this incident occurred on the 15th and that you were picked up
9 on the 23rd --

10 A. I was --

11 Q. -- in North Carolina?

12 A. I was arrested the same day, the same afternoon.

13 Q. What car were you driving?

14 A. Our car, the car I bought. I bought the car -- I bought
15 the car -- we bought the car before I got out of prison.

16 Q. And whose ATM card did you use?

17 A. It was in her name, but it was my money.

18 Q. And you said that you didn't realize that she was cut so
19 deeply, but you were injured, correct?

20 A. Yeah.

21 Q. Did you require medical aid?

22 A. Yeah.

23 Q. What did they do?

24 A. What did they do? They stitched me up. There were
25 stitches across my hand and stitched me right there and failed.

1 MR. BARLOW: Nothing further, Your Honor.

2 THE COURT: Thank you. Any redirect?

3 MR. BAILEY: Nothing further, Your Honor.

4 THE COURT: Okay. Now, let Mr. Turbeville step down.

5 Thank you, Mr. Turbeville.

6 THE APPLICANT: Yes, ma'am. Thank you.

7 THE COURT: Any other witnesses, Mr. Bailey?

8 MR. BAILEY: No additional witnesses, Your Honor.

9 THE COURT: Thank you. Call your side.

10 MR. BAILEY: Thank you, Your Honor, we would call Ms.

11 Karen Parrott.

12 **KAREN PARROTT WAS DULY SWORN AT THIS TIME AND**

13 **TESTIFIED AS FOLLOWS:**

14 **DIRECT EXAMINATION**

15 BY MR. BARLOW:

16 Q. Good morning, Ms. Parrott. How are you doing today?

17 A. Good. How are you?

18 Q. Doing well. Thank you. How long have you been

19 practicing law?

20 A. Twenty-five years.

21 Q. And how long of that has been in criminal?

22 A. Twenty years at the Public Defender's office just last

23 April.

24 Q. Were you appointed in this case?

25 A. I was.

1 Q. And how long before the plea were you appointed?

2 A. He was arrested on January 3, 2019, I believe. I'm
3 looking and trying to find the record to try to get the records
4 immediately, we would have been appointed as part of that
5 hearing at that bond hearing.

6 Q. Roughly, could you recall or can you recall how many
7 times you met with Applicant between to time you were appointed
8 and the date of the plea hearing?

9 A. At least four, and then phone calls on top of that, as
10 well as, that does not take into account his talking with my
11 investigators, if he did so.

12 Q. In those meetings did you discuss the elements of
13 attempted murder?

14 A. Yes.

15 Q. And what the State had to prove?

16 A. Yes.

17 Q. Would you briefly characterize the State's evidence in
18 this case?

19 A. The victim in this case, Krystal Gandy, had a huge
20 gaping wound under her chin and on her neck and she also had a
21 gape -- or excuse me, another cut on her chin. She had enough
22 blood to where the investigator when he wrote about it said
23 that she was covered in blood from head to toe, and part of
24 that, I'm sure, was because of the fact that where the cuts
25 were located, but we discussed the fact that those -- this cut,

1 particularly, the one that was just gaping open and then was
2 more than, I mean, it was a good cut across the, and it was
3 across, it wasn't up, it was across, and it was kind of
4 diagonal, were very close to the arteries, and so therefore it
5 was very close to severing what would have been the carotid
6 artery and very easily could have been a murder case if it had
7 just been just a little bit more of a cut. So that was the
8 evidence along with the fact that she was still cognizant
9 whenever law enforcement arrived. They were interviewing her,
10 she was starting to bleed even more as they were interviewing
11 her, had to her on to the hospital, and there she was stitched
12 up, but it was the pictures, her words, her cooperation with
13 the investigation along with what the stories were.

14 Q. And your client, what did he do during -- right after
15 this occurred?

16 A. He fled. He took her car, and I'm saying, "her car,"
17 because that's how she told law enforcement, is he's taking my
18 car, and he was found with that car, and it was at that point a
19 stolen car in North Carolina.

