

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

—————
Certiorari to Lee County

Honorable Edgar W. Dickson, Circuit Court Judge

—————
DALONTE GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000213

—————
APPENDIX
—————

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INDICTMENT AND SENTENCE SHEET FOR NO. 2013-GS-25-0003179

Basically

State of South Carolina)	In the Court of General Sessions
)	Third Judicial Circuit
County of Lee)	Indictment No. 2018-GS-31-00081

State of South Carolina,)	
)	
vs.)	Transcript of Record
)	
Dalonte Green,)	
)	
Defendant.)	
<hr/>		

April 19, 2021
Lee County Courthouse
Bishopville, South Carolina

B E F O R E:

The Honorable R. Kirk Griffin, Judge

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

Paul M. Fata, Assistant Solicitor
Attorney for State of South Carolina

Lir Patrick Derieg, Esquire
Attorney for Defendant

Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Circuit Court Reporter
Certified Verbatim Reporter - Master
Certificate of Merit
Realtime Verbatim Reporter - Master

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E X H I B I T S

NO. DESCRIPTION I.D. EVID.

No exhibits were marked during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding commenced at 10:41 a.m.)

THE COURT: Mr. Fata?

MR. FATA: Yes, sir, Your Honor. Thank you.

Your Honor, the state calls Indictment 2018-GS-31-81, *State v. Dalonte Green*, indictment for possession of a -- of contraband, murder -- that's Count II, is murder; Count III is possession of a weapon during a -- commission of a violent crime. The state is accepting a plea to voluntary manslaughter, which is a lesser-included to Count II of murder. We're dismissing Count I and Count III. And we have negotiated a sentence of 18 years, concurrent with the sentence that he is now currently serving at the Department of Corrections.

THE COURT: Yes, sir, Mr. Fata. Thank you.

DALONTE GREEN, having been first duly sworn, testified and stated as follows:

THE COURT: Mr. Derieg, you represent Dalonte Green?

MR. DERIEG: I do, Your Honor.

THE COURT: You've explained to him the nature of this charge, the possible penalty he could receive, and his constitutional rights with regard to a jury trial?

MR. DERIEG: Yes, sir.

THE COURT: He's understood those conversations?

MR. DERIEG: Yes, Your Honor.

1 THE COURT: All right. Mr. Green, I've got a bunch of
2 questions for you here this morning. If you need any
3 further time to talk with your lawyer as we go through this
4 process or you need me to repeat myself or explain one of
5 my questions, you just let me know, okay?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right, Mr. Green. Today are you under
8 the influence of any drugs or alcohol?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you ever received any treatment for
11 any mental health problems?

12 THE DEFENDANT: No, sir.

13 THE COURT: Mr. Green, the charge that you're pleading
14 to, voluntary manslaughter, is a lesser-included offense of
15 murder. It carries a possible penalty of up to 30 years in
16 prison and mandatory minimum of 2 years in prison. You
17 understand that that is the sentencing range for the
18 charge?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: It is also a violent crime in South
21 Carolina and a most-serious crime. You understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You understand that most-serious crimes,
24 if you get enough most-serious convictions -- two most-
25 serious convictions, you could be facing life without

1 parole?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And, Mr. Green, you understand that you'll
4 have to serve at least 85 percent of the sentence in this
5 case?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Green, when you plead guilty, you give
8 up certain constitutional rights. First, you give up your
9 right to remain silent because you're admitting your guilt.

10 Next, you give up your right to a jury trial. In that
11 jury trial, the state would have the burden of proving you
12 guilty beyond a reasonable doubt to all 12 jurors. In that
13 jury trial, you could confront the state's witnesses
14 against you. You could call witnesses to testify for you.
15 And you could present a defense.

16 But when you plead guilty, you give up all of those
17 jury-trial rights. There will not be a jury trial, and you
18 waive all defenses. You understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you're pleading guilty to Count II on
21 this indictment, and the indictment is 2018-GS-31-0081.
22 And it states that you did, in Lee County, on or about July
23 15th, 2017, willfully, feloniously, and intentionally kill
24 the victim, Christian Ray, with malice aforethought, either
25 express or implied, by means of stabbing; and the victim

1 did die as a proximate result thereof. That is the charge
2 of murder.

3 However, I'm informed that you're pleading guilty to
4 the lesser-included charge of voluntary manslaughter. Do
5 you understand the charge against you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And how do you plead to voluntary
8 manslaughter?

9 THE DEFENDANT: Guilty.

10 THE COURT: The state and your lawyer have negotiated

11 ---

12 An 18-year sentence, Mr. Fata; is that correct?

13 MR. FATA: That's correct, Your Honor.

14 THE COURT: And that sentence will run concurrent with
15 the sentence you're currently serving. You understand
16 that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You understand that those are the
19 recommendations or the negotiations in this case?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Other than the negotiations, anybody
22 promised you anything to get you to plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Anybody forced, threatened, or coerced you
25 to get you to plead?

1 THE DEFENDANT: No, sir.

2 THE COURT: And you're pleading guilty freely and
3 voluntarily?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you satisfied with the services of Mr.
6 Derieg?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: He's gone over the discovery in your case,
9 which was provided by the state?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: He's done everything you asked him to do
12 to represent you in this case?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You need any further time to talk with him
15 now?

16 THE DEFENDANT: No, sir.

17 THE COURT: You got any complaints against the
18 solicitor's office or the law enforcement agency which
19 investigated this matter?

20 THE DEFENDANT: No, sir.

21 THE COURT: And are you pleading guilty to voluntary
22 manslaughter because you are, in fact, guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Green, you have ten days from today's
25 date to appeal this plea or the sentence that I give you.

