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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable George M. McFaddin, Circuit Court Judge

ARTHUR Q. JONES, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001643

APPENDIX

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INDICTMENTS132

State of South Carolina) In the Court of General Sessions
) Fifth Judicial Circuit
 County of Richland) 2018-GS-40-4150
) 2018-GS-40-4151
) 2018-GS-40-4154
) 2018-GS-40-4155
) 2018-GS-40-4156

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Arthur Q. Jones, Jr.,)
)
 Defendant.)
)
 _____)

December 11, 2019
 Columbia, South Carolina

B E F O R E:

The Honorable L. Casey Manning, Judge

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

R. Vance Eaton, Esquire, Assistant Solicitor
 Attorney for the State

J. Rhodes Bailey, Esquire
 Attorney for the Defendant

Elizabeth B. Harris, CVR-M-CM
 Circuit Court Reporter

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No Exhibits Introduced.

1 (PRIOR TO HEARING, THE DEFENDANT IS SWORN.)

2 THE COURT: Let's see, there's three indictments for
3 attempted murder. That carries thirty years. Is that
4 correct, gentlemen?

5 MR. EATON: Yes, Your Honor.

6 THE COURT: One for sale or delivery of possession of
7 certain persons unlawful, stolen pistol. That carries five
8 or ten?

9 MR. EATON: Five, Your Honor.

10 THE COURT: Five years?

11 MR. EATON: Yes.

12 THE COURT: And the weapons during violent crime, that
13 carries five also, doesn't it?

14 MR. EATON: Five. Yes, Your Honor.

15 THE COURT: All right. Just wanted to make sure. Is
16 everybody ready?

17 MR. EATON: Yes.

18 THE COURT: All right, Solicitor, you may proceed.

19 MR. EATON: Thank you, Your Honor. Vance Eaton for
20 the state. Before you, Your Honor, is Arthur Jones and his
21 attorney, Rhodes Bailey. As Your Honor just pointed out,
22 Mr. Jones is here to plead guilty to three counts of
23 attempted murder and two gun charges that stem from the
24 same incident. This incident was on St. Patrick's Day of
25 2018, Your Honor. We have one of the victims and his

1 family in the courtroom today. Two of the victims could
2 not be here.

3 But on that day, as Your Honor is well aware, Saint --
4 Five Points turns into a huge event. There is a 5K run in
5 the morning, followed by a full day of activities,
6 festivities that goes on well into the night. That day,
7 Your Honor, Mr. Jones was there, as was Howard Bow --
8 Howard Boone, who is seated in the courtroom, Your Honor.
9 Mr. Jones was affiliated with gang members, and that night
10 we know from footage -- I'm going to show Your Honor a
11 brief part of the footage. We know that -- it appears that
12 Mr. Jones saw some opposing gang members that walked past
13 them in the crowd. Now, this is a very crowded area;
14 thousands of people come to this event, Your Honor.

15 As you will see, Mr. Jones in this video is obviously
16 engaged visually with somebody, and Mr. Jones makes the
17 decision as he, as he sort of faces off with that person to
18 pull out a .380 pistol and start firing shots at his
19 opponents there in the crowd. Three people are hit, Howard
20 Boone being the worst injured of the three. So, Howard
21 Boone is shot in the neck, and as Your Honor can well see,
22 Mr., Mr. Boone is quadriplegic. Kidron Deal is hit around
23 the face; he has reconstructive face surgery, to include
24 bone grafts. Anfernee Kirkland is hit to the lower left
25 hip. Mr. Deal and Mr. Kirkland are not here today, Your

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Honor.

If I may now, Your Honor, I'd like to direct the court's attention to a very brief clip.

(WHEREUPON, UNIDENTIFIED DVD IS PLAYED FOR THE COURT.)

MR. EATON: So, this camera right here ---

THE COURT: And just for the record, I'm sure, Mr. Bailey, you've seen all of this.

MR. BAILEY: Yes, sir.

THE COURT: There's nothing coming that's a surprise, just for the record.

Go ahead, Mr. Eaton.

MR. EATON: Yes, sir.

(WHEREUPON, PLAY OF DVD RESUMES.)

MR. EATON: So, this camera would be -- the, the position of this camera would have Green Street sort of right behind it and then Harden Street right here, and so this is, like, the teriyaki place right there on the corner.

THE COURT: All right, sir.

MR. EATON: Right here on the corner, as you can see, is Arthur Jones. The opposing gang members have just walked past him and are out the direction he's looking. So, you can see the, the facial expressions, the head movements that are being made. This is -- and we'll see another angle in a second exactly who he's making those at.

1 So as Your Honor can well see, this space that was one
2 of, you know, crowded festivities turns into complete chaos
3 at these gunshots. I'd like to show the court -- this is
4 looking from the same light post now across Green Street
5 with Harden right here, Your Honor.

6 THE COURT: All right, sir.

7 MR. EATON: And so you'll see the guy with the red
8 pants appears to be -- and there's the shots right there,
9 and there's Mr. Boone on the ground. Do you want me to
10 play that again, Your Honor, or was that kind of quick?

11 THE COURT: What now?

12 MR. EATON: You want me to play that again? It's kind
13 of quick.

14 THE COURT: No, no, no. I'm already seen it.

15 MR. EATON: Okay. So, Your Honor, Mr. Boone will
16 speak for himself. I'd like to convey a little bit about
17 him to the court. You know, Your Honor, we see a lot of
18 young men come into this courthouse who are doing
19 everything wrong. Compared to that, it is deeply upsetting
20 and troubling who the victim of this shooting happened to
21 be, and that bullet probably went out 2500 feet per second
22 with no one's name on it.

23 Howard Boone was a young man who was doing everything
24 right. He had already been in the Army for several years.
25 He was in ROTC at St. Augustine University in Raleigh; he

1 had one more year to go. He had already been to airborne
2 school. He would today be a lieutenant in the United
3 States Army probably leading soldiers somewhere.

4 THE COURT: Mr. Eaton, I hate to stop you, but I need
5 to see if I can take the plea first.

6 MR. EATON: Yes, Your Honor.

7 THE COURT: Is that okay?

8 MR. EATON: Yes. Yes, sir.

9 THE COURT: You understand what I'm saying? Are we
10 all on the same page? I'm going to give you all the chance
11 you need, but I need to see if I can get the plea in first.

12 Now, Mr. Bailey, you represent Arthur Jones, Jr. Is
13 that correct?

14 MR. BAILEY: Yes, Your Honor.

15 THE COURT: Have you explained to Mr. Jones the
16 charges contained in these five indictments, the possible
17 punishments, and his rights, including his constitutional
18 right to a jury trial?

19 MR. BAILEY: Yes, Your Honor.

20 THE COURT: In your opinion, does Mr. Jones understand
21 the charges, the punishments, and his rights?

22 MR. BAILEY: Yes, Your Honor.

23 THE COURT: How does he indicate to you he wishes to
24 plead, guilty or not guilty?

25 MR. BAILEY: Guilty, sir.

A. JONES - EXAMINATION BY THE COURT

8

1 THE COURT: You agree to his decision to plead guilty?

2 MR. BAILEY: I do, Your Honor.

3 THE COURT: From your own investigation of the facts
4 and circumstances surrounding this case, do you feel that
5 the state could produce sufficient evidence to convince a
6 jury here in Richland County of Mr. Jones's guilt beyond a
7 reasonable doubt and if he were to stand trial on these
8 charges, his convictions would be probable?

9 MR. BAILEY: Yes, Your Honor.

10 THE COURT: Has Mr. Jones been ordered to submit to a
11 mental examination to determine his competency to stand
12 trial?

13 MR. BAILEY: No, Your Honor.

14 THE COURT: Is there any reason why not?

15 MR. BAILEY: There's no, there's no need. There was
16 no need for him to be submitted for ---

17 THE COURT: Is that your assessment?

18 MR. BAILEY: Yes, sir, that's correct.

19 THE COURT: All right. Has any expert looked at him
20 at all?

21 MR. BAILEY: No, sir.

22 THE COURT: All right, but based on your skills as a
23 lawyer about fifteen years -- how long has it been?

24 MR. BAILEY: About -- almost thirteen. Twelve and
25 change.

A. JONES - EXAMINATION BY THE COURT

9

1 THE COURT: He doesn't appear to have any issues to
2 me.

3 MR. BAILEY: That's correct.

4 THE COURT: But you're satisfied that he knows,
5 understands, and appreciates what he's doing here today?

6 MR. BAILEY: Yes, Your Honor.

7 THE COURT: All right.

8 EXAMINATION BY THE COURT:

9 Q. Now, you are Arthur Jones, Jr. Is that correct?

10 A. Yes, sir.

11 Q. Mr. Jones, before I can accept your plea of guilty.

12 THE COURT: Well, let me you ask this. You've
13 explained to him the charges contained in these five
14 indictments -- I think I asked you, Mr. Bailey; I'll ask
15 you again -- the possible punishments, and his rights,
16 including his constitutional right to a jury trial. Is
17 that correct?

18 MR. BAILEY: Yes, sir.

19 THE COURT: In your opinion, he understands these
20 things. Is that correct?

21 MR. BAILEY: Yes, sir.

22 BY THE COURT:

23 Q. Now, Mr. Jones, you've heard your lawyer, Mr. Bailey,
24 tell me that he has explained to you the charges contained
25 in these five indictments, the possible punishments, and

A. JONES - EXAMINATION BY THE COURT

10

1 your rights, including your constitutional right to a jury
2 trial, and that you understand these things. Is that
3 correct?

4 A. Yes, sir.

5 Q. All right. Mr. Jones, before I can accept your plea
6 of guilty, it is necessary for me to make sure that you're
7 making this plea freely and voluntarily. To do that, sir,
8 I need to ask you a series of questions. At any point
9 during my questioning of you, if you do not understand
10 anything I say or any words that I use, please stop me;
11 I'll be more than happy to repeat or explain anything I
12 say, Mr. Jones. Additionally, I'll be more than happy to
13 stop this plea and allow you as much time as you feel you
14 may need to consult with your lawyer, Mr. Bailey. Do you
15 understand, sir?

16 A. Yes, sir.

17 Q. How old are you, Mr. Jones?

18 A. Twenty-four.

19 Q. Twenty-four. How far did you go in school?

20 A. Got my GED.

21 Q. What kind of work have you done?

22 A. Work, I was a cook.

23 Q. And where were you a cook?

24 A. Where?

25 Q. Yeah. Where?

A. JONES - EXAMINATION BY THE COURT

11

1 A. TakoSushi. TakoSushi.

2 Q. Okay.

3 A. Yes, sir.

4 Q. Now, Mr. Jones, have you ever been treated for the
5 abuse of alcohol or drugs or for mental illness?

6 A. No, sir.

7 Q. Have you taken any medications, drugs, or alcohol in
8 the past twenty-four or forty-eight hours?

9 A. No, sir.

10 Q. Are you today aware of any physical, nervous, or
11 emotional problem that might keep you from understanding
12 what you're doing?

13 A. No, sir.

14 Q. Now, you know what you're doing, Mr. Jones. Is that
15 fair enough?

16 A. Yes, sir.

17 THE COURT: Do you agree, Mr. Bailey, that Mr. Jones
18 knows, understands, appreciates what he's doing here today?

19 MR. BAILEY: Yes, Your Honor.

20 BY THE COURT:

21 Q. Now, I'll repeat this a little bit, Mr. Jones. You
22 heard your lawyer tell me that he's explained to you once
23 again the charges contained in these five indictments, the
24 possible punishments, and your rights, including your right
25 to a jury trial, and that you understand these things. Is

A. JONES - EXAMINATION BY THE COURT

12

1 that fair enough again?

2 A. Yes, sir.

3 Q. All right, Mr. Jones, you are first before me on
4 indictment number 2018-4156, *The State vs. Arthur Jones*.

5 This is possession of a weapon during the commission of a
6 violent crime, it appears. Possession of a weapon during
7 the commission of a violent crime, do you understand this
8 charge, sir?

9 A. Yes, sir.

10 Q. This indictment, Mr. Jones, alleges that you did here
11 in Richland County on or about March the 18th of 2018
12 possess a firearm, or visibly display what appeared to be a
13 firearm, or visibly displayed a knife during the commission
14 or attempted commission of a violent crime. You understand
15 this allegation?

16 A. Yes, sir.

17 Q. You want to plead guilty to having this gun. Is that
18 correct?

19 A. Yes, sir.

20 Q. You realize that by pleading guilty to possession of a
21 weapon during the commission of a violent crime, Mr. Jones,
22 that you could go to jail for five years?

23 A. Yes, sir.

24 Q. Knowing then, sir, that you can go to prison for five
25 years by pleading guilty to this charge, do you still wish

A. JONES - EXAMINATION BY THE COURT

13

1 to plead guilty to it?

2 A. Yes, sir.

3 Q. All right. Next, Mr. Jones, I have before me
4 indictment number 2018-4150, *The State vs. Arthur Jones,*
5 *Jr.*. Once again, this is indictment for possession of a
6 pistol by a person unlawful or a stolen pistol. And the
7 specific allegation says unlawful possession of a weapon by
8 a person convicted of a crime of violence. Do you
9 understand this charge, sir?

10 A. Yes, sir.

11 Q. This indictment, Mr. Jones, alleges that you did here
12 in Richland County on or about March the 18th of 2018
13 knowingly possess or acquire a pistol after having been
14 convicted of a crime of violence as defined in section
15 16-23-10 as amended, violation of section 16-23-0030(b) as
16 amended.

17 THE COURT: What was the crime?

18 MR. EATON: Strong-arm robbery, Your Honor.

19 THE COURT: Is that correct, Mr. Bailey?

20 MR. BAILEY: Yes, Your Honor, that's correct.

21 BY THE COURT:

22 Q. You understand all this?

23 A. Yes, sir.

24 Q. You had a conviction for strong-arm robbery. You
25 shouldn't have had a gun. You understand that. So, you

A. JONES - EXAMINATION BY THE COURT

14

1 want to plead guilty to unlawful possession by a person
2 convicted of a crime of violence, which would be strong-arm
3 robbery. Do you understand that?

4 A. Yes, sir.

5 Q. You realize that by pleading guilty to this particular
6 indictment charged, Mr. Jones, that you could go to jail
7 for five years?

8 A. Yes, sir.

9 Q. Knowing then, sir, that you can go to prison for five
10 years by pleading guilty to this charge, possession of a
11 weapon by a person convicted of a violent crime, you still
12 wish to plead guilty to it?

13 A. Yes, sir.

14 Q. All right. Next, Mr. Jones, I have before me
15 indictment number 2018-4154, *The State vs. Arthur Jones,*
16 *Jr.*, once again, and this is an indictment for attempted
17 murder. Do you understand this charge, sir?

18 A. Yes, sir.

19 Q. This particular indictment, Mr. Jones, alleges that
20 you did here in Richland County on about March the 18th of
21 2018 did with the intent to kill attempt to kill Kidron,
22 K-i-d-r-o-n, Deal with malice aforethought, either
23 expressed or implied. Do you understand this allegation?

24 A. Yes, sir.

25 Q. You want to plead guilty to attempted murder. Is that

A. JONES - EXAMINATION BY THE COURT

15

1 correct?

2 A. Yes, sir.

3 Q. You realize that by pleading guilty to attempted
4 murder, Mr. Jones, that you could go to jail for thirty
5 years?

6 A. Yes, sir.

7 Q. Knowing then, sir, that you can go to prison for
8 thirty years by pleading guilty to attempted murder, do you
9 still wish to plead guilty to it?

10 A. Yes, sir.

11 Q. Now, of course you understand, do you not, Mr. Jones,
12 as I'm sure your lawyer, Mr. Bailey, has explained to you,
13 that this attempted murder is an 85 percent sentence?

14 A. Yes, sir.

15 Q. You understand that? That whatever sentence I impose,
16 you've got to do at least 85 percent of that imposed
17 sentence before you become eligible for parole. Do you
18 understand that, sir?

19 A. Yes, sir.

20 Q. Knowing then, sir, that you can receive up to thirty
21 years for pleading guilty to attempted murder, knowing
22 fully and fully realizing that you've got to do 85 percent
23 of whatever sentence I impose, you still wish to plead
24 guilty to attempted murder?

25 A. Yes, sir.

A. JONES - EXAMINATION BY THE COURT

16

1 Q. All right. Next, Mr. Jones, I have before me
2 indictment number 2018-4155, *The State vs. Arthur Jones,*
3 *Jr.,* once again. Once again this is an indictment for
4 attempted murder, and once again, Mr. Jones, it's fair to
5 say that you understand this charge. Is that correct, sir?

6 A. Yes, sir.

7 Q. Mr. Jones, this particular indictment alleges that you
8 did here in Richland County on about March the 18th of 2018
9 did with the intent to kill attempt to kill Anfernee
10 Kirkland, A-n-f-e-r-n-e-e Kirkland, with malice
11 aforethought, either expressed or implied. You understand
12 this allegation, Mr. Jones?

13 A. Yes, sir.

14 Q. Want to plead guilty to another count of attempted
15 murder, this time trying to kill Anfernee Kirkland. Is
16 that correct?

17 A. Yes, sir.

18 Q. Realize once again that by pleading guilty to
19 attempted murder, Mr. Jones, that you could go to jail for
20 thirty years. Knowing that, you still wish to plead
21 guilty, and the thirty years on all three of these
22 attempted murders carry 85 percent. You understand that,
23 don't you?