20 Q. Did he stop anywhere before that?

21 A. I don't know, I don't recall.

22 Q. Did he recall there being an ATM?

23 A. Yes, and that there was blood on the ATM and that, also.

24 Q. Do you recall if he was arrested the same day that this
25 occurred in North Carolina or was it days later?

1 A. It was days later, and that was all put forth as part of
2 what I did in mitigation for him and trying to argue about what
3 the correct amount of days to be given to him were, because
4 while it was a negotiated plea we put on the record
5 specifically that, that that part of things was not negotiated
6 and the Solicitor fought very hard to try and not to give him
7 the credit, specifically citing code section, all this sort of
8 thing, and I fought just as hard and got the time in North
9 Carolina, which of course was just judicial discretion as to
10 whether or not he wanted to give it, but I got it.

11 Q. And did Mr. Turbeville ever indicate that he wanted to
12 go to trial?

13 A. No. In fact, on the first meeting, first real meeting,
14 I will say, there was one meeting that I was down at the jail,
15 and that was on March 6, 2019 that I saw him and he wanted to
16 discuss the case and I told him that I didn't have anything yet
17 but I would be back to talk to him once I did. He had already
18 called me once on February 27th to discuss the case. I had
19 made a note that it doesn't appear that he was given a bond,
20 and I didn't have the file even yet on February 27th, so it was
21 so new to where I didn't even have it yet. I went and filed
22 the bond motion for him on April the 17th and then went to the
23 jail and talked with him about all of the discovery and all of
24 that, as well as any information he might have on June the 4th.

25 Q. Did you force Mr. Turbeville to take the plea deal?

1 A. No, I did not.

2 Q. Did Mr. Turbeville ask you to interview anyone?

3 A. No, he did not.

4 Q. Did you inform Mr. Turbeville of the consequences of a
5 plea?

6 A. Yes. He told me on June the 4th, I went over all of the
7 discovery that I had with him, I showed him the pictures that I
8 had, including the one with the gaping wound, he told me he
9 wanted ten years or less, that he did not want to go trial,
10 that he wanted a plea and that the victim -- yeah, it was
11 everything. The victim had sent word through his brother that
12 she still loves him and wishes him well, and she was also cut
13 on her shoulder. I'm sorry, I did not note that earlier,
14 but -- and he said something to me then about the fact that he
15 had two cuts on his hands, that he was trying to get the knife
16 away, that she bent down and the knife was then -- cut her as
17 it was -- as they were fighting over it. I'm sorry, and my
18 notes are that they'd been drinking Jagermeister, they
19 hadn't -- that he hadn't been out for 15 days and that she
20 found a year-old text in his phone from another female saying
21 that they argued and it went from there and he had told me that
22 they had done \$3,000.00 worth of cocaine in that time as well
23 as all that Jagermeister, and so he really didn't have full
24 memory of everything, she wouldn't have had full memory of
25 everything, but that they were drunk and that they had done

1 \$3,000.00 worth of cocaine in those days they were together.

2 Q. Did you agree with Mr. Turbeville's inclination to plea?

3 A. I did.

4 Q. Do you stand by your representation?

5 A. I do. We had a bond hearing in September of that year,
6 as well, I met with him prior to the bond hearing and went over
7 the information that was for that, and I specifically recall
8 her being in the courtroom on that side. It was not in C but A
9 or B, that she was on that side and she had a gentlemen sitting
10 with her but she was wailing throughout the bond hearing, so I
11 knew that she was not, even though she may love him, he may
12 love her, she was not going to be his witness on the stand.