1 But if you want to appeal, you must file that appeal in
2 writing within ten days. You understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right, Mr. Green. I'm going to have
5 the solicitor give me the facts in this case, and then I'm
6 going to come back to you.

7 Mr. Fata?

8 MR. FATA: Yes, sir, Your Honor. This happened at --
9 on July 15th, 2017, at the -- I believe it was the
10 Chesterfield Unit at Lee Correctional Institute. The
11 victim, Christopher Ray, was -- came downstairs from the
12 top tier. And Mr. Green came out of his room, which was on
13 the bottom tier.

14 And they met. I guess they call it -- it's -- it's
15 the rock or the -- the daycare area -- day -- day --
16 dayroom area. And they confronted each other. Mr. Green
17 had a -- a shank, a homemade weapon.

18 And on the video, it was very clear. You can see the
19 -- the shank in his hand. You can see he -- Mr. Green
20 raise his hand and stab Mr. Ray in -- in the top of his --
21 top of his shoulder.

22 Anyway, the -- the -- the shank went all the way down
23 and pierced an artery. And the -- the autopsy report was
24 that he exsanguinated, or bled to death, as a result of a
25 perforated artery, resulting from a stab wound to the

1 chest.

2 Mr. Green is currently serving a -- a sentence. I
3 think it's 18 years for a murder down in -- and I don't
4 know what -- exactly what he pled to, if it was
5 manslaughter or what.

6 MR. DERIEG: It was manslaughter.

7 MR. FATA: Manslaughter -- down in Hampton County. So
8 that -- that would be his record.

9 I also want to put on the record, Your Honor, that my
10 -- public -- the victim's advocate in the solicitor's
11 office and myself made several phone calls to the family of
12 Christopher Ray and left messages on the answering -- their
13 answering machine. And we've not had a response from
14 anyone, telling them about today's hearing. And we have
15 not had a response from any family member.

16 But they were here. We did have a *Duncan* hearing.
17 And family members were here for the *Duncan* hearing.

18 MR. DERIEG: And, Your Honor, to the extent, dealing
19 with the victims, they're -- they're represented in a
20 wrongful-death civil suit against Department of
21 Corrections. And they are -- they're represented by a
22 couple of attorneys who have been in contact with me. And
23 they know about this plea, and they -- they're -- they were
24 okay with it.

25 THE COURT: All right. Well, I certainly find that

1 the victims' rights -- or victim -- Victims' Bill of Rights
2 have been -- has been complied with in this matter.

3 Mr. Green, you heard the facts, as recited by the
4 solicitor?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you agree those facts, as stated, are
7 substantially correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: I find there's a substantial factual basis
10 for the plea. I find that the defendant's decision to
11 plead guilty is freely, voluntarily, and intelligently
12 made. He's had the advice and counsel of an attorney with
13 whom he's satisfied. And I will accept the plea.

14 Mr. Derieg, what can you tell me?

15 MR. DERIEG: Your Honor, since this is a negotiated
16 plea and you've -- and I appreciate you agreeing to take a
17 negotiated plea. There's not a lot of room for me to do a
18 lot of lawyering in here today. So I'll -- I just let
19 y'all keep moving on.

20 Although I will say, Your Honor, this was a -- this
21 was a close case. We did have an immunity hearing. Judge
22 McFaddin took several weeks to -- to make his decision.
23 But I think, all in all, this is probably the right result.

24 THE COURT: All right, Mr. Derieg. Thank you.

25 Mr. Green, is there anything that you want to tell me?

1 THE DEFENDANT: No, sir. I thank you for taking the
2 plea.

3 THE COURT: All right. Thank you, Mr. Green.

4 On Indictment 2018-GS-31-0081, *State of South Carolina*
5 *v. Dalonte Green*, on the charge of voluntary manslaughter,
6 sentence of the Court, Mr. Green, you be committed to the
7 State Department of Corrections for a determinate term of
8 18 years. That is concurrent with the current active
9 sentences in SCDC. You're given credit for whatever time
10 that you have served on this charge.

11 Good luck to you, sir.

12 THE DEFENDANT: Thank you, sir.

13 MR. DERIEG: Thank you, Your Honor.

14 (Whereupon, the proceeding concluded at 10:50 a.m.)

15 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, RVR-M, Official Court Reporter (Retired) for the Eighth 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 Lee County, South Carolina, on the 19th day of April, 2021.

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



Maryann S. Nevers, CVR-M-CM, RVR, RVR-M
Official Court Reporter

Leland, North Carolina
June 25, 2022

WITNESSES

Christopher D Long
Corrections

S C Dept Of

DOCKET NO. 2018-GS-31-0081

The State of South Carolina

County of LEE

COURT OF GENERAL SESSIONS

July TERM 2018

THE STATE

vs.

DALONTE GREEN

ARREST WARRANT NUMBER

2017A3110100264

2017A3110100269

2017A3110100273

Indictment for

Carrying or concealing weapon by inmates

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

True Bill

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

Paul H. Williams
6/28/2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)

INDICTMENT FOR

Carrying or concealing weapon by inmates
POSSESSION OF CONTRABAND, MURDER, POSSESSION
OF A WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

At a Court of General Sessions, convened on June 28, 2018 the Grand Jurors of
LEE County present upon their oath:

COUNT ONE
POSSESSION OF CONTRABAND

That Dalonte Green, a prisoner of Lee Correctional, did in Lee County on or about July 15, 2017, possess shank,
such items being declared as contraband by the Commissioner of the South Carolina Department of Corrections, in
violation of Section 24-7-155, S. C. Code of Laws, 1976, as amended.