24 A. Yes, sir.

25 Q. All right. Next, Mr. Jones, I have before me

A. JONES - EXAMINATION BY THE COURT

17

1 indictment number 2018-4151, *The State vs. Arthur Jones,*
2 Jr., once again. Once again this is an indictment for
3 attempted murder. Once again I need to ask you for the
4 record. You understand charge. Is that fair enough?

5 A. Yes, sir.

6 Q. This particular attempted murder charge or indictment
7 alleges that you did here in Richland County on or about
8 March the 18th of 2018 did with the intent to kill attempt
9 to kill Howard Boone with malice aforethought, either
10 expressed or implied. You understand this allegation once
11 again, Mr. Jones?

12 A. Yes, sir.

13 Q. Once again, you are pleading guilty to attempted
14 murder. Is that correct?

15 A. Yes, sir.

16 Q. You realize once again do you not, sir, that by doing
17 so, you can go to jail for thirty years, having to do 85
18 percent of whatever sentence you receive on attempted
19 murder? You still wish to plead guilty. Is that correct?

20 A. Yes, sir.

21 Q. Now, Mr. Jones, are you currently on probation or
22 parole for any prior offenses?

23 A. No, sir.

24 Q. Mr. Jones, I can run these sentences on these five
25 indictments consecutively. That is, put one after the

A. JONES - EXAMINATION BY THE COURT

18

1 other, add one to the other. If I do so, sir, you're
2 looking at, I think, exactly 100 years in jail. You
3 understand that?

4 A. Yes, sir.

5 Q. Understanding then, sir, that you could go to prison
6 for 100 years by pleading guilty to these five indictments,
7 do you still wish to plead guilty to them?

8 A. Yes, sir.

9 Q. Now, Mr. Jones, when you plead guilty, you have to
10 give up certain rights. First of all, you have to give up
11 your right to remain silent. Now, this is your right
12 against self-incrimination, Mr. Jones, your right to say
13 nothing at all. No one can compel you to come into court
14 to provide evidence or to testify against yourself. Do you
15 understand this, sir?

16 A. Yes, sir.

17 Q. Secondly, Mr. Jones, when you plead guilty, you have
18 to give up your right to a jury trial. That is your right
19 for a jury here in Richland County to decide whether or not
20 you're guilty of these five charges beyond a reasonable
21 doubt. A jury would base its decision on whatever evidence
22 the state would introduce at trial against you and also on
23 whatever evidence you and your lawyer, Mr. Bailey, may wish
24 to introduce.

25 Now, Mr. Jones, I emphasize may wish to introduce,

A. JONES - EXAMINATION BY THE COURT

19

1 sir, because in a trial, you'd be presumed innocent. Would
2 not have to prove anything, and you could not be convicted
3 unless the state convinced all twelve jurors of your guilt
4 beyond a reasonable doubt. The jury's decision would have
5 to be unanimous; all twelve would have to agree that you're
6 guilty of all five of these charges. Do you understand
7 that, sir?

8 A. Yes, sir.

9 Q. Thirdly, Mr. Jones, when you plead guilty, you give up
10 your right to confront and to be confronted by the
11 witnesses against you. That is your right to see, hear,
12 and cross-examine any witnesses the state may call to
13 testify against you during a trial. In addition, Mr.
14 Jones, by pleading guilty you give up your right to
15 subpoena and call witnesses on your own behalf. That is
16 someone who may testify for you. Do you understand this,
17 sir?

18 A. Yes, sir.

19 Q. Now, do you understand these rights I just mentioned
20 to you, Mr. Jones?

21 A. Yes, sir.

22 Q. Do you understand, sir, that when you plead guilty,
23 you have to give up these constitutional rights? You
24 understand that?

25 A. Yes, sir.

A. JONES - EXAMINATION BY THE COURT

20

1 Q. Now, is that what you want to do? You want to give up
2 your constitutional rights?

3 A. Yes, sir.

4 Q. Now, you realize you would not receive a jury trial on
5 any of these five charges by pleading guilty to them?

6 A. Yes, sir.

7 Q. You understand that, sir? Now once again, Mr. Jones,
8 you're pleading guilty to three counts of attempted murder.
9 Each count carries up to 90 years in jail. You got to do
10 85 percent of whatever sentence you receive on the
11 attempted murder charge. And in addition, I've explained
12 to you that possession of a gun by a person convicted of a
13 violent crime and unlawful possession of a gun during the
14 commission of a violent crime both carry five years apiece.
15 I've explained to you that you're looking at a total of 100
16 years if these sentences are run consecutively. Now,
17 considering what I've said, Mr. Jones, I'll ask you once
18 again. How do you wish to plead guilty to these charges,
19 guilty or not guilty?

20 A. Guilty.

21 Q. You realize, Mr. Jones, that when you plead guilty,
22 you admit the truth of the allegations contained in these
23 five indictments against you. You understand that?

24 A. Yes, sir.

25 Q. I tell you that, sir, because, Mr. Jones, you might

A. JONES - EXAMINATION BY THE COURT

21

1 have some defenses to these charges. Of course I have no
2 way of knowing that, but you need to realize that by
3 pleading guilty here today, you give up any defenses you
4 may have. Do you understand that, sir?

5 A. Yes, sir.

6 Q. You need to speak up, Mr. Jones. You need to say yes
7 or no.

8 Additionally, Mr. Jones, I tell you that because when
9 you were arrested by the Columbia Police Department, you
10 may have given some type of incriminating statement. That
11 is, made some confession or admission about your guilt.
12 You need to realize that by pleading guilty here today, you
13 waive your right to later on challenge or contest, if you
14 gave any statements, whether or not they were taken or
15 obtained from you freely and voluntarily in accordance with
16 your constitutional rights. Do you understand that?

17 A. Yes, sir.

18 Q. Now, once again you're pleading guilty to three counts
19 of attempted murder because you are guilty. Is that fair
20 enough, Mr. Jones?

21 A. Yes, sir.

22 Q. You're pleading guilty to one count of possession of
23 possession of a weapon during the commission of a violent
24 crime because you are guilty of that. Is that fair enough?

25 A. Yes, sir.

A. JONES - EXAMINATION BY THE COURT

22.

1 Q. Now once again, you're pleading guilty to possession
2 of a gun by a person convicted, or possession of a weapon
3 during the commission of a violent crime and the unlawful
4 possession of a gun by a convicted felon, all right.

5 THE COURT: Now, Solicitor, have there been any plea
6 negotiations?

7 MR. EATON: This is a straight-up plea, Your Honor.

8 THE COURT: Anything additional at all, Mr. Bailey, in
9 any way, shape, or form that needs to be added to the
10 record in connection with any plea negotiations or any
11 recommendations?

12 MR. BAILEY: No, Your Honor.

13 BY THE COURT:

14 Q. You understand all this, Mr. Jones?

15 A. Yes, sir.

16 Q. Do you still wish to continue and plead guilty?

17 A. Yes, sir.

18 Q. Now, sir, are you fully satisfied with the manner in
19 which your lawyer here, Mr. Bailey, the way he has advised
20 and represented you on these charges?

21 A. Yes, sir.

22 Q. Have you talked with him for as long and for as often
23 as you feel it necessary for him to properly represent you?

24 A. Yes, sir.

25 Q. You need any more time to talk to him?

A. JONES - EXAMINATION BY THE COURT

23

1 A. No, sir.

2 Q. Have you understood your talks with him?

3 A. Yes, sir.

4 Q. Mr. Jones, has Mr. Bailey done everything for you you
5 feel he should do or could do on your behalf in advising
6 and representing you on these charges?

7 A. Yes, sir.

8 Q. Has he done anything you feel he should not have done?

9 A. No, sir.

10 Q. Are you completely satisfied with his services?

11 A. Yes, sir.

12 Q. You have any complaints, Mr. Jones, against anyone at
13 the Columbia Police Department?

14 A. No, sir.

15 Q. You have any complaints against anyone working here in
16 the solicitor's office?

17 A. No, sir.

18 Q. Have you understood my questions, Mr. Jones?

19 A. Yes, sir.

20 Q. Is there anything you want to ask me about what I just
21 discussed with you, anything at all?

22 A. No, sir.

23 Q. Mr. Jones, you realize that you have a right to appeal
24 this guilty plea and whatever sentence I may impose upon
25 you, but if you want to appeal, you need to file a notice

1 of intent to appeal within ten days of today's date. Do
2 you understand that, sir?

3 A. (NO VERBAL RESPONSE.)

4 Q. Additionally, Mr. Jones, once you're in the Department
5 of Corrections, if you later on find or feel or think that
6 you have some complaints against the Columbia Police
7 Department, against your lawyer, Mr. Bailey, against the
8 solicitor's office, or anybody else involved in your case,
9 you need to make those complaints known by filing a
10 post-conviction relief application within one year of
11 today's date. Do you understand that, sir?

12 A. Yes, sir.

13 THE COURT: Very well, Solicitor, be happy to hear
14 about it.

15 MR. EATON: Thank you, Your Honor, and I apologize. I
16 got carried away there, Your Honor.

17 THE COURT: That's all right.

18 MR. EATON: I'll wrap up, I'll wrap up my comments
19 here in just a second.

20 You know, Howard Boone was doing everything right. He
21 was here from out of town, didn't know Arthur Jones, had
22 nothing to do with any gang. And today if this had not
23 have happened, would probably be leading a platoon of
24 soldiers in the greatest fighting force on Earth. He
25 signed up to serve his country; he signed up knowing that

1 he could go to combat. Of course, he did not expect that
2 right here in Columbia, South Carolina.

3 So, that scene of chaos that we see, that is a crime
4 against the victims, against Mr. Boone, Mr. Deal, Mr.
5 Kirkland. It's also against this whole community because
6 everybody, from visitors to our town like Mr. Boone to
7 people who live here, have the right to go to Five Points
8 and enjoy themselves without finding themselves suddenly in
9 the crossfire of gang combat, Your Honor.

10 So, Your Honor, for the reasons that I've stated --
11 and, you know, we see attempted murders all the time where
12 people shoot at one other where we do not have the severity
13 of these injuries, but those are the injuries, life
14 altering.

15 THE COURT: Well, it's reminiscent of the case, part
16 of which I heard, in the Vista after the Kentucky game.

17 MR. EATON: Yes, sir. Exactly.

18 THE COURT: Now go ahead.

19 MR. EATON: So, because those of reasons, Your Honor,
20 the state is asking for the maximum number and for
21 consecutive time.

22 THE COURT: All right, sir.

23 MR. EATON: If I may approach? I have a statement
24 written by Kidron Deal, whose mother is -- mother, aunt,
25 and sister, cousins are here today, and I just -- Mr.

1 Bailey has seen this. I would just hand this to the court
2 real quick.

3 THE COURT: All right, sir.

4 (A PAUSE.)

5 THE COURT: All right, sir.

6 MR. EATON: So, Your Honor, if I, if I may at the
7 appropriate time, I'll turn it over to the victims who do
8 wish to address Your Honor. We obviously have Howard Boone
9 here. We have his mother, Ms. Lewis.

10 THE COURT: Let me ask you a question first. What is
11 his prior record?

12 MR. EATON: 2014 strong-arm robbery, Your Honor.

13 THE COURT: All right. Anything further about that?

14 MR. EATON: No, Your Honor.

15 THE COURT: Let me qualify the plea first.

16 Now, Mr. Bailey, I'm sure you're not surprised by any
17 of this.

18 Mr. Jones, you heard the presentation by the
19 solicitor's office. Now, is all of what he says
20 substantially accurate and correct? Is there any real
21 dispute about any of that?

22 DEFENDANT: Sir?

23 THE COURT: What he just said to me in terms of how
24 this matter happened, the film and everything that was
25 presented to me, is that substantially accurate and

1 correct?

2 (COUNSELOR CONFERS WITH THE DEFENDANT.)

3 THE COURT: Mr. Bailey, this is asked of both you and
4 your ---

5 MR. BAILEY: Yes, sir. Yes, sir. Yes, Your Honor.

6 THE COURT: All right. Very well. I find there is a
7 substantial factual basis for your plea, Mr. Jones. I
8 further find your decision to plead guilty to be freely,
9 voluntarily, knowingly, and intelligently made, that you've
10 had the advice of competent counsel whom you indicate to me
11 you are completely satisfied with. Therefore, I will
12 accept his plea.

13 I'll be happy to hear anything additional from the
14 state at this time, Solicitor.

15 MR. EATON: Yes, sir. So, Mr. Boone is here with a
16 number of family members if, if, it the court would hear
17 from them.

18 THE COURT: Yes.

19 MR. EATON: I would just ask y'all to speak up.

20 (A PAUSE.)

21 UNIDENTIFIED SPEAKER: Sir, my name is Kelvin, Your
22 Honor. I am Howard Boone's uncle. I've been married -- I
23 married his aunt thirteen years ago, and he has been a son
24 from day one to me. Him and my stepson were the same age,
25 and I'm, I retired from the Army and he, I felt like, was

1 following in my footsteps. And everything that he had
2 worked so hard for was taken away at the blink of an eye.

3 I, I sat and listened to everything that you read to
4 the young man here, and, and he talk like, talk like he did
5 get credits for some things that Howard cannot get any
6 credit for. Everything that he worked so hard for, his,
7 his -- there is no light, it doesn't appear to be. It
8 appears to be -- I just leave it all in God's hands because
9 I know that God can work miracles.

10 But I just sat there and sat there and watched the
11 demeanor of the young man here in front of me, and it just
12 seem like to me he don't have a care in this world, and
13 it's not fair for us as his -- myself as his uncle, his
14 parents. I've seen what devastation this action has caused
15 this family. I sit and watch the Justice Channel all the
16 time, and I feel sorry for the families that go through
17 these type of things, but it doesn't hit home until it hits
18 someone that you know, that you know personally, and it's
19 difficult. It is very difficult for us to go through.

20 I pray hard for Howard. He encourages me. He
21 encourages anybody he come in contact with. This young man
22 just had so much to look forward to, and only God knows
23 what the future holds for him.

24 I ask that, that he is given the max that you can give
25 him. You know, he's, he's a young man and I just, I pray

1 for him also. I pray for this country, for South Carolina,
2 this whole country. We just need to do something. I don't
3 know what we can do, but it's -- I hate to see young men go
4 out and do something like this, and they don't realize that
5 it not only affects them. It affects the community. It
6 affects his parents. It affects the people that they, that
7 they injure, and I just want something to be done.

8 I'm sick. I'm tired of all this that I, that I see on
9 a daily basis. I deal with PTSD and I, and I fought for my
10 country for twenty years, over twenty years. I cannot
11 stand to watch the news now; I cannot watch the news. I
12 break down in tears every time I watch the news because
13 there's always something negative on there.

14 I just pray that, that God leads you in, in the right
15 direction to make a good, sound decision. I pray that a
16 young man finds forgiveness and set his life -- maybe he
17 can be the light for someone else. It's very difficult,
18 and I ask that just if you believe in prayer, pray for us.
19 We'll pray for you. I just want to say thank you.

20 THE COURT: Thank you, sir.

21 Yes, ma'am, your name, please.

22 MS. LEWIS: My name is Cheryldeen Lewis [phonetic],
23 and I am the mother of Howard Boone. I don't know how
24 possible it is, but I wish he could turn around and look at
25 my son.

1 He is a big brother, a half brother, a better son and,
2 I mean -- and all I can do is just piggyback on what
3 everybody has been saying. He was going somewhere and I am
4 proud of him. He's still that motivator.

5 He may -- he can't finish what he started, but he is
6 continuing to go places. The big brother that he is, he
7 just don't know how hard it is. He has a thirteen-year-old
8 brother that he, he wanted to -- him to just watch him as
9 he could -- saying that he was going to follow his
10 footsteps, and it's just hard for him to be where he is and
11 can still feel like he's there for his brother.

12 Like I said, he was going places: college student,
13 Army man. He was accomplishing a whole lot. He was down
14 here in this town still for his accomplishments and to be
15 -- end up in the presence of this young man right here, we
16 can't get it back. We can't get it back.

17 But I just wish that he, he could turn around. I just
18 wish he could turn around and look at my son and just see
19 how he affected this family, affect his life: quadriplegic,
20 on a ventilator, and each day we still not knowing what the
21 outcome will be for him.

22 My son is still here and I'm going to take, I'm going
23 to take each day and allow, and allow him to basically
24 still to try to continue some of his accomplishments.
25 We're going to be there for him.

1 And I just, just want to say I just -- I don't wish
2 this on anybody. I don't wish this on anybody, and I just
3 wish that young man could have rethought and have a
4 different process, a different thought the night that he
5 decided to do this.

6 And like his uncle said, we praying, and it, it's hard
7 to be here to stand for this. I just feel like he deserves
8 whatever the court decides to do because this is how we
9 were left.

10 THE COURT: Well, I thank you both. I know it's been
11 difficult.

12 And this is? Yes, sir.

13 MR. BOONE, SR.: My name is Howard Boone, Sr. That's
14 my son there. Like his mom said, wish he could turn around
15 and see him.

16 This has been hard on our family, friends, everybody
17 that love him. That's my first time seeing the video. I
18 couldn't even get the newspaper. I couldn't look at no
19 video. I couldn't even imagine my son laying in the street
20 like that, and that was my son.

21 I hurt every day. I didn't want to take time off. I
22 go to my son's house every day, but I knew if I didn't go
23 by my son's house every day, he was going to miss me, but I
24 had to take some time off. I was going every day, so I had
25 to take some time off. I told him I had to take Wednesday

1 off, but I go by my son's house every day. If I don't go
2 there when I -- if I don't go every day, he's looking at me
3 like why? Where you been?