13 Q. What was your inclination as to a self defense defense?

14 A. When you got someone who's telling you that they've done
15 \$3,000.00 worth of cocaine over a period of days as well as a
16 bunch of Jagermeister and that he doesn't have a full memory of
17 everything, she doesn't -- she's not gonna have a full memory,
18 I think you have to go with what the evidence is and she's got
19 a cut that goes all the way up her neck, basically, and it's
20 gaping open, he's only got a couple of teeny tiny wounds, to me
21 it was inconsistent with self defense, and then whenever he put
22 that whatever he did on the record as part of the plea and the
23 judge asked him are you waiving self defense, he said, yes, and
24 he had told me he wanted to plea, even from that first time
25 when we went over all of the evidence, so I felt that was the

1 right thing to do.

2 MR. BARLOW: Thank you, Ms. Parrott. Nothing
3 further, Your Honor.

4 MR. BAILEY: Thank you, Your Honor.

5 THE COURT: Go ahead, Mr. Bailey.

6 **CROSS-EXAMINATION**

7 BY MR. BAILEY:

8 Q. Good morning, Ms. Parrott.

9 A. Good morning, sir.

10 Q. I think you've described the wound by Ms. Gandy as a
11 huge gaping wound?

12 A. Yes, sir.

13 Q. Is it something that would have immobilized her?

14 A. It was on her neck. What do you mean? So it doesn't
15 affect her legs, but I mean, I think there was a question of
16 how much longer she was going to last bleeding out the way she
17 was, yes.

18 Q. After sustaining that wound do you think you could have
19 argued that she had to have attacked him first?

20 A. If he would have wanted to have gone to trial then I
21 think you can make that argument, I also think it loses.

22 Q. But it was his choice?

23 A. Yes.

24 Q. And did you explain that to him?

25 A. Yes. He told me from the front that he didn't want to

1 go to trial, that he wanted a plea, and I did give him a copy
2 of all of his rule five, by the way. I gave him that on -- I
3 dropped it off at the pod for his guard to give him on June the
4 6th, so two days after he and I had gone through all of his
5 discovery I left the copy for him to have.

6 Q. But Mr. Turbeville's position is did you explain to him
7 specifically that based on the severity of the wound that she
8 sustained she would have had to have attacked him first, based
9 on his defensive wounds on his hands?

10 A. He told me what happened as far as what he remembered,
11 so I don't think that my telling him that she started it is
12 relevant. He's telling me what happened, I'm going with his
13 version of the events.

14 Q. Did you all talk about him testifying at trial?

15 A. He told me he didn't even want, that he didn't want one.
16 I tried to get him the plea deal that he wanted, which was
17 something around ten years or less than that. Mr. Tucker
18 absolutely refused to do so, and so Mr. Tucker's response was
19 he would give him a negotiated 20 but he was not going any
20 lower than that, and it was -- and it really was, it was either
21 take the 20 or go to trial.

22 MR. BAILEY: Court's indulgence for one moment? No
23 further questions, Your Honor.

24 THE COURT: Thank you. Any redirect?

25 MR. BARLOW: Not from the State, Your Honor.

1 THE COURT: Ms. Parrott, you explained to him what a
2 negotiated plea is?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: And that he was gonna be stuck with the
5 -- the judge was stuck with the 20?

6 THE WITNESS: Yes, Your Honor. And he and I went
7 over the fact that it was the difference between serious and
8 most serious and that this wasn't going to be a strike on his
9 record, that he would have to do at least 80 percent, that he
10 might do as much as even 85 -- well, might do as much as
11 100 percent, but 80 percent before credits are given, 85
12 percent before he can be considered for parole, went through --
13 and all the regular trial rights.

14 THE COURT: Thank you, Ms. Parrott.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: That's all I had. Can I excuse the
17 witness? We'll let you go back to General Sessions.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Anything, Mr. Bailey?

20 MR. BAILEY: Your Honor, we would just ask that you
21 grant the relief requested in the application and we ask that
22 you take this matter under advisement and to consider the
23 testimony in the file that's in the case.

24 THE COURT: Anything, Mr. Barlow?

25 MR. BARLOW: Your Honor, we would just ask that you

1 take this case under advisement. I think the testimony speaks
2 for itself.

3 THE COURT: Thank you. I'll take it under
4 advisement. Mr. Turbeville, I'll issue an order in the next
5 couple of weeks. Okay?