COUNT TWO
MURDER

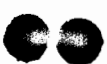
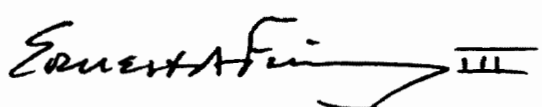
That Dalonte Green did in Lee County, on or about July 15, 2017, willfully, feloniously, and intentionally kill the
victim, Christian Ray, with malice aforethought, either express or implied, by means of stabbing, and the victim did
die as a proximate result thereof on or about 7-15-17 in Lee County, in violation of Section 16-03-0010, S. C. Code
of Laws, 1976, as amended.

COUNT THREE
POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

That Dalonte Green did in Lee County, on or about July 15, 2017, 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.

Solicitor



COUNTY OF _____
STATE _____

vs.
Dalonte Green

AKA: _____

Race: Black Sex: M Age: 27

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Columbia, SC 29210

DL#: _____ SID#: _____

*CDL CMV Hazmat

INDICTMENT/CASE#: 2018-GS-31-0081

A/W#: 2017A3110100269

Date of Offense: 7/15/2017

S.C. Code § : 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was TO: Voluntary Manslaughter

CONVICTED OF or PLEADS

in violation of § 16-03-50 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

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

ATTEST: [Signature] Fata, Paul M SC Bar# 1966 [Signature] Dalonte Green Defendant [Signature] Derieg, Kir P Attorney for Defendant SCB76135 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 18 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on: current active sentences in SCDJ

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDJ.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ \$ _____ Substance Abuse Counseling

§14-1-206 (Assessments 107.5 %) _____ \$ _____ Random Drug/Alcohol testing

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso (Public Def/Probation) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Teresa Brown

Court Reporter: Maryann Nevers

Presiding Judge [Signature]

Judge Code: 2768

Sentence Date: 4-19-2021

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

- (b) See Attachment:
- (c) See Attachment:
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment:
- (b) See Attachment:
- (c) See Attachment:
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. Not applicable
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Not applicable
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. Not applicable
- 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. NOT applicable
- 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?
The grounds set forth in (10) have not been previously presented to this or any other court state or federal in any petition, motion or application which applicant has filed.

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

(a) which grounds have been presented:

- i. not applicable
- ii. _____
- iii. _____

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

- i. not applicable
- 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) The grounds set forth in (10) have not been previously presented because they
- (b) were not appropriate issues for direct appeal or for a petition for a writ of certiorari
- (c) to the United States Supreme Court. Furthermore these grounds rely on additional facts outside the record before the previous courts.

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____

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

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

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

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

i. Dedrick Jilck

ii. _____

iii. _____

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

i. PLEA

ii. _____

iii. _____

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

Applicant seeks relief from his conviction and sentence.

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

Applicant is not under sentence from any other court

2 (X) Applicant's right to the effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated when trial counsel failed to have prison officials calculate his sentence correctly according to § 16-3-50 (Voluntary Manslaughter).

11(X) Petitioner contends prison officials have erroneously calculated his sentence, sentence-related credits, and custody status.

Green avers he was inappropriately sentenced under § 16-3-10, and should be classified under § 16-3-50. All-Shabazz clearly allows for this matter to be raised in either a PCR and/or as a non-collateral matter in the manner outlined in All-Shabazz. Thus, All-Shabazz provides an avenue of relief for Green to challenge the classification of his sentence through PCR.

Green contends he was sentenced pursuant to § 16-3-50 (Voluntary Manslaughter) instead of § 16-3-10 (Murder). His sentencing sheet clearly shows how they dropped the initial charge of murder into the plea agreement of Voluntary Manslaughter. Green should be able to receive 85%

(1)(X)

of the 18 year sentence. The prison staff should recalculate Green's 18 years sentence and he should be released after 15 years has been served on his sentence. Green should have a max-out date of the year 2032 instead of 2036.

Green asserts the supreme court addressed a similar issue in *State v. Mills*, reinforcing that a prisoner may serve an amount equal to the original sentence for CSP violations. In *Mills*, Appellant was originally sentenced to six months. He served five months and two days of the original sentence and was released into CSP which was to continue for two years. Appellant's CSP was revoked and he served three weeks in prison for the CSP violations. Appellant's CSP was revoked for a second time and he was sentenced to five months and seven days. Appellant appealed this second revocation, claiming that the length of imprisonment for CSP violations could not exceed the remaining length of time left on his original sentence of six months. Since Appellant served five months and two days of his original sentence in addition to three weeks from his first CSP revocation, he argued his second revocation could not exceed five days. The

(2)(A)

supreme court disagreed and upheld the second CSP revocation sentence, explaining that the statute provides that sentences for successive CSP revocations may total the time of the original sentence.

Green's argument is that the statute of § 16-3-50 is indicated in his sentencing sheet and that the statute should control, the CDR code 0116.

Essential to a determination on Green's claim is an understanding of CDR codes and how they are utilized in the overall judicial process. CDR codes are four digit numerical codes which represent the criminal offenses created by the South Carolina General Assembly and common law. See South Carolina Judicial Department, CDR codes frequently asked questions, <http://www.sccourts.org/cdr/userinstructions.htm>.

The codes were developed in the late 1970s in a collaborative effort between the South Carolina Justice Department (SCJD), DPP, and SCDOC. They were created at a time when computer systems had limited memory and did not have the capacity to maintain references to specific statutes which could contain many digits. The shorter CDR codes saved computer space and provided a consistent administrative

(3)(X)

shortcut to be used by all three departments. The code developers started with a list of statutory criminal offenses and assigned each a number. As laws change and new offenses are created, the codes are updated. The master list of CDR codes is now maintained by the SCJD which monitors the legislative process to determine required changes and corrects errors in the codes.