4 He can't pick up the phone. Somebody got to give him
5 the phone. They got to plug in the daggone machine so he
6 can talk on his phone. He can't go to the bathroom by his
7 self. Somebody got to manually go in his uterus -- not his
8 uterus but his rectum to -- for him to go to the bathroom.
9 If not, he could get build up and he could die.

10 For all that don't know, thank God for EMS here. They
11 did a great job. I didn't know until he told me. His mom
12 told him he died. They had to bring him back twice that --
13 and I didn't know because I didn't want -- I hadn't read
14 nothing and I didn't want to read nothing. I couldn't even
15 -- every time I hear an ambulance, I have to close my ears
16 because the only thing I can vision is my son, my son, my
17 son in that ambulance going to the hospital.

18 And people don't realize when you pull that trigger,
19 them bullets do not turn around, and everybody that has a
20 gun, think before you squeeze that trigger. That's all I
21 have to say.

22 THE COURT: Anything further, Solicitor?

23 MR. EATON: Just that we had -- I know that Mr. -- I
24 think Mr. Boone, Howard Boone.

25 MS. WASHINGTON: I'm going to say something before

1 Howard goes. My name is Shakeisha Washington. I'm
2 Howard's girlfriend.

3 As everybody already has mentioned the type of person
4 Howard was, you know, I just would ask that whatever is in
5 your heart, that that's what is given to this young man
6 here today, knowing the amount of pain and suffering this
7 has brought onto this family financially, emotionally, and
8 any other way you can imagine.

9 I understand that the young man here has kids of his
10 own. And being his partner, we would love to have our own
11 kids, but we have to pay and we have to go through so much
12 other stuff to have the life that any normal person would
13 have.

14 Every day I look at this, this man and I have to find
15 a way and a level of strength to keep him motivated. It
16 would be very easy for him to give up. Every day, people
17 tell him they don't know how he do it, and I don't how he
18 does it because I don't think I could. But to know that
19 every dream and every other goal he ever set for his self
20 he accomplished until March 18, 2018, when it was taken
21 from him, that's a pain that nobody can -- it can't go
22 away.

23 And as they say, we don't wish this on anybody else.
24 And we know that it's not in our hands to decide the fate
25 of this person, but we just hope that and pray that God

1 touches you and you can understand what type of person this
2 man was and who he still is because even through this
3 injury -- and God knows it's a list of them -- he continues
4 every day to push people past where they feel like they can
5 go. He encourages people. It hurts him to see us like
6 this because he's hurting, but he doesn't have a choice.

7 This young man gets to wake up every day and walk on
8 his own free will outside with whatever restrictions he has
9 being behind bars, but he can't get up. He can't pick up
10 his phone when he wants to. He can't scratch his nose when
11 it's itching. He can't breathe on his own. The very thing
12 that we all take for granted, to just take a breath, he
13 can't do on his own because of one bullet. And through his
14 situation, he finds a way to still encourage people to take
15 a second thought before you pull that trigger.

16 I don't know if you got a chance to see video, but I
17 was -- we were told that it was sent to you, but he is now
18 a strong advocate for gun violence and things of that
19 nature, just trying to promote that once you pull that
20 trigger, that bullet does not turn back and it doesn't have
21 a name on it. You might intend for it to hit somebody, but
22 it will not -- it's not promised to hit that person or only
23 that person. And if you do hit that person, there is a
24 mile-long of family members behind that person that one
25 bullet on that one person affects. And this is not even an

1 inch of the amount of family that has been impacted from
2 this.

3 MR. BOONE, JR.: How you doing, Judge? My name is
4 Howard Boone.

5 THE COURT: How are you doing, sir?

6 MR. BOONE, JR.: You know, not even for me but for the
7 other victims as well, being, you know, struck by a bullet
8 and then having to have a life-changing situation, it's
9 just like, you know, having to go through procedures and
10 surgeries just to have a normal life. Like my girlfriend
11 said, like, you know, things that we may take for granted
12 every day, you know, the surgeries and procedures that I
13 have to go through and that the other victims have to go
14 through just to live a normal life, it is hard because it's
15 not something that you intended with your life to be based
16 on, what it's been built on.

17 You know, I was always a family man; I still always
18 will be. You know, my mom talked about my little brother
19 and how I want him -- everything I did was pretty much for
20 him. My, my nephews, my sister has two kids. Everything I
21 did was pretty much for them to look up to me, for them to
22 follow in my footsteps, if not, you know, do something
23 close to where -- everything that I had. Just everything
24 that I had, I wanted to show them, to give them something
25 to be. Like, okay, if he did it, I can do it, too.

1 You know, my brother, he really doesn't say much and,
2 you know, with gun violence, when one person is affected,
3 it affects everybody that's involved. And, you know, my
4 brother really doesn't talk or really speak much about my
5 situation. I try to talk to him about it, but I really
6 don't know exactly how he feels deep down inside. So, you
7 know, with that being said, he just -- I don't know how
8 that really affects him.

9 You know, with me being in the military, I always said
10 I would rather die overseas fighting for my country or
11 fighting for my family than to die in the streets, being
12 another statistic as an African-American. And that fact,
13 that, that always stuck big on me because I was always
14 that, that motivated -- that person that everybody in the
15 family look towards. It'd be like okay. This guy's doing
16 it. Maybe I can do it. If I'm not doing it, I need to be
17 doing something and, you know, I was that person that
18 create that legacy. You know, I got to a point in my
19 career and my life that I wasn't just doing it for myself.
20 I was doing for everybody that couldn't do it around me.

21 And now that I can't really do exactly what I want to
22 do, it's hard for me, but I try to be that, that person who
23 was strong in the family, that person who was, you know,
24 always positive minded because people are still watching
25 me. You know, they was watching me before but they, they

1 watch me even more now because they want to know, like,
2 how, how I do it, how I get through everyday life. And,
3 you know, it's not even just me March 18th. I wasn't the
4 only one affected. You know, the two other victims was
5 affected, and they dealing with their situation they way
6 they're dealing with it. And I can say all day, you know,
7 I wish I was in that person's shoes, but mentally and
8 emotionally they might doing it to a whole, whole nother
9 the level than what I am right now.

10 And, you know, just moving forward, you know, I pray
11 for better days and I pray that Mr. Jones, you know, finds
12 himself and realize that, you know, this just didn't affect
13 my family and two other victims' families. It affected his
14 life, his kids, his, his family, everybody else involved,
15 you know. So, moving forward, you know, I just pray that,
16 you know, the world and society gets better and the thought
17 behind carrying a weapon or a gun changes.

18 THE COURT: Thank you, sir. Anything further?

19 MR. EATON: Your Honor, today was the -- because he's
20 in North Carolina, today was the first day that I got to
21 meet Howard Boone. As you can see, he is a remarkable guy,
22 and no one deserves it and Howard Boone didn't deserve it,
23 the way his life's been changed. So, those are the reasons
24 that we're asking for the sentence we're asking for, Your
25 Honor.

1 THE COURT: All right. Thank you, sir.

2 Mr. Bailey, be happy to hear from you, sir.

3 MR. BAILEY: Thank you very much, Your Honor. Mr.
4 Jones has been in jail for 634 days. He's had a lot of
5 time to reflect on this tragedy and this tragedy that he
6 takes full responsibility for, Your Honor.

7 Since he's been in, he's taken numerous classes: Work
8 Keys, literacy, Going Through the Goal. I won't bother to
9 itemize them. He's tried, he's tried to do something with
10 that time.

11 We've had a lot of conversation; I've had a lot of
12 meetings with his family, who've come to my office. At one
13 point I went down to meet with Arthur, and he's always been
14 remorseful. He's always taken responsibility; he's been
15 very cooperative with me, Your Honor.

16 I went, I went down and he told me that his cousin had
17 been in a car accident and had been paralyzed, and he said,
18 you know, I felt bad for what happened before but not --
19 you know, I, I caused this to somebody else. This is
20 something -- you know, I put a man in a wheelchair. And,
21 you know, this is something that, that I can't forgive
22 myself for and that I've got to try and, you know, make up
23 for for the rest of my life. And I was, I was surprised by
24 just the -- I was struck by the empathy of it when we had
25 that conversation, Your Honor.

1 He takes full responsibility. Arthur hopes and I
2 hope, Your Honor, that, that this tragedy and his behavior
3 concerns other young men in this community, statewide,
4 nationwide that -- you know, not to bring guns to public
5 places and guns and violent weapons to places like Five
6 Points. That it just, you know, it destroys lives and it
7 destroys families. And he has had a lot of time to reflect
8 on, you know, the mistakes that can come from playing tough
9 with guns and the consequences that it has on innocent
10 people like Mr. Boone, Your Honor.

11 His -- with him today is, is his father, Arthur Jones,
12 Sr.; his, his sister, Sequita [phonetic]. His mom was not
13 able to come because of her work schedule, but I've been in
14 frequent communication with her. They're very nice people,
15 and they've come to my office many times, Your Honor.
16 Also, also, Pastor Allen Williams from Full Gospel is here
17 if the court would hear from them just briefly, Your Honor.

18 THE COURT: I'll be happy to hear from anyone, sir.

19 MR. BAILEY: Mr., Mr. -- if Mr. Jones wants to speak.

20 THE COURT: And coincidentally, he was standing
21 outside in the hallway before I started nonjury. I asked
22 y'all to go down and wait until we were finished with the
23 other matters before I heard this case. Is that correct,
24 sir?

25 MR. JONES, SR.: Yes, sir.

1 THE COURT: And tell me your name again for the
2 record.

3 MR. JONES, SR.: Arthur Jones, Sr.

4 THE COURT: Yes, sir.

5 MR. JONES, SR.: I'm the father of Arthur Jones, and
6 what I would like to say to all the families and the
7 victims, we're standing by you and with you in prayer and
8 hurt.

9 (A PAUSE.)

10 MR. JONES, SR.: What can a parent say when you raise
11 a child one way and you find yourself here? I just want
12 y'all to know that my son was raised in church. No gun
13 violence, no drugs, no alcohol, both parents. All siblings
14 are college-educated people. We cannot understand it; we
15 don't know why the decision was made to do what was done.
16 So, we, we just don't understand because -- we understand
17 the solicitor's job is to do what he needs to do.

18 But I'll let the courtroom here know today that my son
19 ain't running in no streets like that. He was working, as
20 he said, trying to take care of his little babies. And one
21 dumb night, one stupid decision has caused all of us to be
22 here today. It makes no sense. We don't know why. Like I
23 said, there's no guns in the home; he's never been around
24 any guns. Nobody does drugs or alcohol, and he got a
25 loving family, raised by two parents and siblings.

1 Everybody's doing well. We don't understand what would
2 make anybody decide that one day to change all of these
3 lives.

4 So, we're here because that's my son, and we just
5 stand by whatever decision the court make here today, Your
6 Honor. We just want the families to know that we're here
7 with you.

8 THE COURT: Thank you, sir.

9 Yes, sir, your name, please, sir.

10 MR. WILLIAMS: Pastor Allen Williams, Your Honor. And
11 to the family, we are so sorry.

12 I'd like for y'all to know, as Minister Jones said, AJ
13 was -- I remember him from a baby. He was raised in
14 church. Oftentimes I would sit down and talk to him and,
15 and I would tell him about my troubled past as a young man
16 and, and how I got in trouble, and, and how it gave me a
17 turn around. But his parents, Your Honor, tried. They had
18 him in church, all of our activities. We, we spent a lot
19 of time together.

20 And I don't want to minimize the hurt of the family.
21 I really don't. I just, Your Honor, I just want to let you
22 know that his parents have really tried. And even since
23 he's been incarcerated, I write him often and, and we just
24 didn't, we just didn't see this coming. In fact, the
25 church that I pastor is -- it's right off Five Points.

1 It's only about two miles from where the incident happened,
2 and that's the church that he grew up in, so.

3 THE COURT: What street is it?

4 MR. WILLIAMS: Rosewood. It's 1401 Rosewood Drive.
5 It's right by the track, Carolina track.

6 THE COURT: I know exactly where it is.

7 MR. WILLIAMS: Yes, sir, and we've been there about
8 thirty-four years, and he's been there from a baby up until
9 this recent incident, but had no trouble with him in
10 church. He just -- but -- and again, my heart really go
11 out to the family. My heart go out to AJ. I really love
12 him, but, but, but whatever happens here, it pales in
13 comparison to the pain y'all have, and we didn't see this
14 coming.

15 And I tell AJ I love you.

16 Thank you, Your Honor.

17 THE COURT: You're welcome, sir.

18 Anything further?

19 MR. BAILEY: No, Your Honor. We would ask the court
20 to consider a sentence of fifteen to eighteen years, sir.

21 THE COURT: How much?

22 MR. BAILEY: We would ask the court to consider a
23 sentence of fifteen to eighteen years.

24 THE COURT: All right, sir.

25 SENTENCE OF THE COURT:

1 THE COURT: All right, on indictments number 2018-4155
2 and 4154, attempted murder, sentence thirty years. Credit
3 for time served of 634 days. On indictments 2018-4151,
4 this is -- I'm sorry. On indictments -- weapons charge.
5 On indictments 2018-4150, 2018-4156 sentence five years.
6 That's concurrent with 2018-4154 and 2018-4155.

7 Let me back up a little bit. On the two attempted
8 murder charges, thirty years. Five years concurrent on the
9 weapons charges. On indictment number 2018-4151 -- this is
10 the third attempted murder charge -- sentence thirty years,
11 provided that upon the service of ten years the balance is
12 suspended, and this is consecutive to the thirty years. Do
13 I make myself clear?

14 MR. EATON: Yes, Your Honor.

15 MR. BAILEY: Yes, Your Honor.

16 THE COURT: Look. This is a tragedy for everyone
17 involved. My heart bleeds for both families. There's
18 nothing we can go back to change this situation, but as a
19 judge who is responsible for citizens here today, I can
20 tell both sides equally and fairly that whether good or
21 bad, I become the conscience of this community. And the
22 sentence that I've imposed I do believe reflects -- I could
23 be in error -- the conscience of this community. Thank you
24 all so very much. This matter is concluded.

25 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 11TH DAY OF DECEMBER, 2019.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JANUARY 4TH, 2021

2020CP4004856

FORM 5

STATE OF SOUTH CAROLINA)

County of Richland)

Arthur Jones Jr #358555)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Evans Corrections Institution
610 Hwy 9 Bennettsville, SC 29512
2. Name and location of Court which imposed sentence Richland County
Court house 1701 Main Street 29201, Columbia SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2018A4021600811
(b) 2018A4021600810

JEANNETTE W. HOGAN
C.C.P. & G.S.
2020 OCT 14 AM 9:16
RICHLAND COUNTY
FILED

(c) 2018A4021600812

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

- (a) Dec, 11 2019 one Attempted murder ran Consecutive
- (b) Dec, 11 2019 Two Attempted murders ran Concurrent
- (c) for a total sentence of 40 years

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) Could not raise ineffective counsel claim on direct appeal

(b) _____

(c) _____

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

- (a) Violation of my Fifth Amendment
- (b) Violation of my Sixth Amendment
- (c) Violation of my Fourteenth Amendment

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

- (a) Ineffective assistance of counsel
- (b) Ineffective assistance of counsel
- (c) Ineffective assistance of counsel

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

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

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

- (a) the specific nature thereof:
 - i. _____
 - 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. _____
- 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?

NO

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? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (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. J. Rhodes Bailey, Richland County Public Defender 1701 main street post office Box 192 Columbia, SC
 - ii. 29201
 - iii. _____

- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment and plea
 - ii. Sentencing
 - iii. _____

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

The vacating of the conviction and sentence

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

NO

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Arthur Jones Jr, 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.

Arthur Jones Jr

SWORN to and subscribed before me this 28th day of August, 2020

Sandra Oetlow (L.S.)
Notary Public

My Commission Expires: 2/17/24

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

I, Arthur Jones Jr, 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.

Arthur Jones Jr
Applicant

SWORN or affirmed to and subscribed before me this
28th day of August, 2020

Sandra Outlaw
Notary Public

My Commission Expires: 2/17/24

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	FOR THE 5TH JUDICIAL CIRCUIT
)	
Arthur Jones, Jr., #358555,)	
Applicant,)	Case No.: 2020-CP-40-4856
)	
v.)	
)	RETURN & MOTION FOR A MORE
State of South Carolina,)	DEFINITE STATEMENT
Respondent.)	(Counsel Appointed)

In response to Applicant Arthur Jones, Jr.'s action for post-conviction relief (PCR) commenced October 14, 2020, Respondent, the State of South Carolina, makes this return:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted during the October 2018 term of the Richland County Grand Jury for three counts of attempted murder (2018-GS-40-4151; 2018-GS-40-4154; 2018-GS-40-4155), possession of a weapon during the commission of a violent crime (2018-GS-40-4156), and unlawful possession of a weapon by a person convicted of a crime of violence (2018-GS-40-4150). Applicant was represented by J. Rhodes Bailey, Esquire. Assistant Solicitor R. Vance Eaton of the Fifth Circuit Solicitor's Office prosecuted the case.

Applicant plead guilty as indicted on December 11, 2019, before the Honorable L. Casey Manning. Judge Manning, without recommendation or negotiation, sentenced Applicant to thirty years imprisonment for two counts of attempted murder, five years imprisonment for unlawful possession of a weapon by a person convicted of a violent crime, five years for possession of a weapon during the commission of a violent crime, to run concurrently, and thirty years imprisonment for the remaining charge of attempted murder to be served consecutively with the balance suspended upon the service of ten years. Applicant did not appeal.