6 THE APPLICANT: Yes, ma'am.

7 THE COURT: Thank you.

8 THE APPLICANT: Thank you so much, Your Honor.

9 THE COURT: You're welcome.

10

11 CERTIFICATE

12 STATE OF SOUTH CAROLINA

13 COUNTY OF FLORENCE

14 I, Julie A. Kevish, Official Court Reporter for the
15 State of South Carolina, do hereby certify that the foregoing
16 is a true, accurate and complete Transcript of Record of the
17 proceedings had and evidence introduced in the Court of Common
18 Pleas for Florence County, South Carolina, on the 12th of June,
19 2023.


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

22 June 12, 2023

23

24

25



JULIE A. KEVISH
OFFICIAL COURT REPORTER

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT

2023 OCT 18 PM 2:22

Timothy C. Turbeville, #299569, FORT FLORENCE) CASE NO. ~~2019~~-CP-21-0830

CCCP & GS 2020

Applicant, FLORENCE COUNTY, SC)

v.)

ORDER OF DISMISSAL
WITH PREJUDICE

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of Timothy C. Turbeville's (Applicant) application for post-conviction relief (PCR) filed on March 16, 2020. Respondent, the State of South Carolina, filed its Return on July 8, 2020, requesting an evidentiary hearing to resolve the claims set forth in the application. On November 30, 2022, Applicant filed an Amended Post-Conviction Relief Application.

On June 12, 2023, an evidentiary hearing was held at the Florence County Courthouse before the Honorable Debra R. McCaslin. Applicant was present and represented by Joshua A. Bailey, Esquire. Assistant Attorney General D. Russell Barlow, II, represented Respondent. At the hearing, Applicant proceeded forward on the claims set forth in his original application *only* and withdrew his amended application allegations. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Karen E. Parrott, Esquire (Plea Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

CERTIFIED: A TRUE COPY
Donna Paula Ottana
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the June 2019 term, the Florence County Grand Jury indicted Applicant for Attempted Murder (2019-GS-21-00702). Twelfth Circuit Assistant Public Defender Karen E. Parrott represented Applicant. Twelfth Circuit Assistant Solicitor Todd S. Tucker prosecuted the case.

On January 9, 2020, Applicant appeared before the Honorable Thomas A. Russo, and pled guilty to Attempted Murder. Judge Russo accepted Applicant's plea and sentenced him to a negotiated term of twenty years imprisonment for Attempted Murder.

Applicant did not appeal his conviction and sentence.

FACTS GIVING RISE TO THE CONVICTION

Applicant stabbed his girlfriend, Crystal Lane Gandy (Victim), at the Economy Inn in Florence County. (Plea Tr. p. 17). On April 15, 2018, at about 8:15 a.m., law enforcement responded to an assault complaint from the hotel manager. (Plea Tr. pp. 17-18). The manager called 911 after Victim rushed into the manager's door, pleading that he call 911 because she had been stabbed. (Plea Tr. p. 18). Police observed horrific knife wounds on Victim's neck and shoulder. (Plea Tr. p. 18). Victim explained she had shared the room with Applicant, and they had stayed at the hotel for the past two weeks. (Plea Tr. p. 18). Victim informed police that Applicant borrowed her car earlier that morning to go get breakfast. (Plea Tr. p. 18). When he returned, Applicant asked Victim if she wanted something to eat; however, Victim declined. (Plea Tr. p. 18). Victim got out of bed, and as she was walking, Applicant stabbed her repeatedly from behind. (Plea Tr. pp. 18-19). One of Victim's wounds was in the left back of the deltoid muscle, and she still had problems raising her arm at the time of the plea hearing.

(Plea Tr. p. 19). However, the worst stab wound Victim endured was a large laceration from the point of her right jaw, down her throat, and almost to the back of her neck. (Plea Tr. p. 19).