While the codes were developed and are used to provide an administrative shortcut, they were never intended to replace statutory law. The codes are normally listed after the statute on all warrants, indictments, and sentencing sheets. As the SCJD's website explains, the elements of a crime, its penalties and other related matters are governed by the Code of Laws and the common law alone. Any errors in a CDR code do not affect the crime, its characterization as violent or non-violent, for example, or even if someone can be prosecuted for a crime. The website further states in a disclaimer, "[t]he South Carolina Code of Laws is the controlling authority for classifications, definitions and penalties for criminal offenses, and the statute itself should always be consulted."

(4)(A)

See: State v. Bennett, 650 S.E.2d 490, (2007),
 On appeal, at oral argument, the State agreed that
 Bennett's sentencing sheet was filled out
 incorrectly and that either the COR code or the
 statute could have been a mistake. The State
 also acknowledged that someone had to make a
 decision between the statute and COR code,
 as to what the judge intended on the sentencing
 sheet, and it (appeared) SCDOC made a decision
 based on the COR code. Further, the State
 conceded that the COR code is an administrative
 listing of violations.

Because the South Carolina Code of Laws is the
 controlling authority for classifications, definitions and
 penalties for criminal offenses, a statute listed on a
 sentencing sheet, and not a COR code, will dictate
 a criminal sentence. Therefore, we find Bennett
 was sentenced as a first offender. Bennett's warrant,
 indictment, and sentencing sheet all list S.C. Code
 § 44-53-375(B)(1), indicating a first offense,
 may not trump the listed statute. Due to SCDOC's
 erroneous interpretation of Bennett's sentencing
 sheet, Bennett has served more than the original
 sentence of six years and should be released
 from CSP. Therefore, we remand to the circuit court
 for an order consistent with this opinion.

(5)(X)

— For the foregoing reasons, Greed should be granted the right to receive 18 years 85% present to § 16-B-50 (Voluntary Manslaughter) and CDK codes.

(6)(A)

10 (B) Applicant's right to the effective assistance of counsel as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law was violated when trial counsel failed to protect clients "liberty" interest according to the statutory right to sentence-related credits.

11 (B) The State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment "liberty" to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated.

The States may, under certain circumstances, create liberty interests which are protected by the Due Process Clause; Hendersal v. Comm'rs of Bristol County, 49 Mass App Ct 455, 730 N.E.2d 362, 370 (2000) ("The entitlement to statutory good time credit is a liberty interest.")

(1)(B)

29

The USSC noted in Wolff that punishment in the form of "the forfeiture or withholding of good-time credits" affects the term of confinement. Wolff, 94 S.Ct. 2963. Additionally, in Superintendent, Mass. Corr. Inst. v. Hill, 105 S.Ct. 2768 (1985), the USSC specifically stated the following: "Where a prisoner has a liberty interest in good time credits, the loss of such credits threatens his prospective freedom from confinement by extending the length of imprisonment. Thus the inmate has a strong interest in assuring that the loss of good time credits is not imposed arbitrarily."

In Al-Shubazz v. State, 527 S.E.2d 742 (2000), we acknowledged that "[t]he statutory right to sentence-related credits is a protected "liberty" interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state created right was not arbitrarily abrogated." Id. at 370, 527 S.E.2d at 750 (citing Wolff, supra).

Turning now to the instant case, we reiterate that the State of South Carolina clearly has created a liberty interest in good-time credits by enacting section 24-13-210. Without

(2)(B)

a doubt, these credits for good behavior may be withheld or revoked as punishment when an inmate commits an offense while incarcerated or otherwise violates the Rules of the institution. When a state-created liberty interests is implicated, the inmate is entitled to certain due process rights Wolff supra. While the DOC's disciplinary policies comport with those due process requirements, the purpose of allowing review is to ensure that due process was, in fact, accorded to the inmate and the inmate's right to the statutory credit was not "arbitrarily abrogated." Wolff, 94 S.Ct. 2963; accord Al-Shabazz, supra.

10(C) Petitioner is bringing forth postconviction relief alleging he received ineffective assistance of counsel during his prosecution for Voluntary Manslaughter.

11(C) Pursuant to a plea agreement, Petitioner pled guilty on April 19, 2007 to Voluntary Manslaughter, §16-3-50, to violate the South Carolina laws. At the plea hearing, the State stipulated that Petitioner would receive a sentence of eighteen (18) years. Pursuant unto §16-3-50, Petitioner did not directly appeal his plea or sentence.

Deficient Performance

Petitioner's support is positioned around *Sprouse v. State*, 585 S.E.2d 278, 281 (2003) (finding defendant was entitled to post-conviction relief where the State failed to honor the plea agreement it made with defendant and trial counsel failed to ensure that the State adhered to the original plea agreement); *Thompson v. State*, 531 S.E.2d 294, 296-297 (2000) (concluding defendant established a claim for ineffective assistance of counsel where trial counsel failed to object when the Solicitor recommended the maximum sentence in violation of the

(1)(C)

plea agreement); *Jordan v. State*, 374 S.E.2d 683, 684-85 (1988) (holding trial counsel rendered ineffective assistance of counsel in failing to withdraw guilty plea after State repleaded on plea, and reasoning that counsel's conduct in not protecting defendant's right to enforce the plea agreement with the Solicitor's office fell below "prevailing professional norms").

Taking to the facts of the instant case, Plea Counsel's failure to let his client know that he would not receive 18 years with credit from July 15, 2017. Counsel rendered ineffectiveness. Because client "Green" accepted the plea offer with the knowledge, willingness, and understanding that he would have to do 18 years of the 18 years for his acceptance of the Plea Offer being released on October 19, 2032. However, counsel's failure to do so could not be construed as excusable neglect. During the plea hearing, the solicitor informed the circuit court judge that "Green" will be receiving an negotiated sentence. "See: Exhibit A" - In view of the solicitor's statement, it was incumbent upon plea counsel to make client aware of the actual time and release date he would now have. Because counsel failed to make any attempt to protect

(2)(c)

Petitioner's interest regarding this significantly lower sentence. The court should conclude counsel's performance fell below the prevailing professional norms and, thus, constituted deficient performance.