II. FACTS GIVING RISE TO THE CONVICTION

The incident giving rise to the charges occurred on March 17, 2018 (Tr. 3). At the guilty plea proceeding Assistant Solicitor Eaton gave the following factual recitation in support of the pleas:

This incident was on St. Patrick's Day of 2018, Your Honor. We have one of the victims and his family in the courtroom today. Two of the victims could not be here.

But on that day, as Your Honor is well aware, Saint -- Five Points turns into a huge event. There is a 5K run in the morning, followed by a full day of activities, festivities that goes on well into the night. That day, Your Honor, Mr. Jones was there, as was Howard Bow -- Howard Boone, who is seated in the courtroom, Your Honor.

Mr. Jones was affiliated with gang members, and that night we know from footage -- I'm going to show Your Honor a brief part of the footage. We know that -- it appears that Mr. Jones saw some opposing gang members that walked past them in the crowd. Now, this is a very crowded area; thousands of people come to this event, Your Honor.

As you will see, Mr. Jones in this video is obviously engaged visually with somebody, and Mr. Jones makes the decision as he, as he sort of faces off with that person to pull out a .380 pistol and start firing shots at his opponents there in the crowd. Three people are hit, Howard Boone being the worst injured of the three. So, Howard Boone is shot in the neck, and as Your Honor can well see, Mr., Mr. Boone is quadriplegic. Kidron Deal is hit around the face; he has reconstructive face surgery, to include bone grafts. Anfernee Kirkland is hit to the lower left hip.

Tr. 3-4.

III. CURRENT APPLICATION

Applicant timely commenced this PCR action on October 14, 2020. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. Violation of my Fifth Amendment;
 - b. Violation of my Sixth Amendment;
 - c. Violation of my Fourteenth Amendment;

As requested relief, Applicant is seeking to vacate his conviction and sentence.

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

IV. MOTION FOR A MORE DEFINITE STATEMENT

The Uniform Post-Conviction Procedure Act requires applicants to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). In an application for post-conviction relief, it is incumbent upon the applicant to make a *prima facie* showing entitling them to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Rule 71.1(d), SCRPC, provides appointed PCR counsel "shall insure that all available grounds for relief are included in the application and shall amend the application if necessary."

Here, Applicant has failed to state with any specificity the facts giving rise to his allegation of ineffective assistance of counsel, as required by section 17-27-50. Additionally, Applicant's allegation that his Fifth, Sixth, and Fourteenth Amendment rights were violated is not supported by any other additional information in the application. Therefore, Respondent moves pursuant to Rule 12(e), SCRPC, and Rule 71.1(d), SCRPC, to require Applicant, through PCR counsel, to provide a more definite statement of his allegation of ineffective assistance of counsel.

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief." Accordingly, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth

specific allegations for relief, Respondent reserves the right to move to dismiss the application for failure to state a claim.

V. RESPONSE TO ALLEGATIONS

Applicant's alleges his counsel was ineffective; however, Applicant wholly failed to provide any facts or circumstances to support this allegation. Notwithstanding, Respondent submits the record establishes this claim lacks 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).

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. *Id.*; *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625. Under this prong, the court measures an attorney's performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at

690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. 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).

These standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668.

Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified

acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney.” *Id.* at 690.

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

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of trial counsel; therefore, Respondent 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”).

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

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. As noted above, Respondent 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. ALL OTHER CLAIMS

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

VIII. CONCLUSION

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on the issues of ineffective assistance of counsel after Applicant, through his counsel, amends the application to provide the required specificity for each allegation.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

YASMEEN E. KLEIN
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

March 9, 2021

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State of South Carolina)	Court of Common Pleas
County of Richland)	Fifth Judicial Circuit
Arthur Q. Jones, Jr.,)	Transcript of Record
Petitioner/Applicant,)	2020-CP-40-04856
vs.)	
State of South Carolina,)	
<u>Respondent.</u>)	

May 25, 2022
Columbia, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge

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

Arthur Aiken, Esquire
On behalf of the Petitioner/Applicant

D. Russell Barlow, II, Assistant Attorney General
On behalf of the State of South Carolina

Reported by: Stacy S. Johnson, RPR
Circuit Court Reporter

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I N D E X

<u>WITNESS</u>	<u>PAGE</u>
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E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held May 25, 2022,
2 beginning at 1:35 PM.)

3 THE COURT: Yes, sir.

4 MR. BARLOW: Thank you.

5 THE COURT: All right, Mr. Aiken -- or, Mr. Barlow,
6 if you'd read into the record the case and then we'll
7 crank it up.

8 MR. BARLOW: Yes, sir. May it please the Court?
9 Russ Barlow on behalf of the State of South Carolina.
10 This is a post-conviction relief matter. Arthur Q. Jones,
11 Junior, versus the State. Case Number 2020-CP-40-4856
12 out of Richland County.

13 Would you like me to go into the procedural
14 background or do you want the records?

15 THE COURT: It's already in the file?

16 MR. BARLOW: Yes, sir.

17 THE COURT: I've got it.

18 All right. Mr. Aiken, are you ready, sir?

19 MR. AIKEN: Your Honor, I waive opening and I call
20 Mr. Jones as my first and only witness.

21 THE COURT: All right. Thank you, sir.

22 (Whereupon, Arthur Q. Jones, Junior, was duly sworn
23 by the Court Bailiff.)

24 COURT BAILIFF: Step up and take a seat and take
25 your full name for the record.

1 THE WITNESS: Arthur Quinton Jones, Junior.

2 THE COURT: Proceed, sir.

3 MR. AIKEN: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 ARTHUR QUINTON JONES, JUNIOR,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. AIKEN:

9 Q. Mr. Jones, this is your PCR, correct?

10 A. Yes.

11 Q. And it arises out of a criminal case that was handled
12 in Richland County; is that correct?

13 A. Yes, sir.

14 Q. And the charges were three counts of attempted
15 murder, one count of possession of a firearm during the
16 commission of a violent crime, and one count of possession
17 of a firearm by a violent felon; is that correct?

18 A. Yes, sir.

19 Q. All right. Now you -- you understand that if you were
20 to get the maximum sentence on those charges and all those
21 charges were run consecutive, you'd be looking at a hundred
22 years; is that correct?

23 A. No, sir.

24 Q. No?

25 A. Unh-unh.

1 Q. That's not correct?

2 A. No, sir.

3 Q. Okay. Well, assault and -- attempted murder is thirty
4 years, correct?

5 A. Yes, sir.

6 Q. Okay. So three counts of that run consecutive would
7 be ninety; is that right?

8 A. Yes, sir.

9 Q. And then five for each of the gun charges, correct?

10 A. Yes, sir.

11 Q. And with those run consecutive, it would be another
12 ten, right?

13 A. Yes, sir.

14 Q. So a total consecutive sentence could have been a
15 hundred years; isn't that right?

16 A. Yes, sir.

17 Q. Okay. Now you understand, do you not, that if you win
18 this post-conviction relief -- well, first, let me ask you
19 this. You pled guilty to all those charges, correct?

20 A. Yes, sir.

21 Q. And you received a sentence of forty years; is that
22 correct?

23 A. Yes, sir.

24 Q. All right. Now do you understand that if you win this
25 PCR, your conviction and your sentence will be vacated?

1 A. Yes, sir.

2 Q. Do you understand if that happens you go right back to
3 Richland County to face the same criminal charges again?

4 Do you understand that?

5 A. Yes, sir.

6 Q. Okay. So you understand that you could go back
7 looking at a hundred years and not forty years, right?

8 A. Yes, sir.

9 Q. Okay. Now understanding all that, do you still want
10 to go forward with your PCR?

11 A. Yes, sir.

12 Q. Okay. Now who was your lawyer at the court below?

13 A. Rhodes Bailey.

14 Q. Now Mr. Bailey, did you have discussions with him
15 about this plea?

16 A. When we went to the plea arrangement, that was my
17 first time knowing about it.

18 Q. So you showed up for court and you found out when you
19 showed up for court you had a plea scheduled?

20 A. It was like -- he was just telling me I was going to
21 court, you know, for it, but I never knew nothing about the
22 plea itself until I got there.

23 Q. Now did you have discussions between the time you got
24 to court on that day and the time of your actual guilty
25 plea?

1 A. A small -- small session.

2 Q. Well, let me ask you this. Did he explain to you the
3 elements of all those offences that I listed earlier that
4 you were charged with?

5 A. What you mean by that?

6 Q. The offenses that you were charged with that we just
7 went over a little while ago --

8 A. Uh-huh.

9 Q. -- did Mr. Bailey explain to you what facts
10 constituted those offenses?

11 A. No.

12 Q. Now let me ask you this. Did -- did he explain to you
13 the maximum penalty on each of those offenses?

14 A. He never explained to me that I could receive the time
15 that he was basically consulting with -- with me about.

16 Q. I see. But did he tell you that, for example, you --
17 you were looking potentially at a hundred years?

18 A. I don't recall. He might have did.

19 Q. All right. Now did Mr. Bailey discuss with you the
20 advantages and disadvantages of a plea and the advantages
21 and disadvantages of a trial?

22 A. No, sir.

23 Q. This discussion you-all had between the time you
24 showed up for court on the day of your plea and the actual
25 plea, how long did that last?

1 A. Repeat the question.

2 Q. The discussion you had with Mr. Bailey about the
3 guilty plea, between the time you arrived at court on the
4 day of the plea and the actual plea, how long did that
5 discussion take?

6 A. Maybe five, ten minutes.

7 Q. Now, Mr. Jones, the sentencing sheet on which the
8 judge put your sentence, did -- did Mr. Bailey explain to
9 you that sentence sheet?

10 A. I'm not -- as far as the -- the time and what was
11 going on, I was really like confused about the situation.
12 I'm not --

13 Q. Well, was there any discussion with Mr. Bailey on that
14 morning that your plea was taken, was there any discussion
15 with him then about how much time you'd be looking at?

16 A. I wasn't aware of the fact, like I said, that -- the
17 time he discussed with me, you know, that we was already
18 talking about, I could get more than that, and so I really
19 didn't understand.

20 Q. Did -- did he discuss specific time -- time -- a
21 specific bracket of time?

22 A. Yes. When I was within the county jail, Alvin S.
23 Glenn, he was saying like -- basically like I was looking
24 at twenty, twenty-five years. He kept saying something
25 about twenty, twenty-five years, and then when I actually

1 went for the arrangement and plea he was saying something
2 like he was gonna ask for eighteen or twenty-five or
3 something, so, you know...

4 Q. Did he explain to you that -- that that number was not
5 binding on the State?

6 A. No.

7 Q. Did -- did Mr. Bailey explain the difference between a
8 straight up plea and a negotiated plea?

9 A. No, sir.

10 Q. Do you understand the difference?

11 A. No, sir.

12 Q. Now added altogether, what was your problem with
13 Mr. Bailey's representation?

14 A. He never gave me full disclosure of my motion of
15 discovery, my Rule 5. I asked him for it. He didn't give
16 it to me. There was material facts within it, you know,
17 that supports a -- a claim of innocence to the charges I
18 was accused of. You had police incident reports and notes
19 and also witnesses that was saying someone else was the
20 shooter. You know, there wasn't no really physical
21 evidence, no DNA, you know. It was like -- I really didn't
22 know of a lot of material. Like I said, I didn't know
23 about the witnesses. Even -- I know now that the Columbia
24 Police Department was even looking for other people,
25 so-called suspects whatever, persons of interest whatever.

1 I wasn't even a wanted suspect. I was a person of
2 interest.

3 Q. Do you know of any investigation Mr. Bailey did of
4 your case?

5 A. No, sir.

6 Q. Now did Mr. Bailey actually sit down with you and go
7 through all of the discovery?

8 A. No, sir.

9 Q. How much did he show you?

10 A. He came one time and the -- one or two sheets that
11 I've seen was like photos of my Facebook.

12 Q. Now the relief you're requesting is a vacated sentence
13 and a vacated conviction; is that correct?

14 A. Yes, sir.

15 Q. All right.

16 MR. AIKEN: Thank you. Please answer any questions
17 the State might have.

18 THE COURT: Mr. Barlow.

19 MR. BARLOW: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. BARLOW:

22 Q. Good afternoon, Mr. Jones.

23 A. Good afternoon.

24 Q. All right. So today you're here alleging ineffective
25 assistance of your plea counsel, correct?

1 A. Yes, sir.

2 Q. And I know that you confirmed it with your counsel,
3 but just to be clear you realize that if you're successful
4 here today and granted PCR, that you would be retried for
5 all the matters you were originally indicted for and could
6 face up to a hundred years in prison?

7 A. Yes, sir.

8 Q. Okay. Before you pled, how many times did you meet
9 with your attorney?

10 A. Maybe five to seven.

11 Q. And during any of those meetings do you recall
12 reviewing discovery?

13 A. Like I said, the one time that he like brought it to
14 my notice, I seen only -- he only gave me sheets that
15 showed Facebook pictures. I never had a full disclosure.
16 I've asked for it, but he never let me obtain it. We
17 didn't go through it at all. Like the whole from A to Z,
18 we didn't go through it at all. I wasn't given it because
19 he didn't give it to me.

20 Q. Okay. Do you recall discussing the elements of each
21 of the offenses you were charged with with your attorney?

22 A. I don't recall.

23 Q. Do you recall discussing possible defenses with your
24 attorney?

25 A. I was just, you know, aware that I was charged with

1 attempted murder.

2 Q. But did you-all discuss any possible or potential
3 defenses if you were to go to trial?

4 A. No. No, sir.

5 Q. Did you give your attorney any leads or witnesses to
6 investigate?

7 A. Like I said, I never knew about the witnesses. I
8 never knew about the police reports, the police notes, you
9 know, that people gave them, statements claiming another
10 shooter. I guess there was video showing a description of
11 the person that they stated was the shooter. A black male,
12 gray hoodie pulled out a gun.

13 Q. Well, my -- my question is did you ever give your
14 attorney any leads to investigate?

15 A. Well -- well, as an attorney he's supposed to do that
16 on my behalf.

17 THE COURT: Would you answer the question, please,
18 sir, yes or no, and then you can explain.

19 Mr. Jones?

20 Re-ask the question, please.

21 MR. BARLOW: Yes, sir.

22 BY MR. BARLOW:

23 Q. Did you give your attorney any leads to investigate?

24 A. What do you mean by that?

25 Q. Did you provide any information to your attorney that

1 you wanted him to investigate? I believe that one of your
2 claims is that he failed to investigate.

3 A. Yes, sir.

4 Q. So did you provide him with any information or leads
5 that he would investigate?

6 A. Well, we -- when we talked he was telling me about
7 another guy that he claimed was -- was to pull out a gun
8 or something. He said something about, you know, when the
9 DNA test results came back about the -- the clip that was
10 found on the scene, that there was no DNA come back to me,
11 so. I mean, I believe he was supposed to investigate. I
12 mean, I'm not sure exactly if I was supposed to give him
13 leads, to tell him to do it or not.

14 Q. Okay. At the plea hearing do you recall the State
15 presenting the facts surrounding the allegations?

16 A. What you mean by that?

17 Q. Do you recall the solicitor reading the facts into the
18 record of what happened, what occurred that night?

19 A. I believe so.

20 Q. And do you recall agreeing with the facts presented by
21 the State at your plea hearing?

22 A. I only agreed on counsel's advice.

23 Q. Do you recall the judge telling you that in order for
24 him to accept your plea that he needed to ask you a series
25 of questions to make sure you were pleading freely and

1 voluntarily?

2 A. Yes, sir.

3 Q. Do you recall affirming that your plea counsel
4 explained the charges contained in the indictments, the
5 possible punishments, the right -- your rights, your
6 constitutional rights, including the right to a jury trial,
7 and that you understood those things?

8 A. Off of counsel's advice, yes, sir.

9 Q. Do you recall affirming that you understood the charge
10 of possession of a weapon during a violent crime carried a
11 maximum of five years?

12 A. Off of counsel's advice, yes, sir.

13 Q. And you wished to plead guilty to it?

14 A. Mr. Bailey told me to say yes to everything.

15 Q. Okay. Do you recall affirming that you understood
16 that the charges you were facing required you to serve
17 85 percent of the sentence imposed?

18 A. Off of counsel's advice.

19 Q. Do you recall telling the judge you understood that
20 the charges could lead to a hundred years of imprisonment?

21 A. Off of counsel's advice.

22 Q. Do you recall telling the judge that you had no
23 complaints against counsel?

24 A. Say it again.

25 Q. Do you recall telling the judge that you had no

1 complaints against your counsel?

2 A. I believe I did.

3 Q. Do you recall telling the plea judge that you were
4 satisfied with your attorney's services?

5 A. I believe. I believe so.

6 Q. Do you recall telling the judge you talked to your
7 attorney enough?

8 A. I believe. I think so.

9 Q. Do you recall telling the judge you kind of understood
10 -- well, strike that, Your Honor.

11 Do you recall telling the judge you did not need more
12 time to talk with your attorney?

13 A. Any questions that was asked, I went off counsel's
14 advice.

15 Q. And do you recall telling the judge you had enough
16 time to make up your mind whether to plead guilty or go to
17 trial?