After the attack, Applicant fled to North Carolina in Victim's car. (Plea Tr. p. 20). When North Carolina law enforcement attempted to pull Applicant over, he led them on a chase. (Plea Tr. p. 20). Applicant was charged in North Carolina for increasing speed to allude and was imprisoned for the offense from April 23, 2018, to January 2, 2019. (Plea Tr. p. 20). Applicant was extradited to South Carolina immediately after completing his North Carolina sentence to face the underlying charges. (Plea Tr. p. 20).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief commenced on March 16, 2020, Applicant alleged he was being held in custody unlawfully as set forth below:

1. Ineffective Assistance of Plea Counsel
 - a. Failure to investigate and present the defense of self-defense.
2. Involuntary Guilty Plea
 - a. Plea Counsel coerced Applicant into a plea by telling him if he did not accept the plea he would start trial the following week and would get thirty years.

On November 30, 2022, Applicant filed an amended PCR application adding the following additional claims for relief:

1. Involuntary Guilty Plea:
 - a. Failed to investigate and interview potential witnesses to establish a defense of self-defense.

Before this Court are Florence County Clerk of Court records regarding the subject's conviction and sentence, Applicant's records from the South Carolina Department of Corrections, Applicant's guilty plea transcript, and the records of Applicant's current PCR action.

INEFFECTIVE ASSISTANCE OF COUNSEL

The Uniform Post-Conviction Procedure Act¹ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is insufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442,

¹ S.C. Code Ann. §§ 17-27-10 to -160.

334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry V. State, 300 S.C. 115, 117—18, 386 S.E.2d 624,625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356,373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of Strickland remains unchanged, the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded

of attorneys in criminal cases." Hill, 474 U.S. at 56. However, the second, or "prejudice" prong "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58-59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and observed the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his

application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing **credible** and **persuasive**, where she presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court finds Applicant's testimony at the evidentiary hearing **not credible**. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, she rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, supra). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. p. 7); 2. Applicant understood the details and circumstances of the negotiated plea (Plea Tr. pp. 14-17); 3. Applicant clearly

indicated he was satisfied with Plea Counsel (Plea Tr. p. 16); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. p. 14); 5. Applicant indicated he had enough time with Plea Counsel (Plea Tr. p. 13–14); 6. Applicant indicated no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. p. 17); 7. Applicant was not on drugs or medications that would affect his ability to understand the plea proceedings (Plea Tr. p. 16–17); 8. Applicant understood the sentencing range (Plea Tr. p. 14–15); 9. Applicant agreed with the allocation of the facts surrounding the State's case except that he did not just attack Victim "out of the blue" (Plea Tr. pp. 21–22); 10. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. pp. 23).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: Failure to Investigate and Present a Defense of Self-Defense.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate and present the defense of self-defense. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified that he told Plea Counsel what happened and how he was injured, which supported his contention this was self-defense. (PCR Tr. pp. 6–7). Applicant testified that Plea Counsel was a woman, and the Victim was a woman, so Plea Counsel had already made her mind up. (PCR Tr. p. 10). Applicant testified that while he tried to explain how it was self-defense, Plea Counsel just scribbled on paper and would not listen to him. (PCR Tr. pp. 10–11).

On direct examination, the following colloquy occurred with Plea Counsel:

- Q. What was your inclination as to a self defense defense?
 A. When you got someone who's telling you that they've done \$3,000.00 worth of cocaine over a period of days as well as a bunch of Jagermeister and that he doesn't have a full memory of everything, she doesn't -- she's not gonna have a full memory, I think you have to go with what the evidence

is and she's got a cut that goes all the way up her neck, basically, and it's gaping open, he's only got a couple of teeny tiny wounds, to me it was inconsistent with self defense, and then whenever he put that whatever he did on the record as part of the plea and the judge asked him are you waiving self defense, he said, yes, and he had told me he wanted to plea, even from that first time when we went over all of the evidence, so I felt that was the right thing to do.

(PCR Tr. pp. 20–21).