Prejudice

Great points now to *Harris v. State*, 875 S.W. 2d 662, 665 (Tenn. 1994) ("There is no doubt that the prejudice suffered by defendant was the direct result of failure on the part of defense counsel to discuss the plea bargain offer with his client") See also: *Smith v. State*, 631 S.E. 2d 260, 261 (2006) ("The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty.").

Remedy

Petitioner through this PCR application is seeking relief in the form of a new sentencing hearing. Remedies for ineffective assistance of counsel "should be tailored to the injury

(3)(c)

suffered from the constitutional violation and should not unnecessarily infringe on competing interests." *Turner v. Tennessee*, 858 F.2d 1201, 1207 (6th Cir. 1988), cert. denied, 112 S.Ct. 915 (1992) (quoting *United States v. Morrison*, 101 S.Ct. 665, 66 (1981)... "Indeed, the only way to neutralize the constitutional deprivation suffered by [a defendant] would seem to be to provide [the defendant] with an opportunity to consider the [commonwealth's initial] plea offer with the effective assistance of counsel." *Turner*, 858 F.2d at 1208.

The United States Supreme Court has expressed that specific performance of a plea agreement is an allowable remedy where one has been denied constitutionally guaranteed effective assistance of counsel. *Id.* (citations omitted). On the other hand, specific performance is not warranted where it might unnecessarily infringe on the state's competing interests. *Id.* at 1208-09. In some circumstances, the State may withdraw its original plea proposal, yet, in order to effectively do so the state must show the "withdrawal is free of a reasonable apprehension of vindictiveness." *Id.* at 1208 (citations omitted).

It has been established that when a criminal

(4)(c)

defendant successfully achieves relief, either through direct appeal or collateral attack to the conviction, he "may not be subjected to greater punishment for exercising that right." Id. at 1208 (citing *Blackledge v. Perry*, 94 S.Ct. 2098, (1974)). So therefore Petitioner upon this application is asking if his sentence is remanded that the new sentence not exceed more than (18) eighteen years.

Because there is no evidence in the record that Petitioner expressed a desire to proceed to trial rather than plead guilty. The Court should remand for a new trial because this is the appropriate remedy. Also See: *Custodio v. State*, 644 S.E.2d 36, 40 (2007) (finding counsel rendered ineffective assistance in failing to have plea agreement enforced and concluding the appropriate remedy was specific performance of the plea agreement because defendant detrimentally relied on the promised plea agreement).

Conclusion

Based on the foregoing, Counsel was deficient
(S)(C)

in failing to communicate the State's Plea offer to client correctly. Hindering client to accept a plea offer of (18) eighteen years mandatory. Which client thought he would receive 18 years 85% pursuant to § 16-3-50 Voluntary Manslaughter Counsel prejudiced defendant showing deficient performance. The Circuit Court judge shall take into consideration the correct offer and deliver Petitioner an offer of 18 years 85% giving Petitioner 15 years to do in the South Carolina Department of Corrections

(6)(c)

STATE OF SOUTH CAROLINA

COUNTY OF LEE VS. STATE

Dalonte Green

AKA:

Race: Black Sex: M Age: 27

DOB: SS#: Address:

City, State, Zip: Columbia, SC 29210

DL#: SID#:

*CDL CMV Hazmat

In disposition of the said indictment comes now the Defendant who was TO: Voluntary Manslaughter

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-31-0081

A/W #: 2017A3110100269

Date of Offense: 7/15/2017

S.C. Code §: 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-50 of the S.C. Code of Laws, bearing CDR Code # 0217
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST: Fata, Paul M SC Bar# 1966 Dalonte Green Defendant Derieg, Kir P Attorney for Defendant SCB 1535 SC Bar#

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

CONCURRENT or CONSECUTIVE to sentence on: Current active sentences in SCDC.
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP, days/hours Public Service Employment

Total: \$ plus 20% fee: \$ Obtain GED Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund

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

OTAL Clerk of Court/ Deputy Clerk Teresa Brown Court Reporter: Maryann Nevers

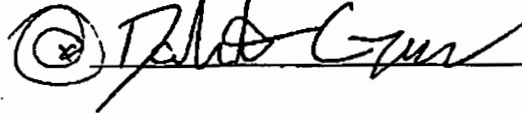
Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees. Presiding Judge Judge Code: 2768 Sentence Date: 4-19-2021

Vertical stamp: Certified as a True Copy, Judge G. Brown, Clerk of Court/Deputy Clerk of General Sessions, Lee County, South Carolina

STATE OF SOUTH CAROLINA)
)
County of LEE)

VERIFICATION

I, DA, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this _____
day of _____, 2____.

Notary Public (L.S.)

My Commission Expires: _____

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

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

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



 Applicant

SWORN or affirmed to and subscribed before me this _____ day of _____, 2____.