18 A. Based off counsel's advice.

19 Q. And do -- do you recall telling the judge you
20 understood you were entering a guilty plea?

21 A. Off counsel's advice.

22 Q. Did anyone threaten or coerce you into pleading
23 guilty?

24 A. I believe it was like a product of fear and what you
25 would call coercion.

1 Q. Would you please repeat that?

2 A. The word "coercion" I believe was in there.

3 Q. Did you tell your plea counsel that you wanted to go
4 to trial?

5 A. When we talked, I kind of like made a statement about
6 it, but he shut it down. It was like he never even
7 mentioned no type of defenses. Like I said, the material
8 that I was unaware of was -- like undermined my confidence.
9 I was not aware of it, you know. If I would have knew
10 about a lot of material evidence that was, you know, I
11 feel like suppressing me by him, you know, I would have
12 went to trial because the -- the facts are -- you know,
13 the evidence is mitigated.

14 Q. Do you recall the judge discussing your right to a
15 jury trial then?

16 A. Off counsel's advice.

17 Q. Was it your decision to plead guilty?

18 A. Off counsel's advice.

19 MR. BARLOW: No more questions, Your Honor.

20 THE COURT: Mr. Aiken.

21 MR. AIKEN: No redirect, Your Honor, and that's the
22 close of the Applicant's case.

23 THE COURT: Thank you, sir.

24 You may step down.

25 (Witness excused.)

1 THE COURT: Mr. Barlow.

2 MR. BARLOW: At this time, Your Honor, we'd call
3 J. Rhodes Bailey.

4 (Whereupon, John Rhodes Bailey was duly sworn by
5 the Court Bailiff.)

6 COURT BAILIFF: Okay. Have a seat up here and
7 state your full name for the record for us.

8 THE WITNESS: Yes. My name is John Rhodes Bailey.

9 JOHN RHODES BAILEY,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BARLOW:

13 Q. Good afternoon, Mr. Bailey. Thank you for being here
14 today.

15 How long have you been practicing law?

16 A. Since 2007, so about fifteen years.

17 Q. And how long or how much of your practice of law has
18 been in criminal law?

19 A. About ten years. Two -- two different times at the
20 Richland County Public Defender's Office.

21 Q. Were you appointed or retained in this case?

22 A. Appointed in this case.

23 Q. About how long before the plea?

24 A. Let's see. It would have -- it was -- the shooting
25 was right after St. Patrick's Day 2018 and then the plea

1 was late -- the plea was I want to say November of 2019 --
2 no, wait. Oh, it was December of 2019, so almost two
3 years. Well, not quite. I guess about four months shy of
4 two years or so. I might have that a little wrong, but...

5 Q. Okay. How many times did you meet with your client
6 between the time you were appointed and the plea hearing?

7 A. I don't remember exactly how many times. The -- I was
8 able to get my notes from the office, but I didn't get
9 access to the computer program. The old computer program
10 at the public defender's office usually tells you how many
11 meetings. If he said five to seven, I would -- I would
12 think maybe on the -- closer to seven or eight. I don't
13 know exactly, but it was -- it was pretty frequent because
14 I also had other clients in the same dorm as him and I --
15 I frequently make it a -- if I go to a housing unit at the
16 jail, I try to meet with other clients also in that unit
17 while I'm there.

18 Q. Well, during those meetings do you recall discussing
19 the elements of the charges and what the State was required
20 to prove?

21 A. I'm -- I'm sure we did. Here the biggest charges
22 were attempted murder because I believe three guys were
23 shot and that's really relatively straight -- those are
24 pretty -- relatively straightforward. Later the prosecutor
25 directly presented him with possession of a weapon during a

1 violent crime and we, of course, went through that because
2 they brought him over to the courthouse to -- to present
3 him with that charge directly.

4 Q. Would you briefly characterize for the Court the
5 State's evidence in this case?

6 A. Sure. So this was a shooting -- or he was charged
7 with three attempted murders, shooting three men from out
8 of town, at Five Points on St. Patrick's Day, so this was
9 right -- it was St. Patrick's Day I want to say about
10 1:00 or 2:00 in the morning after the big party and
11 everything, and it was a shooting. It was all over the
12 news that it had happened and they actually had pictures
13 of -- of Mr. Jones. They had kind of his visage a little
14 bit on the news. Not -- I mean, not some of the clearest
15 pictures, I don't remember specifically, but it was all
16 over the news and, you know, later I had access to the --
17 to the videos. The videos were pretty -- you know, we have
18 security cameras around the city. The videos were pretty
19 clear and -- and it definitely looked like, you know,
20 Mr. Jones as -- you know, as objectively as -- as you can
21 say that.

22 And there were a lot of folks there. It was a big --
23 it was a big crowd that scattered after the shots. So, I
24 mean, basically it was -- the allegation was that he was
25 walking with some other guys, then he bumped into somebody

1 or somebody bumped into them, and then maybe it was like
2 -- it was kind of like a conflict, like people riding
3 each other, and then he pulled out his gun and fired three
4 times and it was just -- it was around the fountain at
5 Five Points and he fired three times allegedly or, you
6 know, I guess, that was the determination on conviction,
7 in the direction of the bar, Group Therapy, over at Five
8 Points, and it was just -- and then the three men that
9 were shot were three guys from out of town that were in
10 town with their fraternity, I think, they had some kind
11 of military or ROTC connection, and they were shot. They
12 weren't in any way involved in the altercation, but that
13 was -- the bulk of the evidence was -- was the video,
14 which the -- it was the video captured by the cameras.

15 Q. Well, let me ask you this.

16 A. Yeah.

17 Q. Were the original individuals that were involved,
18 the Applicant and the men that bumped into him, was it
19 gang-related issues?

20 A. There was speculation about that. Of course, to be
21 fair, with the media you never know if anything is gang --
22 you know, frequently people get a little gang heavy in the
23 talk. There was speculation on maybe there was, but it was
24 on the media's part. I didn't -- there was a little bit of
25 a talk among investigators speculating that that was what

1 -- Mr. Jones's conflict was with one of these other guys.
2 I never saw any real hard evidence of that kind of thing,
3 but -- but any conflict that he had with the guys at the --
4 at Five Points was really kind of irrelevant to the case
5 because the people that got hit with the guns were not in
6 any way related to the conflicts. You know, they didn't
7 know these -- they didn't know any of these folks. They
8 were just kind of randomly -- they were just kind of
9 randomly hit. You know, I -- there was speculation that
10 maybe one of those guys had a gun or maybe flashed a
11 weapon, but, that -- you know, that kind of was -- that
12 wasn't necessarily -- I mean, and that -- I didn't see
13 evidence of -- like any real evidence of that, but that
14 didn't -- that didn't really have any bearing on whether
15 or not these other guys got shot, you know.

16 Q. All right. Did you discuss Mr. Jones's version of
17 the facts?

18 A. He didn't talk to me a lot about it. You know,
19 frequently when you have a client they don't want to --
20 you know, sometimes they don't have a lot to say at first
21 and if that's the case, you know, you say don't talk to
22 anybody else, I'll get evidence in and then we'll review
23 it together, and then you see how the client addresses or
24 deals with it. Usually our clients don't want to say
25 everything to you or there are clients that don't really

1 say a lot, they're just like what's going on, what's
2 happening, and I'll just sort of sit and wait. The
3 impression I got from -- and Arthur was very -- or I guess
4 -- I think he went by A.J. initially. A.J. was very
5 polite every time I met him. He -- he didn't seem to be
6 in a rush. I kind of got the feeling like he knew it was
7 serious enough that he -- you know, that maybe it didn't
8 benefit to rush.

9 Q. Okay. Let me ask you if the version of facts that he
10 gave you, were they -- the limited amount that he gave you,
11 were they different from the State's or did it coincide
12 with the State's -- the State's version?

13 A. I never really got anything -- I never really got much
14 of a story that was -- any tangible narrative that would
15 have -- you know, the only real defense here would have
16 been like a self-defense kind of narrative, right, but it's
17 kind of hard to make a self-defense narrative in this sort
18 of situation and there wasn't -- there wasn't any -- there
19 wasn't any real strong evidence. You know, nobody knew
20 where the other guys in the conflict were at. You know, I
21 -- he never really said very much. I would have remembered
22 if he said this is what happened or there was this guy with
23 a gun and he did this and this. He just didn't really say
24 very much.

25 Q. Did you review discovery with the Applicant?

1 A. I did. I'm sure I did. Sometimes, you know, the
2 jail is real funny about bringing in videos or outside
3 computers. I -- what I normally would have to do during
4 my tenure at the public defender's office, I left about --
5 I think this was last year, last March, 2021. Of course,
6 at that point, this was pre-COVID. Not long pre-COVID,
7 but this was pre-COVID before this happened, but a lot
8 times to show clients videos, I would use some computer at
9 the jail, which was terrible and didn't always want to work
10 like you wanted it to, or a lot of times I would show him
11 discovery at the courthouse. I cannot remember looking at
12 my notes if I -- I know that I either would have shown
13 Arthur the video or I would have said here -- you know, the
14 video is pretty strong, do you want to see it? You know,
15 it looks -- it looks pretty clear that you're on this
16 video, and you say that in the nicest way possible, you
17 know, not in an accusatory way because you don't want your
18 client to feel like you're fussing or you're prosecuting
19 them, and either -- I remember I showed the video to his
20 parents. His parents met with me maybe twice. Maybe his
21 mom twice and his dad once, and they -- you know, I showed
22 them the video, and I want to say his dad was real upset
23 and talked to him about it after he was, you know, mad.
24 And, of course, I tell people don't talk on the jail phones
25 and everybody always talks on the jail phones.

1 Q. Let me ask you, did you discuss the punishments
2 associated with his offenses?

3 A. Yes, I -- yes.

4 Q. Okay. Did you discuss the possible defenses with him
5 if you -- if he intended to go to trial?

6 A. I mean, you know, it's not gonna be a whodunit because
7 his face is pretty clear. The best possible defense would
8 have been a self-defense case. You know, Arthur never
9 really pushed one way or the other. He didn't really push
10 for -- he did not push for a trial, he didn't push for a
11 factual defense either. I would have remembered if he had.

12 Q. Well, did you inform the Applicant of his right though
13 to a jury trial?

14 A. Oh, yeah. Absolutely. Absolutely.

15 Q. Did Mr. Jones ever tell you that he did not understand
16 something?

17 A. If he did, I would have repeated it. I didn't -- I
18 didn't get the impression -- again, a very nice fella,
19 very respectful. Frequently -- I mean, I didn't get the
20 impression that he -- he usually understood what was going
21 on and I would have been careful to -- to explain anything
22 to him if he didn't understand.

23 Q. Did Applicant, or Mr. Jones rather, did he provide any
24 information that he wanted you to investigate?

25 A. No. Early on though we did try to find out camera

1 information. I brought a guy at my office who works at
2 the office who was a paralegal slash kind of runner and he
3 went down to the jail with me less than a month after this
4 happened, really just a few weeks, so that we could kind
5 of draw kind of a map as to where we think this happened
6 or where there might be camera footage available and, you
7 know, other than that there wasn't a lot of investigating
8 to do because of the -- the camera evidence that had --
9 you know, that was produced by the State, the video and
10 stuff, but I wasn't given any other leads to follow
11 investigation-wise. I didn't -- there wasn't a real clear
12 contradiction from -- from Mr. Jones that it happened
13 differently.

14 Q. All right. Let's see. Did you -- did you enter into
15 any plea negotiations?

16 A. You know, I tried my best. The -- you have to
17 understand in -- at this time, early 2018 through 2020,
18 Five Points was in the news for shootings and violence all
19 the time. There was the young woman that was paralyzed a
20 few years before that. You know -- you know, it became
21 actually a pretty -- actually, you know, people were
22 talking about it on the news all the time, politicians
23 would talk about it, and there was press. This was in
24 the paper, the local news, when it first happened. My
25 strategy, and how I explained this to Mr. Jones, was to

1 lay low and not attract attention on this case and --
2 and -- you know, until hopefully things would sort of
3 calm down a little bit before we eventually went to court
4 on it because, you know, emotions were really high. Not
5 -- not just in this particular case, but, you know,
6 attitudes about violence in Five Points.

7 I'm sorry. That probably was not responsive to your
8 exact question.

9 Q. That's all right. So the question was did you ever
10 enter any -- enter into any plea negotiations?

11 A. Oh, yeah. They were -- you know, the prosecutor
12 wanted to try this case. He was like oh, yeah, you know,
13 we're gonna -- he loved it, you know. You have the -- you
14 know, my client was on video very clearly shooting a gun,
15 you know, at Five Points in a crowd of people, and -- and
16 so he wanted that. That would have been great press then.
17 He wanted to get this into court every time he could. He
18 brought him into court to serve him with a new warrant
19 that was completely unnecessary, you know. They wanted to
20 -- they wanted to attract attention, you know, and I -- so
21 he was basically, like no, I'm not offering anything; you
22 know, either he pleads straight up or we're not gonna -- or
23 we're gonna try the case.

24 Q. That was my next question.

25 A. Yes.

1 Q. All right. So did you ever tell Mr. Jones that he
2 would only get eighteen to twenty-five years if he pled
3 guilty?

4 A. No, I told him I was gonna ask for eighteen to
5 twenty-five years. I had been in front of Judge Manning
6 a -- a lot of times. I find Judge Manning -- you know,
7 I've been in front of Judge Manning off and on since 2007
8 or so; and I just said, you know -- I mean, the strategy
9 here was this -- this is a rough situation, a rough set of
10 facts, and we've -- we've just got to go ahead and do --
11 you know, show -- show remorse and, you know, do my best to
12 humanize you in front of the judge. Or we -- you know, we
13 could certainly go to trial, but, you know, it didn't -- it
14 didn't seem like a very great case to take to trial, and --
15 and so -- I'm sorry, what was the last question? I can't
16 remember what it was. I don't tes -- lawyers make the
17 worst witnesses because we don't testify.

18 Q. Just basically -- you had answered it, whether or not
19 you told him he would only get eighteen to twenty-five
20 years, and I believe your testimony was that you --

21 A. I hoped he would get eighteen to twenty-five years.
22 I was -- eighteen was very optimistic. Eighteen was my
23 lowball. I was hoping to get into the twenties. I mean,
24 I was the chief litigator at the public defender's office
25 when I left, so I was -- and I was the head of the violent

1 squad, so I'd seen a lot of these cases come and go and I
2 thought if we got anything under thirty, we'd be -- we'd be
3 lucky in this particular case.

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

6 A. Yes.

7 Q. Okay. And in your opinion, did Mr. Jones understand
8 the facts against him?

9 A. Yes.

10 Q. And there's an allegation that you didn't explain his
11 sentencing sheet to him before he signed it.

12 A. You know, I have a very specific protocol when
13 somebody pleads guilty, as does my office. We go over all
14 the rights, we do the sentencing sheet, you know, like
15 it's a fee sheet, which is kind of silly. They might have
16 finally gotten rid of those. I'm sure I explained this is
17 it, this is a strike, here's an X, this is a violent --
18 this is a violent crime, two strikes on your record. That
19 -- I don't remember specifically -- having done thousands
20 of guilty pleas, I don't remember the specific interactions
21 on this particular sheet, but I would have explained it to
22 him.

23 Q. Do you feel that you were adequately prepared to
24 proceed to trial had he not pled?

25 A. I think -- he never wanted a trial. I mean, I -- he

1 just never in any way communicated to me that he wanted a
2 trial because I think he knew it was a rough situation and,
3 you know, I -- I certainly -- I did think this was a pretty
4 stiff sentence. I was certainly hoping for less, but if he
5 would have wanted a trial, we would have done it.

6 Q. That was my next question. All right. So in terms of
7 your client's decision to plead guilty, did you agree with
8 him at that time?

9 A. I did. You have a lot of cases that are, you know, a
10 choice between bad and worse. His victim was -- one of the
11 victims that was paralyzed from the neck down was all of
12 the news in like his hometown of Raleigh. They were having
13 charity-based ball games for him and he would cry on the
14 news. You know, he was -- and he was in like sort of a
15 reclined -- it wasn't even a wheelchair, it was kind of
16 like one of these bed-type prop things, and when --
17 actually when the plea happened, it was in one of these
18 smaller courtrooms and they brought him in, it took people
19 to wheel it, there was a lot of equipment and stuff, and I
20 just think, you know, that -- that visual at trial would
21 have been tough. It would have been tough. I thought we
22 could do better by pleading guilty. Unfortunately, it was
23 not much better, but I -- I was just praying that they
24 weren't gonna bring cameras into the courtroom. That's
25 what I was really hoping for.

1 Q. Do you stand by the counsel you provided Mr. Jones
2 today?

3 A. I do. I wish -- I wish it had been a -- I felt -- I
4 would liked to have seen him get more credit for taking
5 responsibility. You know, we worked on how it had changed
6 his life and -- and how it had changed his outlook and,
7 you know, remorse. And -- and I talked to his family a
8 lot. I prepared them for it. I felt like I had to really
9 prepare his family hard. I feel like I did the best --
10 the best I could and I really wished for a better result
11 because I liked him and I thought it was a tough -- thought
12 it was tough situation.

13 MR. BARLOW: Thank you, Mr. Rhodes.

14 Please answer any questions Mr. Aiken has. Thank
15 you.

16 THE COURT: Mr. Aiken, sir.

17 MR. AIKEN: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. AIKEN:

20 Q. How are you, Mr. Bailey?

21 A. I'm fine. How are you, Mr. Aiken?

22 Q. Good. I'm doing fine.

23 You -- you represented Mr. Jones in his criminal case?

24 A. That's right.

25 Q. And during your representation, how much aggregate

1 time did you spend discussing the plea with Mr. Jones?