On cross-examination, the following colloquy occurred with Plea Counsel:

- Q. After sustaining that wound do you think you could have argued that she had to have attacked him first?
- A. If he would have wanted to have gone to trial then I think you can make that argument, I also think it loses.
- Q. But it was his choice?
- A. Yes.
- Q. And did you explain that to him?
- A. Yes. He told me from the front that he didn't want to go to trial, that he wanted a plea, and I did give him a copy of all of his rule five, by the way. I gave him that on – I dropped it off at the pod for his guard to give him on June the 6th, so two days after he and I had gone through all of his discovery I left the copy for him to have.
- Q. But Mr. Turbeville's position is did you explain to him specifically that based on the severity of the wound that she sustained she would have had to have attacked him first, based on his defensive wounds on his hands?
- A. He told me what happened as far as what he remembered, so I don't think that my telling him that she started it is relevant. He's telling me what happened, I'm going with his version of the events.

(PCR Tr. pp. 21–22).

This Court finds Plea Counsel **credibly** testified that Applicant indicated he never wanted to go to trial. Plea Counsel **credibly** testified that they could have made the self-defense argument if he had wanted to go to trial, but she thought it would lose. Plea Counsel **credibly** testified that Applicant's facts of the events, as presented to her, were inconsistent with self-

defense.

Notably, when Applicant did not fully agree with the facts as presented by the Solicitor, the plea court asked Applicant if he understood that if he had any defenses to include self-defense, he would waive that defense if he pleaded guilty, to which Applicant replied, "Yes, sir. Yes, sir." (Plea Tr. p. 22). Applicant had the opportunity to avail himself of the defense of self-defense at trial, and he informed the plea court he understood he was waiving that right. see Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements 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.").

Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. Based on Plea Counsel's credible testimony, this Court finds Applicant never wanted to go to trial, and Plea Counsel advised Applicant accordingly, and Applicant chose to plead guilty. Therefore, this Court finds Plea Counsel's representation of Applicant was not deficient, and Applicant cannot demonstrate any prejudice flowing from Plea Counsel's performance in this matter.

Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation: Involuntary Guilty Plea

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant alleges Plea Counsel coerced him into pleading guilty because she told him he could either take the twenty years and plead or go to trial and get thirty years. This Court disagrees and finds Plea Counsel did not coerce Applicant, and this allegation is without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought (Garner v. Louisiana, 368 U.S. 157 (1961); Specht v. Patterson, 386 U.S. 605 (1967), and forestalls the spin-off of collateral proceedings that seek to probe murky memories.").

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

As an initial matter, this Court finds the record reflects that Applicant's guilty plea was knowingly, intelligently, and voluntarily entered with a complete understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

At the evidentiary hearing on direct examination, Applicant testified that he pled guilty on Plea Counsel's advice because she told him that if he did not take the twenty, he would get thirty at trial. (PCR Tr. p. 10). Applicant testified that Plea Counsel was brusque and just told him he would get thirty years at trial. Id. Applicant testified that Plea Counsel was a woman, and the Victim was a woman, and "it was already in [Plea Counsel's] head [he] was guilty." Id. Applicant testified that had Plea Counsel prepared for self-defense, he would have gone to trial because twenty is not much different from thirty.² (PCR Tr. pp. 10-11).

On cross-examination, Applicant testified that Plea Counsel did not force him to take the plea deal; instead, he told the plea court that Plea Counsel said to him that if he did not take the twenty years, he would get thirty years at trial.³ (PCR Tr. p. 12). Applicant further testified that he did not recall telling the plea court he was satisfied with Plea Counsel, and instead, he told the

² Contrary to Applicant's testimony here, at the plea hearing, Applicant begged the plea court to accept the negotiated twenty years and not give him any more time. (Plea Tr. p. 25).