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

DALONTE GREEN, SCDC # 31923,

Case No.: 2022-CP-31-0064

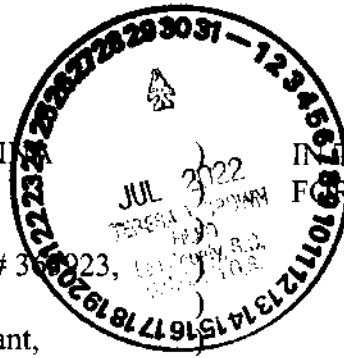
Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**RETURN AND PARTIAL MOTION
TO DISMISS THE APPLICATION
FOR POST-CONVICTION RELIEF
(Counsel Already Appointed)**



In response to Applicant Dalonte Green’s post-conviction relief application filed on March 21, 2022 and received by Respondent the State of South Carolina on March 25, 2022, Respondent makes the following return¹ to the application and moves for summary dismissal of all claims related to the calculation of his sentence by the South Carolina Department of Corrections (including those raised under the guise of ineffective assistance of counsel for counsel’s failure to correct or intervene in SCDC’s calculations of his sentence) and requests an evidentiary hearing solely on Applicant’s claims of ineffective assistance of counsel related to his advice and performance before and during his guilty plea pursuant to the Uniform Post-Conviction Procedures Act (S. C. Code Ann. § 17-27-10 et seq.) and the South Carolina Rules of Civil Procedure. In

¹ Respondent’s return was due to be filed within sixty days of receipt. See Rule 12(a), SCRCP (“[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.”). However, on the date the return was due to be served, the court reporter had not yet delivered the requested transcript for Applicant’s plea and sentencing proceedings to the State. Since receipt and review of this transcript was necessary for the drafting and submission of a return, Respondent requested an extension to file this return once all necessary transcripts were received. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.”); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.). Now, having received the transcripts, Respondent submitted this return to the application.

support of this return and partial motion to dismiss, Respondent offers the following:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). On July 15, 2017, Applicant, who was incarcerated at the Lee Correctional Institution within SCDC², stabbed fellow inmate Christopher Ray to death with a shank and Ray died as a result of those injuries. The encounter was captured on video clearly depicting the stabbing. Thereafter, the Lee County Grand Jury indicted Applicant for murder, possession of contraband by an inmate, and possession of a weapon during a crime of violence (2018-GS-31-0081). Applicant was represented by Lir P. Derieg, Esquire. The case was prosecuted by Assistant Solicitor Paul M. Fata of the Third Circuit Solicitor's Office.

On March 9, 2020, a pre-trial hearing to determine if Applicant was entitled to immunity under the Protection of Persons and Property Act (S.C. Code Ann. § 16-11-410 through 450) was convened before the Honorable George M. McFaddin, circuit court judge. Following a full hearing, including the presentation of multiple witnesses and exhibits as well as argument from both parties, Judge McFaddin denied Applicant immunity. A written order summarizing the court's finding was dated March 27, 2020, and filed on March 30, 2020.

On April 19, 2021, Applicant appeared before the Honorable R. Kirk Griffin, circuit court judge, and pled guilty to the lesser-included offense of voluntary manslaughter. Pursuant to a plea agreement reached between Applicant and the State, the State dismissed the two related charges and agreed to a negotiated eighteen year term of imprisonment to be served concurrently to Applicant's unrelated sentence.

² Applicant was incarcerated within SCDC following a November 4, 2020, guilty plea to voluntary manslaughter arising out of Hampton County (2013-GS-25-00031). This plea and sentence is not being challenged in this action.

Following a thorough plea colloquy, Judge Griffin accepted Applicant's guilty pleas and sentenced Applicant to eighteen years of imprisonment to be served concurrent to his unrelated sentence pursuant to the plea agreement. Applicant did not appeal his plea or sentence.

II. Current Action before the Court

In his application for post-conviction relief, Applicant alleges he is entitled to relief based on the following grounds:

10 (a) “[T]rial counsel failed to have prison officials calculate his sentence correctly according to §16-3-50 (voluntary manslaughter).”

11(a): “Petitioner contends prison officials have erroneously calculated his sentence, sentence-related credits, and custody status . . .”

10 (b) “[T]rial counsel failed to protect clients ‘liberty’ interest according to the statutory right to sentence related credits.”

11(b): “The State having created the right to good time and itself recognizing that is deprivation is a sanction authorize for major misconduct, the prisoner’s interest has real substance and is sufficiently embraced within Fourteenth Amendment ‘liberty’ to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the State-created right is not arbitrarily abrogated. . . .”

10 (c) “[I]neffective assistance of counsel during his prosecution for Voluntary manslaughter.”

11(c): Applicant asserts counsel failed to ensure the State adhered to the original plea agreement for an eighteen-year sentence with credit for time-served since July 15, 2017.

As requested relief, Applicant states he is seeking a new sentencing hearing only.

Attached herewith and incorporated herein are the records of the Lee County Clerk of Court regarding the underlying general sessions proceedings, the transcripts from Applicant's plea proceeding, and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to and Motion to Dismiss Allegations of Related to the Calculation of Applicant's Sentence by SCDC

In his application, Applicant raises two claims pertaining to the manner and method in which SCDC has calculated his sentence. While he raises these claims under the guise of ineffective assistance of counsel for failing to ensure SCDC correctly calculated his sentence, it is clear these claims are attacks on the manner and method in which SCDC has calculated his sentence.

Respondent submits that these claims should be summarily dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act because sentencing calculation claims, credit-related claims, or challenges to other conditions of confinement within SCDC are administrative matters and, thus, cannot be raised in a post-conviction relief proceeding.

An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or

conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). Post-conviction relief "is a proper avenue of relief *only when Applicant mounts a collateral attack challenging the validity of his conviction or sentence.* Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742,749 (2000) (emphasis added). A credit-related claim or challenge to other conditions of confinement is an administrative matter and, thus, cannot be raised in a post-conviction relief proceeding. Id.