2 A. I'd -- I'd say a fair amount because I explained that
3 -- when it seemed that -- when it seemed clear he didn't
4 want a trial earlier on, I was explaining what we would be
5 doing is to try and mitigate the circumstances in this
6 plea. Having his parents there, seeing if they're -- you
7 know, talking about his -- I talked to his parents about
8 school, you know, how he behaved at school, if he'd had any
9 learning disabilities, they told me he had ADHD and stuff
10 like that. I didn't -- I didn't bring that up because that
11 wasn't even diagnosed, but we talked -- we talked pretty
12 extensively about what we were doing.

13 Q. What all did you do to prepare his case for trial in
14 case he decided not to plea?

15 A. I -- he never showed an interest in it. I mean, he
16 never showed an interest in a trial. So, you know, I
17 prepared the -- I mean, I went through the evidence, I
18 went through it with him. If he had given me some kind of
19 cohesive narrative -- not narrative, but something to work
20 with, maybe we could have done some kind of self-defense
21 trial, but that would have been difficult because you have
22 to be acting lawfully. I mean, you know, it just -- it
23 would have been tough, but I just never got -- he kind of
24 -- he was really pretty quiet, always polite when I saw
25 him, never showed an interest in wanting a trial.

1 Q. Did you discuss the elements of the -- of the offenses
2 with Mr. Jones?

3 A. I'm pretty sure I did.

4 Q. Did you -- did you discuss any other potential
5 defenses?

6 A. I -- you know, he never really said -- another
7 potential defense, I guess, could have been it's not me
8 that committed the shooting, but he never indicated that
9 he wasn't there and he never indicated that he was not
10 involved, you know.

11 Q. Did you -- did you tell Mr. Jones the possible
12 penalties he faced?

13 A. Yes.

14 Q. Did you tell him he was looking at a hundred years?

15 A. I'm sure I -- every single time I added up -- I added
16 up all the potential things. I cannot -- I mean, even
17 right now I guess it would have been, let's see, thirty --
18 I mean, I'm sure I did because I always add it up and that
19 was kind of one of the things they always train us in my
20 office early on was add up the offenses, tell them you
21 could face up to 200 years or 105 years or whatever it is,
22 and I always do that just to be safe.

23 Q. Because this was a straight up plea? No
24 recommendation? No negotiation, right?

25 A. That's right. As much as I disliked it, they were not

1 recommending --

2 Q. And at the plea they came right out the gate saying we
3 want max plus consecutive time?

4 A. I -- yeah, I think they said they wanted consecutive
5 and I was trying to keep it under consecutive time.

6 Q. Right.

7 A. That was -- I mean, that was always thinking best case
8 scenario was I keep it in concurrent time.

9 Q. Did you discuss eighteen to twenty-five years with --
10 with Mr. Jones?

11 A. I told him that's what I wanted to ask for and I asked
12 for his approval to ask for that.

13 Q. Did he give his approval to ask for that?

14 A. Yes, and I told him that does not mean that's what
15 you're getting. We're probably lucky to keep it in the
16 twenties. It's gonna be rough because we were -- and the
17 plea lasted about -- I mean, it lasted two or two and a
18 half hours. I mean, it was real long.

19 Q. Did you -- did you ask for eighteen to twenty-five at
20 the plea?

21 A. I think I did. I mean, I don't -- I'd have to read
22 the transcript. I mean, if it wasn't eighteen to
23 twenty-five, it was -- I don't -- I have not read the
24 transcript. Hold on. If I have that a little bit wrong,
25 let me know.

1 Q. I believe you have that right.

2 A. Okay. Yeah, but essentially I think that's what I
3 asked. I think I -- that number between or about eighteen
4 into the twenties. As I said earlier, the eighteen was
5 sort of my -- my like high hopes lowball on that, you know,
6 in that situation because I knew that there was gonna be a
7 lot of -- there was a lot of public pressure and political
8 pressure for people to be tough on crime in Five Points and
9 those are obviously, you know, I mean, there. You know,
10 there weren't any cameras or anything, but, you know, that
11 was -- I think it was between twenty and twenty-five. If I
12 have it off a year or two, I apologize.

13 MR. AIKEN: Your Honor, may I speak to my client for
14 just one moment?

15 THE COURT: Yes, sir.

16 (Discussion between Applicant and his counsel.)

17 BY MR. AIKEN:

18 Q. Did -- did Mr. Jones ask you about the witnesses in
19 the case?

20 A. His earlier testimony about there being other
21 suspects, I don't remember him ever bringing anything like
22 that up to me.

23 Q. Okay. But did he -- did he discuss whatever witnesses
24 that were in his discovery with you?

25 A. I don't remember the specifics. I mean, he may have

1 -- he may -- I think it may have been he may have asked
2 if there was any indication that anybody had a gun in
3 discovery, that kind of thing. But, again, it wouldn't
4 have ever been a situation where there -- there was no
5 other witnesses that anybody else shot anything. There was
6 a little bit of speculation that maybe somebody else had a
7 gun and Arthur, you know -- but it was so independent from
8 Arthur clearly on video. Like may -- they bumped heads,
9 not literally, figuratively. They bumped into each other
10 and then they split, went a different direction, and then
11 Arthur kind of, you know, makes a gesture or a movement,
12 like kind of, you know, and they were kind of talking, you
13 know, saying stuff back and forth to each other on the
14 video, but there's no sound on it, and then he's pulling
15 the gun and shoots it bang, bang, bang, three -- three
16 times maybe? I don't remember. Or hit three people. Shot
17 it, you know, straight at head level -- or body level, so
18 it's kind of -- you know, I didn't -- I didn't pay a lot --
19 I mean, I looked at it, but there wasn't much evidence of
20 anybody else with a gun and it would have kind of -- it
21 didn't really -- it just didn't really have an effect. No
22 -- nobody else saw anybody else pull a gun on him.

23 MR. AIKEN: All right. Thank you very much,
24 Mr. Bailey.

25 THE COURT: Mr. Barlow, do you have anything on

1 redirect?

2 MR. BARLOW: Just one question, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. BARLOW:

5 Q. Would you agree with me if I tell you that the
6 transcript reflects that you actually asked the Court to
7 consider a sentence of fifteen to eighteen years?

8 A. Oh, gosh, yeah. That's right. Sorry. I -- I knew
9 eighteen was in there somewhere. I apologize. This was
10 about not quite three years ago. That sounds right. That
11 sounds right. Sorry. I think I was hoping though -- I
12 know in my head I was hoping we could keep it under thirty.

13 Q. Okay.

14 A. That sounds about right. I apologize if I got that
15 wrong, Your Honor, and apologize to the Court. I knew
16 eighteen was in there somewhere.

17 MR. BARLOW: Thank you, Mr. Rhodes.

18 Nothing further from the State.

19 THE COURT: Mr. Aiken, anything on recross?

20 MR. AIKEN: I have no recross, Your Honor.

21 THE COURT: Thank you.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness excused.)

24 THE COURT: Mr. Barlow?

25 MR. BARLOW: Nothing further.

1 THE COURT: Mr. Barlow, Mr. Aiken, I take copious
2 notes. I'll get you a ruling out soon. I'm trying to
3 move this docket as quickly as I can.

4 MR. BARLOW: Thank you, Your Honor.

5 MR. AIKEN: Thank you, Judge.

6 THE COURT: Thank you-all so much.

7 (Whereupon, the proceedings were concluded at
8 2:19 PM.)

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C E R T I F I C A T E

1
2
3 I, Stacy S. Johnson, Official Court Reporter
4 for the Eleventh Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing
6 is a true, accurate and complete transcript of record
7 of all the proceedings had and the evidence introduced
8 in the hearing of the captioned case in Circuit Court
9 on the 25th day of May, 2022.

10 This transcript may contain quoted material.
11 Such material is reproduced as read by the speaker.

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

14
15 March 17, 2023

16
17 Is/ Stacy S. Johnson
18 STACY S. JOHNSON
19 CIRCUIT COURT REPORTER
20
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22
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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Arthur Q. Jones, Jr., #358555,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

) CASE NO. 2020-CP-40-4856
)

) **ORDER OF DISMISSAL**
)

JEANETTE M. WILKINSON
C.C., G.S., & F.C.

2022 OCT 20 AM 11:31

RICHLAND COUNTY
FILED

The matter before the Court is an action for post-conviction relief (PCR) commenced by Arthur Q. Jones, Jr. (Applicant) on October 14, 2020, asserting various allegations of ineffective assistance of counsel. The State submitted its Return and Motion for a More Definite Statement on March 12, 2021, requesting an evidentiary hearing. Applicant, through counsel, amended his application on May 25, 2022.

Before this Court, an evidentiary hearing was convened on May 25, 2022, at the Richland County Courthouse. Applicant was present and represented by Arthur K. Aiken, Esquire, and Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant and J. Rhodes Bailey, Esquire (Plea Counsel), testified at the hearing. After hearing the testimony at the PCR hearing and a full review of the record, the Court finds that Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In October 2018, the Richland County Grand Jury indicted Applicant for three counts of attempted murder (2018-GS-40-4151; 2018-GS-40-4154; 2018-GS-40-4155), possession of a weapon during the commission of a violent crime (2018-GS-

40-4156), and unlawful possession of a weapon by a person convicted of a crime of violence (2018-GS-40-4150). Applicant was represented by J. Rhodes Bailey, Esquire. Assistant Solicitor R. Vance Eaton of the Fifth Circuit Solicitor's Office prosecuted the case.

Applicant pleaded guilty as indicted on December 11, 2019, before the Honorable L. Casey Manning. Judge Manning, without recommendation or negotiation, sentenced Applicant to thirty years imprisonment for two counts of attempted murder, five years imprisonment for unlawful possession of a weapon by a person convicted of a violent crime, five years for possession of a weapon during the commission of a violent crime, to run concurrently, and thirty years imprisonment for the remaining charge of attempted murder to be served consecutively with the balance suspended upon the service of ten years. Applicant did not appeal.

Applicant timely commenced this PCR action on June 7, 2018.

SUMMARY OF RELEVANT FACTS

The incident giving rise to the charges occurred on March 17, 2018. (Plea Tr. p. 3). At the guilty plea proceeding Assistant Solicitor Eaton gave the following factual recitation in support of the pleas:

This incident was on St. Patrick's Day of 2018, Your Honor. We have one of the victims and his family in the courtroom today. Two of the victims could not be here. But on that day, as Your Honor is well aware, Saint -- Five Points turns into a huge event. There is a 5K run in the morning, followed by a full day of activities, festivities that goes on well into the night. That day, Your Honor, Mr. Jones was there, as was Howard Bow -- Howard Boone, who is seated in the courtroom, Your Honor. Mr. Jones was affiliated with gang members, and that night we know from footage -- I'm going to show Your Honor a brief part of the footage. We know that -- it appears that Mr. Jones saw some opposing gang members that walked past them in the crowd. Now, this is a very crowded area; thousands of people come to this event, Your Honor. As you will see, Mr. Jones in this video is obviously engaged visually with somebody, and Mr. Jones makes the decision as he, as he sort of faces off with that person to pull out a .380 pistol and start firing shots at his opponents

there in the crowd. Three people are hit, Howard Boone being the worst injured of the three. So, Howard Boone is shot in the neck, and as Your Honor can well see, Mr., Mr. Boone is quadriplegic. Kidron Deal is hit around the face; he has reconstructive face surgery, to include bone grafts. Anfernee Kirkland is hit to the lower left hip.

(Plea Tr. pp. 3-4).

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Violation of his Fifth Amendment;
 - b. Violation of his Sixth Amendment; and
 - c. Violation of his Fourteenth Amendment.

On May 25, 2022, Applicant, through PCR counsel, amended his application as follows:

1. Ineffective Assistance of Counsel:
 - a. Jones' guilty plea was not made with or based on advice of competent counsel.
 - b. Jones' guilty plea was not intelligently made.
 - c. Trial counsel did not prepare Jones' case for trial, and Jones was left with no choice but to plead guilty.
 - d. Trial counsel did not discuss the elements of the offense or potential defenses with Jones.
 - e. Trial counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Jones so that Jones could make an informed choice of whether to enter a plea or try his case.
 - f. Trial counsel did not investigate Jones' case.
 - g. Trial counsel did not tell Jones the possible penalties for his offenses.
 - h. Trial counsel had Jones sign the Sentencing Sheet without explaining it to him.
 - i. Trial counsel told Jones that if he pled, he would get between eighteen and twenty-five years, and Jones received forty years.
 - j. Trial counsel did not explain the difference between a recommendation and a negotiation.

SUMMARY OF RELEVANT TESTIMONY

APPLICANT'S TESTIMONY

Initially, Applicant was asked whether or not he understood that he was potentially facing one hundred years if he was granted a PCR relief, and Applicant responded with "no, sir." Later, Applicant testified that he understood how PCR relief works and that he could go back and potentially receive one hundred years imprisonment instead of forty years. Applicant testified that when they went to the plea hearing, that was the first time he knew about it. Applicant testified that he did not know that they were going to the plea hearing until he was in court.

Applicant testified that he and Plea Counsel had a small session. Applicant testified that Plea Counsel never explained the elements of his crimes. Applicant testified that Plea Counsel may have told him he could receive one hundred years, but he was not sure. Applicant testified that Plea Counsel did not discuss the advantages or the disadvantages of pleading. Applicant testified that the discussion regarding the plea was about five to ten minutes long. Applicant was asked if the sentencing sheet was explained to him, and he replied that he was really confused about the entire situation, including the time he was receiving. Applicant further testified that he wasn't aware of the time he could get, and Plea Counsel never made him aware of that. Applicant testified that he was told he was looking at twenty to twenty-five years.

Applicant testified at the plea hearing Plea Counsel told him he would seek eighteen to twenty-five years. Applicant testified that Plea Counsel never explained the difference between a straight-up plea and a negotiated plea. Applicant testified that Plea Counsel never provided full disclosure of his discovery. Applicant testified that he asked Plea Counsel about some material evidence showing someone else was the shooter. Applicant testified that the state had no physical

evidence and he did not know about the witnesses. Applicant testified that he now knows that the Columbia Police Department was looking at other people.

Applicant testified that he was not aware of any investigation by Plea Counsel. Applicant testified that Plea Counsel came to him once and showed him sheets of his Facebook photos.

On cross-examination, Applicant testified that prior to his plea, he met with Plea Counsel five to seven times. Applicant testified that Plea Counsel reviewed discovery once with him, and he saw only sheets with Facebook pictures, but there was no full disclosure, and he asked for it. Applicant testified that he did not recall discussing the elements of his charges or potential defenses. Applicant testified that he did not know about witnesses or police reports. Applicant was asked if he gave his attorney any leads to investigate, and he replied that he believed he was supposed to investigate.

Applicant testified that he thought he remembered the state reading the facts into the record. However, Applicant testified that he only agreed because of Plea Counsel's advice. Applicant testified that he recalled the colloquy, recalled agreeing with the court, but it was only because of Plea Counsel's advice. Applicant then testified that Plea Counsel told him to say yes to everything. Applicant was asked if he remembered his response to being satisfied with his Plea Counsel and that he had talked to Plea Counsel enough, and he replied "I believe so." Applicant then testified that his answers to questions from the plea court were based on counsel's advice. Applicant testified that entering his guilty plea was based on counsel's advice. Applicant was asked about his response to the court about anyone threatening or coercing him, and he replied that it was a product of fear and coercion.

Applicant testified that when he and Plea Counsel talked, he made a statement, but Plea Counsel shut it down and never mentioned any type of defenses. Applicant was asked about his

responses to the judge regarding a jury trial in his decision to plead guilty, to which he replied that it was off of counsel's advice.

PLEA COUNSEL'S TESTIMONY

On direct examination, Plea Counsel testified that he met with Applicant about seven to eight times, which was pretty frequently because he had other clients in the same dorm. Plea Counsel testified that he was sure they discussed the elements of his charges. Plea Counsel testified that the prosecutor later filed a direct indictment for possession of a weapon during the commission of a violent crime. In Plea Counsel's summary of the State's evidence, he replied that a shooting occurred between 1:00 and 2:00 AM at Five Points on St. Patrick's Day. Plea Counsel testified that there were pictures of Applicant and the news. Plea Counsel testified that videos and surveillance cameras were clear, and it definitely looked like Applicant.

Plea Counsel testified that some people bumped into Applicant, and he pulled out a gun and fired three times towards Group Therapy. Plea Counsel testified that three fraternity guys were shot and were not involved in the altercation. Plea Counsel testified that the videos were the primary evidence. Plea Counsel testified that there was speculation regarding gang affiliation, but mostly media and Plea Counsel never saw hard evidence of gang affiliation. Plea Counsel testified that there was speculation that someone else flashed a weapon, but Plea Counsel did not see any evidence of that either.

Plea Counsel testified that Applicant did not talk much regarding his version of the facts. Plea Counsel testified that Applicant was very polite and not in a rush. Plea Counsel testified that he never really got much of a story that was a tangible narrative, and the only real defense was maybe self-defense, but he never really said much to me. Plea Counsel testified that he was sure he reviewed discovery; however, the jail was funny about computers and videos. Plea Counsel

said that he would have definitely shown discovery at the courthouse. Plea Counsel testified that he would have included the video and would have at least told him about it if he did not show him the video. Plea Counsel testified that the parents of Applicant met with him twice and saw the video.