³ This Court notes Applicant's assertion is wholly refuted by the plea transcript. At no point during Applicant's plea hearing did he tell the plea court that Plea Counsel told him he would get thirty years if he went to trial. Instead, the plea court informed Applicant that the maximum sentence for his charge was thirty years. (Plea Tr. p. 7).

plea court Plea Counsel told him if he did not take the twenty, he would get thirty years at trial. Id. Applicant further testified that he agreed to the State's recitation of facts except that he was the initial aggressor. (PCR Tr. p. 13). Applicant also testified that he recalled asking the plea court to accept the plea negotiations and not give him any more time than the negotiated 20 years. Id. Applicant testified that he did not recall the plea court explaining that he would be waiving the right to self-defense if he had a defense of self-defense by pleading guilty. Id.

On direct examination, Plea Counsel credibly testified in the following colloquy:

- Q. And did Mr. Turbeville ever indicate that he wanted to go to trial?
- A. No. In fact, on the first meeting, first real meeting, I will say, there was one meeting that I was down at the jail, and that was on March 6, 2019 that I saw him and he wanted to discuss the case and I told him that I didn't have anything yet but I would be back to talk to him once I did. He had already called me once on February 27th to discuss the case. I had made a note that it doesn't appear that he was given a bond, and I didn't have the file even yet on February 27th, so it was so new to where I didn't even have it yet. I went and filed the bond motion for him on April the 17th and then went to the jail and talked with him about all of the discovery and all of that, as well as any information he might have on June the 4th.
- Q. Did you force Mr. Turbeville to take the plea deal?
- A. No, I did not.
-
- Q. Did you inform Mr. Turbeville of the consequences of a plea?
- A. Yes. He told me on June the 4th, I went over all of the discovery that I had with him, I showed him the pictures that I had, including the one with the gaping wound, he told me he wanted ten years or less, that he did not want to go to trial, that he wanted a plea and that the victim -- yeah, it was everything. The victim had sent word through his brother that she still loves him and wishes him well, and she was also cut on her shoulder. I'm sorry, I did not note that earlier, but -- and he said something to me then about the fact that he had two cuts on his hands, that he was

trying to get the knife away, that she bent down and the knife was then -- cut her as it was -- as they were fighting over it. I'm sorry, and my notes are that they'd been drinking Jagermeister, they hadn't -- that he hadn't been out for 15 days and that she found a year-old text in his phone from another female saying that they argued and it went from there and he had told me that they had done \$3,000.00 worth of cocaine in that time as well as all that Jagermeister, and so he really didn't have full memory of everything, she wouldn't have had full memory of everything, but that they were drunk and that they had done \$3,000.00 worth of cocaine in those days they were together.

Q. Did you agree with Mr. Turbeville's inclination to plea?

A. I did.

Q. Do you stand by your representation?

A. I do. We had a bond hearing in September of that year, as well, I met with him prior to the bond hearing and went over the information that was for that, and I specifically recall her being in the courtroom on that side. It was not in C but A or B, that she was on that side and she had a gentlemen sitting with her but she was wailing throughout the bond hearing, so I knew that she was not, even though she may love him, he may love her, she was not going to be his witness on the stand.

(PCR Tr. pp. 18–20).

This Court finds the combination of the record and Plea Counsel's credible testimony that Applicant knew the nature of the charges against him, the terms of the negotiated plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin. Moreover, if there was any deficiency in Plea Counsel's advice, which this Court does not find, the plea colloquy cured any alleged deficiency. The plea transcript reflects Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by

United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so). Thus, based on the plea transcript and the evidence presented at the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

Accordingly, this Court finds Applicant has failed to establish his guilty plea was involuntary and further failed to establish any deficiency by Plea Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

NEW ALLEGATIONS RAISED AT THE EVIDENTIARY HEARING

Allegation: Failure to Meet with Applicant a Sufficient Number of Times to Properly Review the Evidence and Discuss the Case.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times to properly review the evidence and discuss the case. This Court finds this allegation is without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Likewise, in order to prevail on a claim that counsel did not review discovery with applicant, the applicant must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Id.