These administrative matters typically arise in two ways: (1) when an inmate is disciplined, and punishment is imposed and (2) when an inmate believes prison officials have erroneous Claims that affect only the duration of the sentence or quality of the inmate's confinement do not affect the validity of the conviction or sentence and therefore are considered non-collateral attacks on the conviction. Cooper v. State, 338 S.C. 202, 206, 525 S.E.2d 886, 888 (2000). Such non-collateral or administrative matters must be reviewed through the Administrative Procedures Act. Al-Shabazz, 338 S.C. at 378–79, 527 S.E.2d at 754–55.

Here, Applicant avers that SCDC is failing to properly interpret his sentence and failing to properly award him credits to which he is entitled. While Applicant's enumerated claims read as PCR claims because he frames them as ineffective assistance of counsel, the crux of his claims exclusively pertain to how SCDC has interpreted his sentence and awarded him credits, which clearly falls outside the purview of the post-conviction relief process. Accordingly, these claims must be adjudicated through the Administrative Procedures Act (APA). Al-Shabazz, 338 S.C. at 375, 547 S.E.2d at 753.

Accordingly, the State moves to dismiss this allegation pursuant to Rule 12(b)(6), SCRPC, for failure to state a cognizable claim. The State further moves for summary dismissal of this claim pursuant to § 17-27-70 because there is no genuine issue of material fact which would necessitate an evidentiary hearing, and these allegations should be dismissed as a matter of law. See Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Because there is no question of law or fact to necessitate a hearing, Respondent requests the Court not hold a hearing in this matter, and, instead, summarily dismiss these claims. See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). Respondent moves for summary dismissal of these claims.

IV. Response to Allegations of Ineffective Assistance of Counsel

In his application, Applicant also raises a claim of ineffective assistance of counsel for counsel failing to ensure that his plea agreement was honored. However, the record establishes that Applicant was clearly sentenced to eighteen years of imprisonment to be served concurrently with his unrelated sentence for which he was housed in SCDC at the time of his crime, and, therefore, that his plea agreement was honored.

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 can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; 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 it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (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 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 687 (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 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 'prejudice' showing 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, 282 S.C. at 134, 318 S.E.2d at 361.

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.

In Applicant’s case, the record fully supports that Applicant entered a knowing, voluntary, and intelligent plea with the advice of competent counsel, who was able to secure an extremely favorable plea agreement that allowed Applicant to plead to a lesser-included offense for a determinate sentence to be served concurrently to an active, unrelated sentence and the dismissal of two related charges. The record reflects Applicant was sentenced in accordance to this plea agreement.

Accordingly, Respondent submits the record conclusively refutes Applicant’s allegation that his plea counsel was ineffective for failing to ensure his plea agreement was honored. However, allegations regarding counsel’s performance may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Any Future Amendments and Invocation of Discovery Process

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 an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d

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

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

VI. Response to Any and All Other Allegations

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

VII. Request for an Evidentiary Hearing Solely on the Claims Pertaining to Counsel's Performance unrelated to SCDC's Calculation of his Sentence

WHEREFORE, Respondent respectfully requests this Court convene an evidentiary hearing solely on Applicant's claims of ineffective assistance of counsel for counsel's failure to ensure the plea agreement was honored. As to all remaining claims, Respondent respectfully requests this Court summarily dismiss these claims for failure to present a genuine issue of law or fact necessitating an evidentiary hearing.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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

July 27, 2022

VII. Request for an Evidentiary Hearing Solely on the Claims Pertaining to Counsel's Performance unrelated to SCDC's Calculation of his Sentence

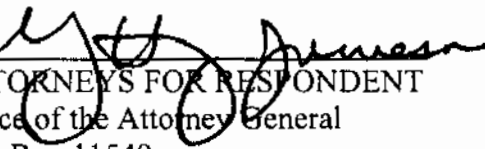
WHEREFORE, Respondent respectfully requests this Court convene an evidentiary hearing solely on Applicant's claims of ineffective assistance of counsel for counsel's failure to ensure the plea agreement was honored. As to all remaining claims, Respondent respectfully requests this Court summarily dismiss these claims for failure to present a genuine issue of law or fact necessitating an evidentiary hearing.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
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Telephone: (803) 734-3737

July 27, 2022

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEE)
)
 DALONTE GREEN, #363923)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS

2022-CP-31-64

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Partial Motion to Dismiss to the Application for Post-Conviction Relief Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Timothy Lee Griffith, Esquire
2338 Mount Vernon Drive
Sumter, South Carolina 29154

DATED this 27th day of July, 2022.



 Joshua Osborne, Legal Assistant
 For Respondent



1 STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT OF
) THE THIRD JUDICIAL CIRCUIT
 2) 2022-CP-31-00064
)
 3 COUNTY OF LEE)
 4
 5 DALONTE GREEN,)
)
 6)
 Applicant,)
 7)
) TRANSCRIPT OF RECORD
 8 vs.)
)
 9 STATE OF SOUTH CAROLINA,)
)
 10 Respondent,)

12 March 1, 2023

13 Sumter, South Carolina

14 B E F O R E:

15 HONORABLE EDGAR W. DICKSON, JUDGE

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

17 Timothy L. Griffith, Esquire
 18 Attorney for the Applicant

19 Zachary W. Jones, Esquire
 20 Attorney for the State

21
 22
 23 Lisa G. Amick
 Official Court Reporter
 24
 25

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INDEX OF WITNESSES

(SW) - Denotes State's witness

(DW) - Denotes Defense witness

(DW) Mr. Green

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EXHIBITS

(NO EXHIBITS INTRODUCED.)