Plea Counsel testified that he discussed the potential sentencing. Plea Counsel testified regarding defense that the video was clear and self-defense was best, but Applicant never pushed one way or the other. Plea Counsel testified that he told Applicant about his right to a jury trial. Plea Counsel testified that he believed Applicant understood and that he would have been cautious to explain everything to Applicant. Plea Counsel testified that Applicant did not provide any information regarding investigations or leads. Plea Counsel testified that he investigated where the camera footage was, but there was nothing really to investigate. Plea Counsel testified that Five Points was in the news a lot regarding shootings and his strategy was to lay low and not attract attention hoping that things were calm down.

Plea Counsel testified that the State wanted to try the case to attract attention, and the State would not offer anything. Plea Counsel told Applicant he would request eighteen to twenty-five years but did not promise eighteen to twenty-five years. Plea Counsel testified that he hoped he would get eighteen to twenty-five years and that eighteen was very optimistic, but he was looking for something under thirty years. Plea Counsel testified that he informed Applicant of the consequences of the plea and that Applicant understood the facts against him. Plea Counsel testified that Applicant never wanted to go to trial, but he would have done it if he did want a trial. Plea Counsel testified that he agreed with the decision to plead guilty. Plea Counsel testified that the trial would have been very visual, and there would have been cameras in the courtroom. Plea

Counsel testified he would have liked Applicant to have gotten more credit for accepting responsibility.

On cross-examination, Plea Counsel testified that he spent a fair amount discussing the plea with Applicant, and he discussed it with the parents. Plea Counsel testified that Applicant never showed interest in a trial. Plea Counsel testified that Applicant never gave a narrative that would support self-defense. Plea Counsel testified that he was pretty sure he discussed the elements of the crimes with Applicant. Plea Counsel testified that another potential defense could have been that it wasn't him, but Applicant never indicated he was not there. Plea Counsel testified that he informed Applicant of the penalties and that it was a practice to add the sentences and to inform defendants wholly.

Plea Counsel testified that it was a straight-up plea with no recommendations. Plea Counsel testified that the state asked for the max plus consecutive sentencing. Plea Counsel testified that the best case here was to keep them concurrent. Plea Counsel testified that this was very public, and political pressure was going on at the time. Plea Counsel testified that he did not remember there being any other suspects. Plea Counsel testified he may have asked if there was any indication someone else had a gun; however, no one reported seeing anyone else pull a gun. Plea Counsel testified that the transcript shows that he requested fifteen to eighteen years, but in his head, he was hoping to keep it under thirty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the plea transcript

and the testimony and evidence presented at the evidentiary hearing establish Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Applicant alleges that he received ineffective assistance from his Plea Counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that an evidentiary hearing can only determine. 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, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] [i]t is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge.

Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

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

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

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and

interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 693 (emphasis added).

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

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

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58

("[R]equiring a showing of prejudice from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.>"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The performance and prejudice standards, however, "do not establish mechanical rules[; . . .] [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of Plea Counsel. The specific claims are addressed below:

- Allegation 1(a): Jones' guilty plea was not made with or based on advice of competent counsel;**
- Allegation 1(b): Jones' guilty plea was not intelligently made;**
- Allegation 1(d): [Plea] counsel did not discuss the elements of the offense or potential defenses with Jones;**
- Allegation 1(e): [Plea] counsel never discussed the advantages and**

disadvantages of a trial versus the advantages and disadvantages of a plea with Jones so that Jones could make an informed choice of whether to enter a plea or try his case;

Allegation 1(g): [Plea] counsel did not tell Jones the possible penalties for his offenses; and

Allegation 1(j): [Plea] counsel did not explain the difference between a recommendation and a negotiation.

In Applicant's allegations 1(a)(b)(d)(e)(g) and (j), Applicant alleges his guilty plea was not made voluntarily or intelligently. This Court finds these allegations are without merit.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Lockhart, 474 U.S. at 52). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

To find a guilty plea voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). A 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 defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d

418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[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." Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harres, 282 S.C. at 133, 318 S.E.2d at 361. However, statements made during a guilty plea should be considered conclusive, unless an applicant 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), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985).

On direct-examination, Applicant testified that Plea Counsel may have told him he could receive one hundred years, but he was not sure. Applicant testified that Plea Counsel did not discuss the advantages or the disadvantages of pleading. Applicant testified that the discussion regarding the plea was about five to ten minutes long. Applicant was asked if the sentencing sheet was explained to him, and he replied that he was really confused about the entire situation, including the time he was receiving. Applicant further testified that he wasn't aware of the time he could get, and Plea Counsel never made him aware of that. Applicant testified that he was told he was looking at twenty to twenty-five years. Applicant testified that Plea Counsel never explained the difference between a straight-up plea and a negotiated plea.

On cross-examination, Applicant testified that prior to his plea, he met with Plea Counsel five to seven times. Applicant testified that Plea Counsel reviewed discovery once with him, and

he saw only sheets with Facebook pictures, but there was no full disclosure, and he asked for it. Applicant testified that he did not recall discussing the elements of his charges or potential defenses. Applicant testified that he did not know about witnesses or police reports. Applicant testified that he thought he remembered the state reading the facts into the record. However, Applicant testified that he only agreed because of Plea Counsel's advice.

Applicant testified that he recalled the colloquy, recalled agreeing with the court, but it was only because of Plea Counsel's advice. Applicant then testified that Plea Counsel told him to say yes to everything. Applicant was asked if he remembered his response to being satisfied with his Plea Counsel and that he had talked to Plea Counsel enough, and he replied I believe so. Applicant then testified that his answers to questions from the plea court were based on counsel's advice. Applicant testified that entering his guilty plea was based on counsel's advice. Applicant was asked about his response to the court about anyone threatening or coercing him, and he replied that it was a product of fear and coercion.

On direct-examination, Plea Counsel testified that he met with Applicant about seven to eight times, which was pretty frequently because he had other clients in the same dorm. Plea Counsel testified that he was sure they discussed the elements of his charges. Plea Counsel testified that videos and surveillance cameras were clear, and it definitely looked like Applicant. Plea Counsel testified that the videos were the main evidence. Plea Counsel testified that Applicant did not talk much regarding his version of the facts. Plea Counsel testified that he never really got much of a story that was a tangible narrative, and the only real defense was maybe self-defense, but he never really said much to him. Plea Counsel testified that he was sure he reviewed discovery; however, the jail was funny about computers and videos. Plea Counsel said that he

would have definitely shown discovery at the courthouse. Plea Counsel testified that he would have included the video and would have at least told him about it if he did not show him the video.

Plea Counsel testified that he discussed the potential sentencing. Plea Counsel testified regarding defense that the video was clear, and self-defense was best, but Applicant never pushed one way or the other. Plea Counsel testified that he told Applicant about his right to a jury trial. Plea Counsel testified that he believed Applicant understood and that he would have been cautious to explain everything to Applicant.

Plea Counsel testified that he informed Applicant of the consequences of the plea and that Applicant understood the facts against him. Plea Counsel testified that Applicant never wanted to trial, but he would have done it if he did want a trial. Plea Counsel testified that he agreed with the decision to plead guilty. Plea Counsel testified that the trial would have been very difficult because of the media attention and there would have been cameras in the courtroom.

On cross-examination, Plea Counsel testified that he spent a fair amount discussing the plea with Applicant, and he discussed it with Applicant's parents. Plea Counsel testified that Applicant never showed interest in a trial. Plea Counsel testified that Applicant never gave a narrative that would support self-defense. Plea Counsel testified that he was pretty sure he discussed the elements of the crimes with Applicant. Plea Counsel testified that another potential defense could have been that it wasn't him, but Applicant never indicated he was not there. Plea Counsel testified that he informed Applicant of the penalties and that it was a practice to add the sentences and to inform defendants wholly.

Plea Counsel testified that he did not remember there being any other suspects. Plea Counsel testified he may have asked if there was any indication someone else had a gun; however,

no one reported seeing anyone else pull a gun. Plea Counsel testified that the transcript shows that he requested fifteen to eighteen years, but in his head, he was hoping to keep it under thirty.

At the plea hearing, the following colloquy occurred between Applicant and the plea court:

Q. Now, Mr. Jones, you've heard your lawyer, Mr. Bailey, tell me that he has explained to you the charges contained in these five indictments, the possible punishments, and your rights, including your constitutional right to a jury trial, and that you understand these things. Is that correct?

A. Yes, sir.

Q. All right. Mr. Jones, before I can accept your plea of guilty, it is necessary for me to make sure that you're making this plea freely and voluntarily. To do that, sir, I need to ask you a series of questions. At any point during my questioning of you, if you do not understand anything I say or any words that I use, please stop me; I'll be more than happy to repeat or explain anything I say, Mr. Jones. Additionally, I'll be more than happy to stop this plea and allow you as much time as you feel you may need to consult with your lawyer, Mr. Bailey. Do you understand, sir?

A. Yes, sir.

Q. How old are you, Mr. Jones?

A. Twenty-four.

Q. Twenty-four. How far did you go in school?

A. Got my GED.

Q. What kind of work have you done?

A. Work, I was a cook.

Q. And where were you a cook?

A. Where?

Q. Yeah. Where?

A. TakoSushi. TakoSushi.

Q. Okay.

A. Yes, sir.

Q. Now, Mr. Jones, have you ever been treated for the abuse of alcohol or drugs or for mental illness?

A. No, sir.

Q. Have you taken any medications, drugs, or alcohol in the past twenty-four or forty-eight hours?

A. No, sir.

Q. Are you today aware of any physical, nervous, or emotional problem that might keep you from understanding what you're doing?

A. No, sir.

Q. Now, you know what you're doing, Mr. Jones. Is that fair enough?

A. Yes, sir.

THE COURT: Do you agree, Mr. Bailey, that Mr. Jones knows, understands, appreciates what he's doing here today?

MR. BAILEY: Yes, Your Honor.

BY THE COURT:

Q. Now, I'll repeat this a little bit, Mr. Jones. You heard your lawyer tell me that he's explained to you once again the charges contained in these five indictments, the possible punishments, and your rights, including your right to a jury trial, and that you understand these things. Is that fair enough again?

A. Yes, sir.

Q. All right, Mr. Jones, you are first before me on indictment number 2018-4156, The State vs. Arthur Jones. This is possession of a weapon during the commission of a violent crime, it appears. Possession of a weapon during the commission of a violent crime, do you understand this charge, sir?

A. Yes, sir.

Q. This indictment, Mr. Jones, alleges that you did here in Richland County on or about March the 18th of 2018 possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife during the commission or attempted commission of a violent crime. You understand this allegation?

A. Yes, sir.

Q. You want to plead guilty to having this gun. Is that correct?

A. Yes, sir.

Q. You realize that by pleading guilty to possession of a weapon during the commission of a violent crime, Mr. Jones, that you could go to jail for five years?

A. Yes, sir.

Q. Knowing then, sir, that you can go to prison for five years by pleading guilty to this charge, do you still wish to plead guilty to it?

A. Yes, sir.

Q. All right. Next, Mr. Jones, I have before me indictment number 2018-4150, The State vs. Arthur Jones, Jr. Once again, this is indictment for possession of a pistol by a person unlawful or a stolen pistol. And the specific allegation says unlawful possession of a weapon by a person convicted of a crime of violence. Do you understand this charge, sir?

A. Yes, sir.

Q. This indictment, Mr. Jones, alleges that you did here in Richland County on or about March the 18th of 2018 knowingly possess or acquire a pistol after having been convicted of a crime of

violence as defined in section 16-23-10 as amended, violation of section 16-23-0030(b) as amended.

THE COURT: What was the crime?

MR. EATON: Strong-arm robbery, Your Honor.

THE COURT: Is that correct, Mr. Bailey?

MR. BAILEY: Yes, Your Honor, that's correct.

BY THE COURT:

Q. You understand all this?

A. Yes, sir.

Q. You had a conviction for strong-arm robbery. You shouldn't have had a gun. You understand that. So, you want to plead guilty to unlawful possession by a person convicted of a crime of violence, which would be strong-arm robbery. Do you understand that?

A. Yes, sir.

Q. You realize that by pleading guilty to this particular indictment charged, Mr. Jones, that you could go to jail for five years?

A. Yes, sir.

Q. Knowing then, sir, that you can go to prison for five years by pleading guilty to this charge, possession of a weapon by a person convicted of a violent crime, you still wish to plead guilty to it?

A. Yes, sir.

Q. All right. Next, Mr. Jones, I have before me indictment number 2018-4154, The State vs. Arthur Jones, Jr., once again, and this is an indictment for attempted murder. Do you understand this charge, sir?

A. Yes, sir.

Q. This particular indictment, Mr. Jones, alleges that you did here in Richland County on about March the 18th of 2018 did with the intent to kill attempt to kill Kidron, K-i-d-r-o-n, Deal with malice aforethought, either expressed or implied. Do you understand this allegation?

A. Yes, sir.

Q. You want to plead guilty to attempted murder. Is that correct?

A. Yes, sir.

Q. You realize that by pleading guilty to attempted murder, Mr. Jones, that you could go to jail for thirty years?

A. Yes, sir.

Q. Knowing then, sir, that you can go to prison for thirty years by pleading guilty to attempted murder, do you still wish to plead guilty to it?

A. Yes, sir.

- Q. Now, of course you understand, do you not, Mr. Jones, as I'm sure your lawyer, Mr. Bailey, has explained to you, that this attempted murder is an 85 percent sentence?
- A. Yes, sir.
- Q. You understand that? That whatever sentence I impose, you've got to do at least 85 percent of that imposed sentence before you become eligible for parole. Do you understand that, sir?
- A. Yes, sir.
- Q. Knowing then, sir, that you can receive up to thirty years for pleading guilty to attempted murder, knowing fully and fully realizing that you've got to do 85 percent of whatever sentence I impose, you still wish to plead guilty to attempted murder?
- A. Yes, sir.
- Q. All right. Next, Mr. Jones, I have before me indictment number 2018-4155, The State vs. Arthur Jones, Jr., once again. Once again this is an indictment for attempted murder, and once again, Mr. Jones, it's fair to say that you understand this charge. Is that correct, sir?
- A. Yes, sir.
- Q. Mr. Jones, this particular indictment alleges that you did here in Richland County on about March the 18th of 2018 did with the intent to kill attempt to kill Anfernee Kirkland, A-n-f-e-r-n-e-e Kirkland, with malice aforethought, either expressed or implied. You understand this allegation, Mr. Jones?
- A. Yes, sir.
- Q. Want to plead guilty to another count of attempted murder, this time trying to kill Anfernee Kirkland. Is that correct?
- A. Yes, sir.
- Q. Realize once again that by pleading guilty to attempted murder, Mr. Jones, that you could go to jail for thirty years. Knowing that, you still wish to plead guilty, and the thirty years on all three of these attempted murders carry 85 percent. You understand that, don't you?
- A. Yes, sir.
- Q. All right. Next, Mr. Jones, I have before me indictment number 2018-4151, The State vs. Arthur Jones, Jr., once again. Once again this is an indictment for attempted murder. Once again I need to ask you for the record. You understand charge. Is that fair enough?
- A. Yes, sir.
- Q. This particular attempted murder charge or indictment alleges that you did here in Richland County on or about March the 18th of 2018 did with the intent to kill attempt to kill Howard Boone

with malice aforethought, either expressed or implied. You understand this allegation once again, Mr. Jones?

A. Yes, sir.

Q. Once again, you are pleading guilty to attempted murder. Is that correct?

A. Yes, sir.

Q. You realize once again do you not, sir, that by doing so, you can go to jail for thirty years, having to do 85 percent of whatever sentence you receive on attempted murder? You still wish to plead guilty. Is that correct?

A. Yes, sir.

Q. Now, Mr. Jones, are you currently on probation or parole for any prior offenses?

A. No, sir.

Q. Mr. Jones, I can run these sentences on these five indictments consecutively. That is, put one after the other, add one to the other. If I do so, sir, you're looking at, I think, exactly 100 years in jail. You understand that?

A. Yes, sir.

Q. Understanding then, sir, that you could go to prison for 100 years by pleading guilty to these five indictments, do you still wish to plead guilty to them?

A. Yes, sir.

Q. Now, Mr. Jones, when you plead guilty, you have to give up certain rights. First of all, you have to give up your right to remain silent. Now, this is your right against self-incrimination, Mr. Jones, your right to say nothing at all. No one can compel you to come into court to provide evidence or to testify against yourself. Do you understand this, sir?

A. Yes, sir.

Q. Secondly, Mr. Jones, when you plead guilty, you have to give up your right to a jury trial. That is your right for a jury here in Richland County to decide whether or not you're guilty of these five charges beyond a reasonable doubt. A jury would base its decision on whatever evidence the state would introduce at trial against you and also on whatever evidence you and your lawyer, Mr. Bailey, may wish to introduce. Now, Mr. Jones, I emphasize may wish to introduce, sir, because in a trial, you'd be presumed innocent. Would not have to prove anything, and you could not be convicted unless the state convinced all twelve jurors of your guilt beyond a reasonable doubt. The jury's decision would have to be unanimous; all twelve would have to agree that you're guilty of all five of these charges. Do you understand that, sir?