Furthermore, an applicant must also present evidence to show how the discoverable

matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is insufficient to support a relief grant. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel met him once at jail one time "for about a minute," and eight months later at court for about a minute and a half. (PCR Tr. pp. 8–9). Applicant testified that Plea Counsel never reviewed the discovery with him. (PCR Tr. p. 10).

On direct examination, Plea Counsel credibly testified that she met Applicant on at least four occasions and had multiple phone calls with him. (PCR Tr. p. 16). Plea Counsel credibly testified that she reviewed all of the discovery with Applicant. (PCR Tr. pp. 18–20).

This Court finds Applicant failed to identify precisely what Plea Counsel did not explain or disclose to him from materials provided in discovery or what, if anything, could have been achieved had Plea Counsel spent more time with him in consultation regarding the contents of the evidence. See Smith v. State, 404 S.C. 493, 500–501, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome); see also Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) (citing United States v. Olson, 846 F.2d 1103 (7th Cir. 1988)) ("[T]here is no established 'minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.'").

This Court further notes Applicant's representation to the plea judge that he was completely satisfied with Plea Counsel and that Plea Counsel had answered all his questions.

(Plea Tr. p. 16); see Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[S]tatements 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.").

For the foregoing reasons, the Court finds Plea Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom.

Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation : Failure to Explain the Elements of Attempted Murder.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to explain the elements of attempted murder. This Court finds this allegation is without merit.

Before a court can accept a guilty plea, the defendant must be advised of the nature and crucial elements of the offense, including the maximum and any mandatory minimum penalty. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record and "may be accomplished by colloquy between the court and the defendant, between the court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993).

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel never explained the elements of attempted murder to him. (PCR Tr. p. 10).

On direct examination, Plea Counsel credibly testified that she explained the elements of attempted murder to Applicant. (PCR Tr. p. 16).

Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. Based on Plea Counsel's credible testimony, this Court finds

Plea Counsel explained the elements of attempted murder to Applicant. Therefore, this Court finds Plea Counsel's representation of Applicant was not deficient, and Applicant cannot demonstrate any prejudice flowing from Plea Counsel's performance in this matter.

Accordingly, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 9 day of October, 2023.

Debra McCaslin
THE HONORABLE DEBRA R. MCCASLIN
Presiding Judge
Twelfth Judicial Circuit

Glenn, South Carolina

2023 OCT 19 PM 2:22
SOUTH CAROLINA
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY
Donna Parks Ottana
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

WITNESSES

Jamie N Cooper Florence County Sheriff

97

Todd Tucker

ARREST WARRANT NUMBER

2018A2110200329

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury
Date: 6/6/2019

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2019-GS-21-00702

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2019

THE STATE

vs.

TIMOTHY CHRISTOPHER TURBEVILLE

Indictment for

ATTEMPTED MURDER

ROSE POLLOS OHARA
COOP & OS
FLORENCE COUNTY, SC

2019 JUN -6 PM 12:28

FILED

40

COUNTY OF Florence
 STATE VS.
Timothy Christopher Turbeville
 AKA:
 Race: White Sex: M Age: 51
 DOB: 1968 SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Florence, SC 29501-4345
 DL#: [REDACTED] SID#: [REDACTED]
 *CDL Yes No CMV Yes No Hazmat Yes No

INDICTMENT/CASE#: 2019-GS-21-00702
 A/W#: 2018A2110200329
 Date of Offense: 4/15/2018
 S.C. Code § : 16-03-0029
 CDR Code #: 3410

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Assault / Attempted Murder

CONVICTED OF or PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)

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

ATTEST:
[Signature] Solicitor 13601 SC Bar# [Signature] Defendant [Signature] Attorney for Defendant 19236 SC Bar#

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

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.
Credit for 33 BAR 627 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
 Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing

Recipient: _____

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

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: Pay \$ 40 PD fee

Clerk of Court/ Deputy Clerk E. Ragan
 Court Reporter: K. Reed
 SCCA/217 (04/2018)

Appointed PD or appointed other counsel, § Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
 Presiding Judge [Signature]
 Judge Code: 2141
 Sentence Date: 1-9-2020