- A. Yes, sir.
- Q. Thirdly, Mr. Jones, when you plead guilty, you give up your right to confront and to be confronted by the witnesses against you. That is your right to see, hear, and cross-examine any witnesses the state may call to testify against you during a trial. In addition, Mr. Jones, by pleading guilty you give up your right to subpoena and call witnesses on your own behalf. That is someone who may testify for you. Do you understand this, sir?
- A. Yes, sir.
- Q. Now, do you understand these rights I just mentioned to you, Mr. Jones?
- A. Yes, sir.
- Q. Do you understand, sir, that when you plead guilty, you have to give up these constitutional rights? You understand that?
- A. Yes, sir.
- Q. Now, is that what you want to do? You want to give up your constitutional rights?
- A. Yes, sir.
- Q. Now, you realize you would not receive a jury trial on any of these five charges by pleading guilty to them?
- A. Yes, sir.
- Q. You understand that, sir? Now once again, Mr. Jones, you're pleading guilty to three counts of attempted murder. Each count carries up to 90 years in jail. You got to do 85 percent of whatever sentence you receive on the attempted murder charge. And in addition, I've explained to you that possession of a gun by a person convicted of a violent crime and unlawful possession of a gun during the commission of a violent crime both carry five years apiece. I've explained to you that you're looking at a total of 100 years if these sentences are run consecutively. Now, considering what I've said, Mr. Jones, I'll ask you once again. How do you wish to plead guilty to these charges, guilty or not guilty?
- A. Guilty.
- Q. You realize, Mr. Jones, that when you plead guilty, you admit the truth of the allegations contained in these five indictments against you. You understand that?
- A. Yes, sir.
- Q. I tell you that, sir, because, Mr. Jones, you might have some defenses to these charges. Of course I have no way of knowing that, but you need to realize that by pleading guilty here today, you give up any defenses you may have. Do you understand that, sir?

A. Yes, sir.

Q. You need to speak up, Mr. Jones. You need to say yes or no. Additionally, Mr. Jones, I tell you that because when you were arrested by the Columbia Police Department, you may have given some type of incriminating statement. That is, made some confession or admission about your guilt. You need to realize that by pleading guilty here today, you waive your right to later on challenge or contest, if you gave any statements, whether or not they were taken or obtained from you freely and voluntarily in accordance with your constitutional rights. Do you understand that?

A. Yes, sir.

Q. Now, once again you're pleading guilty to three counts of attempted murder because you are guilty. Is that fair enough, Mr. Jones?

A. Yes, sir.

Q. You're pleading guilty to one count of possession of possession of a weapon during the commission of a violent crime because you are guilty of that. Is that fair enough?

A. Yes, sir.

Q. Now once again, you're pleading guilty to possession of a gun by a person convicted, or possession of a weapon during the commission of a violent crime and the unlawful possession of a gun by a convicted felon, all right.

THE COURT: Now, Solicitor, have there been any plea negotiations?

MR. EATON: This is a straight-up plea, Your Honor.

THE COURT: Anything additional at all, Mr. Bailey, in any way, shape, or form that needs to be added to the record in connection with any plea negotiations or any recommendations?

MR. BAILEY: No, Your Honor.

BY THE COURT:

Q. You understand all this, Mr. Jones?

A. Yes, sir.

Q. Do you still wish to continue and plead guilty?

A. Yes, sir.

(Plea Tr. pp. 9, l. 23 – 22, l. 17).

The plea transcript reflects the plea court conducted a very thorough colloquy with Applicant. Applicant informed the plea court he understood what he was doing in entering the

guilty plea. The plea court clearly explained Applicant's right to a jury trial, the State's burden of proof, and Applicant's right to present evidence in his defense. Applicant further admitted his guilt. The plea court explained in detail Applicant's charges, potential sentences, and his parole eligibility. Applicant told the plea court he understood the waiver of his rights, had decided to do so of his own free will, and did not have any questions of his Plea Counsel or the court. Even if this Court were to accept Plea Counsel was deficient in any of Applicant's claims, the plea court's colloquy cured any deficiency. See Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994) (holding that the record of the plea proceeding, including applicant's answers to the trial judge's questions, clearly established that applicant understood the possible sentences and the terms of the plea agreement and therefore could not have had misconceptions regarding sentencing).

Accordingly, this Court finds Applicant pleaded guilty freely and voluntarily after discussing his options with Plea Counsel to avoid a trial and avail himself of a lower sentence than he might receive if convicted at trial. This Court further finds Plea Counsel's representation of Applicant was competent and not deficient, nor was Applicant prejudiced by Plea Counsel's representation. The plea transcript indicates Applicant understood the terms of the plea agreement and chose to waive his rights and plead guilty. See Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994) (holding that the record of the plea proceeding, including applicant's answers to the trial judge's questions, clearly established that applicant understood the possible sentences and the terms of the plea agreement and therefore could not have had misconceptions regarding sentencing).

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

Allegation 1(c): [Plea] counsel did not prepare Jones' case for trial, and Jones was left with no choice but to plead guilty;

and
Allegation 1(f): [Plea] counsel did not investigate Jones' case.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to prepare and investigate Applicant's case. This Court finds this allegation is without merit.

Applicant testified that he was not aware of any investigation by Plea Counsel. Applicant testified that Plea Counsel came to him once and showed him sheets of his Facebook photos.

On cross-examination, Applicant was asked if he gave his attorney any leads to investigate, and he replied that he believed he was supposed to investigate.

On direct-examination, Plea Counsel testified that Applicant did not talk much regarding his version of the facts. Plea Counsel testified that he never really got much of a story that was a tangible narrative, and the only real defense was maybe self-defense, but he never really said much to me. Plea Counsel testified regarding defense that the video was clear and self-defense was best, but Applicant never pushed one way or the other. Plea Counsel testified that Applicant did not provide any information regarding investigations or leads. Plea Counsel testified that he investigated where the camera footage was, but there was nothing really to investigate. Plea Counsel testified that Applicant never wanted to go to trial, but he would have done it if he did want a trial.

On cross-examination, Plea Counsel testified that Applicant never showed interest in a trial. Plea Counsel testified that Applicant never gave a narrative that would support self-defense. Plea Counsel testified that another potential defense could have been that it wasn't him, but Applicant never indicated he was not there. Plea Counsel testified that he informed Applicant of the penalties and that it was a practice to add the sentences and to inform defendants wholly.

At the plea hearing, the following colloquy occurred between Applicant and the plea court:

- Q. Now, sir, are you fully satisfied with the manner in which your lawyer here, Mr. Bailey, the way he has advised and represented you on these charges?
- A. Yes, sir.
- Q. Have you talked with him for as long and for as often as you feel it necessary for him to properly represent you?
- A. Yes, sir.
- Q. You need any more time to talk to him?
- A. No, sir.
- Q. Have you understood your talks with him?
- A. Yes, sir.
- Q. Mr. Jones, has Mr. Bailey done everything for you you feel he should do or could do on your behalf in advising and representing you on these charges?
- A. Yes, sir.
- Q. Has he done anything you feel he should not have done?
- A. No, sir.
- Q. Are you completely satisfied with his services?
- A. Yes, sir.
- Q. You have any complaints, Mr. Jones, against anyone at the Columbia Police Department?
- A. No, sir.
- Q. You have any complaints against anyone working here in the solicitor's office?
- A. No, sir.
- Q. Have you understood my questions, Mr. Jones?
- A. Yes, sir.
- Q. Is there anything you want to ask me about what I just discussed with you, anything at all?
- A. No, sir.

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, 466 U.S. 668). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to

interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted).

However, our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. See, e.g., id. at 331, 642 S.E.2d at 597 ("Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation."). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690–91; see id. ("In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

To prevail on a claim of ineffective assistance based on failure to investigate or prepare for trial, a PCR applicant must ordinarily present some evidence "that would have affected counsel's advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009); see, e.g., Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court's grant of relief where the applicant failed to "present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial").

Applicant has not presented any evidence suggesting Plea Counsel could have further prepared for or investigated Applicant's case. Plea Counsel credibly testified that he discussed the discovery with Applicant. Plea Counsel credibly testified he discussed Applicant's constitutional rights with Applicant and believed that Applicant understood the extent of their conversations. Plea Counsel credibly testified he discussed the nature of the offenses and Applicant has failed to present any evidence that Plea Counsel did not investigate, nor has Applicant presented any evidence of information or rights that Plea Counsel failed to discuss with Applicant. As Applicant has failed to present any additional information or evidence that Plea Counsel could have discovered if he were to have prepared or investigated further, this Court finds Applicant has failed to show how Plea Counsel's performance was deficient, or how Applicant was prejudiced by Plea Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

Allegation 1(h): [Plea] counsel had Jones sign the Sentencing Sheet without explaining it to him.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to explain the sentencing sheet to him. This Court finds this allegation is without merit.

On direct-examination, Applicant was asked if the sentencing sheet was explained to him, and he replied that he was really confused about the entire situation, including the time he was receiving.

Initially, this Court finds Applicant has failed to meet his burden proving Plea Counsel's alleged deficiency prejudiced him. Applicant presented a single self-serving answer regarding the sentencing sheets but no evidence at the PCR evidentiary hearing regarding this allegation. Therefore, whether an explanation of the sentencing sheet would have changed the Applicant's

decision to plead and instead go to trial is mere speculation. However, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Furthermore, even if this Court were to entertain Applicant's assertion regarding the sentencing sheets, the plea court colloquy was abundantly clear and thorough. Any alleged deficiency was cured by the plea court's colloquy. See Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994) (holding that the record of the plea proceeding, including applicant's answers to the trial judge's questions, clearly established that applicant understood the possible sentences and the terms of the plea agreement and therefore could not have had misconceptions regarding sentencing).

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

Allegation 1(i): [Plea] counsel told Jones that if he pled, he would get between eighteen and twenty-five years, and Jones received forty years.

Applicant alleges Plea Counsel was constitutionally ineffective because he told Applicant he would only get eighteen to twenty-five years if he pleaded guilty, and instead, Applicant received forty years. This Court finds this allegation is without merit.

On direct-examination, Applicant testified that Plea Counsel may have told him he could receive 100 years, but he was not sure. Applicant further testified that he wasn't aware of the time he could get, and Plea Counsel never made him aware of that. Applicant testified that he was told he was looking at twenty to twenty-five years. Applicant testified at the plea hearing Plea Counsel told him he would seek eighteen to twenty-five years.

On direct-examination, Plea Counsel testified that he discussed the potential sentencing. Plea Counsel testified that he believed Applicant understood and that he would have been cautious to explain everything to Applicant. Plea Counsel told Applicant he would request eighteen to twenty-five years but did not promise eighteen to twenty-five years. Plea Counsel testified that he hoped he would get eighteen to twenty-five years and that eighteen was very optimistic, but he was looking for something under thirty years.

On cross-examination, Plea Counsel testified that he informed Applicant of the penalties and that it was a practice to add the sentences and to inform defendants wholly. Plea Counsel testified that it was a straight-up plea with no recommendations. Plea Counsel testified that the state asked for the max plus consecutive sentencing. Plea Counsel testified that the best case here was to keep them concurrent. Plea Counsel testified that the transcript shows that he requested fifteen to eighteen years, but in his head, he was hoping to keep it under thirty.

Again, this Court finds Applicant has failed to meet his burden proving Plea Counsel's alleged deficiency prejudiced him. Here, Applicant provided testimony that Plea Counsel "may have" informed him that if he went to trial, he could receive up to one hundred years imprisonment. Notably, Applicant contradicts himself in his testimony, because he testified that he was "looking at twenty to twenty-five years . . . and Plea Counsel told him he would seek eighteen to twenty-five years." Whether Applicant would have chosen to proceed to trial had he known he could get forty years and not eighteen to twenty-five years is mere speculation. However, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Furthermore, even if this Court accepted Applicant's assertion regarding the alleged time he would serve if he pleaded guilty, the plea court colloquy was abundantly clear and thorough. The plea court's colloquy cured any alleged deficiency.

Accordingly, this Court finds Applicant has failed to establish Plea Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

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CONCLUSION

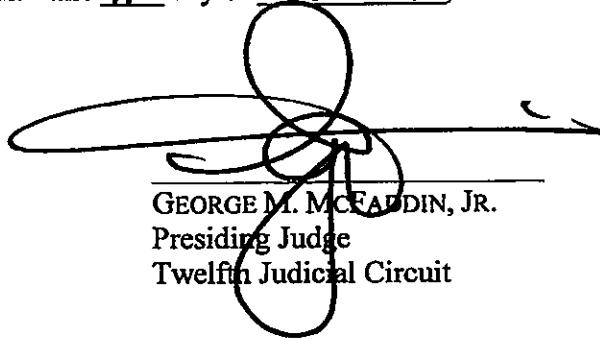
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Plea Counsel's representation was neither deficient nor prejudicial. Therefore, this application for post-conviction relief **must be DENIED and DISMISSED WITH PREJUDICE.**

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Post-conviction relief is denied, and the application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 11th day of October, 2022.


 GEORGE M. MCFADDIN, JR.
 Presiding Judge
 Twelfth Judicial Circuit

WITNESSES

(S)

Kimberly Wire-Lewis - CPD

DOCKET NO. 2018GS4004150

The State of South Carolina

County of Richland

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

Defendant

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

COURT OF GENERAL SESSIONS

OCTOBER TERM 2018

105

ARREST WARRANT NUMBER

DP18529

THE STATE

vs.

Arthur Q. Jones Jr

Arthur Jones Jr
Defendant

Witness:

C.C.C. PLS AND G.S.

**ACTION OF GRAND JURY
TRUE BILL**

Sh. Allen

Foreperson of Grand Jury Date: **OCT 10 2018**

VERDICT

Indictment for

**WEAPONS / SALE OR DELIVERY OF
PISTOL TO, AND POSSESSION BY,
CERTAIN PERSONS UNLAWFUL; STOLEN
PISTOL**

SC Code: 16-23-0030

CDR Code: 2364

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on October 9, 2018, the Grand Jurors of Richland County present upon their oath:

UNLAWFUL POSSESSION OF A WEAPON BY A PERSON CONVICTED OF A CRIME OF VIOLENCE

That Arthur Q. Jones Jr did in Richland County on or about March 18, 2018, knowingly possess or acquire a pistol after having been convicted of a crime of violence defined in Section 16-23-10, S. C. Code of Laws, 2003, as amended, in violation of Section 16-23-0030(B), S. C. Code of Laws, 1976, as amended.

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

Heather S. Weiss
 HEATHER WEISS, SOLICITOR

WITNESSES

(S) Kimberly D Wise
- Columbia Police Department

DOCKET NO. 2018GS4004151

The State of South Carolina

County of Richland

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

Defendant

COURT OF GENERAL SESSIONS

OCTOBER TERM 2018

105

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

ARREST WARRANT NUMBER

2018A4021600810

THE STATE

vs.

Arthur Q Jones Jr

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY
TRUE BILL

W. J. Allen
Foreperson of Grand Jury
Date:

OCT 10 2018

VERDICT

Indictment for

ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

Foreperson of Petit Jury

Date:

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) Kimberly D Wise
- Columbia Police Department

DOCKET NO. 2018GS4004154

The State of South Carolina

County of Richland

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

Defendant

COURT OF GENERAL SESSIONS

OCTOBER TERM 2018

105

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

ARREST WARRANT NUMBER

2018A4021600811

THE STATE

vs.

Arthur Q Jones Jr

Arthur Jones Jr
Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY
TRUE BILL

Bob Allen
Foreperson of Grand Jury
Date:

OCT 10 2018

VERDICT

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

Foreperson of Petit Jury

Date:

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeanette WMSB
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on October 9, 2018, the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Arthur Q Jones Jr did in Richland County on or about March 18, 2018, did with the intent to kill, attempt to kill KIDRON DEAL with malice aforethought, either expressed or implied. All in violation of SC Code of Laws § 16-3-29 (1976, as amended).

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jeanette WMS/Brude
G.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Heather S. Weiss
HEATHER WEISS, SOLICITOR

WITNESSES

(S) Kimberly D Wise
- Columbia Police Department

DOCKET NO. 2018GS4004155

The State of South Carolina

County of Richland

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

Defendant

COURT OF GENERAL SESSIONS

OCTOBER TERM 2018

105

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

ARREST WARRANT NUMBER

2018A4021600812

THE STATE

vs.

Arthur Q Jones Jr

Arthur Jones Jr
Defendant

Witness:

C.C.O. JLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

D. J. Miller

Foreperson of Grand Jury **OCT 10 2018**
Date:

VERDICT

Indictment for

ATTEMPTED MURDER

SC Code: 16-03-0029

CDR Code: 3410

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on October 9, 2018, the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Arthur Q Jones Jr did in Richland County on or about March 18, 2018, did with the intent to kill, attempt to kill ANFERNEE KIRKLAND with malice aforethought, either expressed or implied. All in violation of SC Code of Laws § 16-3-29 (1976, as amended).

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


HEATHER WEISS, SOLICITOR

WITNESSES

(S) Kimberly D Wise
- Columbia Police Department

DOCKET NO. 2018GS4004158
The State of South Carolina
County of Richland

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

Defendant

COURT OF GENERAL SESSIONS

OCTOBER TERM 2018

105

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

ARREST WARRANT NUMBER

2018A4021600813

THE STATE

vs.

Arthur Q Jones Jr

Arthur Jones Jr
Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY
TRUE BILL

H. L. Allen
Foreperson of Grand Jury
Date: **OCT 10 2018**

VERDICT

Indictment for

WEAPONS / POSS. WEAPON DURING
VIOLENT CRIME, IF NOT ALSO
SENTENCED TO LIFE WITHOUT PAROLE
OR DEATH

SC Code: 16-23-0400
CDR Code: 0549

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on October 9, 2018, the
Grand Jurors of Richland County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

That Arthur Q Jones Jr did in Richland County, on or about March 18,
2018, possess a firearm, or visibly display what appeared to be a firearm,
or visibly displayed a knife, during the commission or attempted
commission of a violent crime, in violation of Section 16-23-0490, S. C.
Code of Laws, 1976, as amended.

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

Heather S. Weiss
HEATHER WEISS, SOLICITOR