1 THE COURT: Yes, sir?

2 MR. JONES: May it please the Court? This is the
3 matter of Dalonte Green versus the State of South Carolina,
4 case number 2022-CP-31-64. My name is Zachary Jones on behalf
5 of the State of South, Mr. Green is present along with his
6 attorney, Timothy Griffith. This matter arises from the
7 stabbing of Mr. Christopher Ray in July, on July 15th of 2017.
8 The stabbing occurred while Mr. Green was incarcerated at the
9 Lee Correctional Institution on an unrelated charge. The Lee
10 County Grand Jury indicted Mr. Green for murder, possession of
11 contraband by an inmate, and possession of a weapon during a
12 crime of violence, that indictment number was 2018-GS-31-81.
13 Mr. Green was represented by Lir Derieg, Esquire and the case
14 was prosecuted by Assistant Solicitor Paul M. Fata of the Third
15 Circuit Solicitor's Office. On March 9th, 2020, a pretrial
16 hearing was held to determine if Mr. Green was entitled to
17 immunity under the protection of persons and property act. The
18 immunity was ultimately denied by the Honorable George M.
19 McFadden, Circuit Court Judge. Following that, on April 19th,
20 2021, Mr. Green appeared before the Honorable R. Kirk Griffin,
21 Circuit Court Judge, and pled guilty to the lesser included
22 offense of voluntary manslaughter. Pursuant to a plea
23 agreement between Mr. Green and the State, the State dismissed
24 two related charges and agreed to a negotiated 18 year term of
25 imprisonment to be served concurrently to his unrelated

1 sentence that he was already serving at Lee Correctional
2 Institution. Judge Griffin accepted Mr. Green's guilty plea
3 and sentenced him to 18 years of imprisonment to be served
4 concurrently to his unrelated sentence pursuant to the plea
5 agreement. Mr. Green did not file an appeal, and this
6 application for post-conviction relief was filed on March 21st,
7 2022. With that, I'll turn it over to Mr. Griffith.

8 MR. GRIFFITH: May it please the Court, Your Honor?

9 THE COURT: Yes, sir, Mr. Griffith.

10 MR. GRIFFITH: We would call Mr. Dalonte Green to the
11 stand.

12 THE COURT: Alright. Mr. Green.

13 CLERK: Place your left hand on the Bible. Raise
14 your right hand. State your name.

15 MR. GREEN: Dalonte Green.

16 CLERK: Do you solemnly swear or affirm your
17 testimony to the Court shall be the truth, the whole truth, and
18 nothing but the truth so help you God?

19 MR. GREEN: Yes, sir.

20 CLERK: Thank you. Step around, please. State your
21 name for the record and spell your last name.

22 MR. GREEN: Dalonte Green, G-r-e-e-n.

23 THE COURT: Alright. Mr. Griffith?

24 MR. GRIFFITH: Thank you, Your Honor.

25

DIRECT EXAMINATION

1 BY MR. GRIFFITH:

2 Q Mr. Green, where are you currently incarcerated?

3 A Yes, sir.

4 Q Where is that?

5 A Turbeville.

6 Q Okay. And how long you been there?

7 A Two years now.

8 Q Okay. Now, Mr. Green, do you recall, the crime that you
9 were charged with, do you recall the date of that or close to
10 that ---

11 A Yes, it was in July, July the 15th 2017.

12 Q Okay. And then do you recall the date that you pled
13 guilty?

14 A 2021.

15 Q Okay. Some four years later, isn't that right?

16 A Yes, sir.

17 Q Okay. And so when you pled guilty, you didn't have any
18 problem with the plea, did you?

19 A No, sir.

20 Q Okay. And so let me show you this right here --

21 MR. GRIFFITH: May I approach, Your Honor?

22 THE COURT: You may, you may.

23 Q Okay. Do you recognize this, Mr. Green? The sentencing
24 sheet.

25 A Yes, sir.

- 1 Q Okay. And do you recognize this number right here?
- 2 A Yes, sir.
- 3 Q What is that number?
- 4 A 2,887 days.
- 5 Q Okay. What does that represent?
- 6 A Time credit.
- 7 Q Okay. Now, that is, right beside that it says the
- 8 Defendant be given credit for time served and it lists that 2,
- 9 887 days?
- 10 A Yes, sir.
- 11 Q You read that?
- 12 A Yes, sir.
- 13 Q Okay. And were you expecting to receive that number of
- 14 days?
- 15 A Yes, sir.
- 16 Q Okay. So did you receive that or have you been receiving
- 17 that?
- 18 A No, sir.
- 19 Q Now, just to be curious, when is your projected date to
- 20 get out?
- 21 A As of now?
- 22 Q Yes.
- 23 A 2036.
- 24 Q Okay. And, but that doesn't include the ---
- 25 A That's without the time credit.

1 Q That's without the time served. Okay. So what you're
2 asking for today, now, you and I talked about this and we
3 talked about the fact that this is not actually a PCR matter,
4 didn't we?

5 A Yes, sir.

6 Q But we would just at least like the Judge to perhaps ask,
7 what do you want the Judge to do?

8 A As I talked to you about, SCDC is the biggest problem.
9 The solicitor, everybody, my lawyer did their job. SCDC is
10 saying because I was already incarcerated, that they're not
11 going to give me the time credit even though the Judge put
12 credit for time served.

13 Q Well, let me ask you a question. When you were accused of
14 this crime, did they separate you from where you had been? Put
15 you in a different place? Take away some privileges?

16 A They shipped me to another prison, yeah.

17 Q Okay. And they changed the way things were going for you,
18 right?

19 A I was put in lockup.

20 Q That's exactly right. And that's what they do, isn't that
21 what they do if like if you commit offense when you're in jail,
22 they take away some privileges or put you in lockup --

23 A Yes, sir.

24 Q -- is that right?

25 A Yes, sir.

1 Q Okay. So when you went in there and then you waited that
2 number of days, right?

3 A Yeah. I sat in lockup two years.

4 Q Okay. And actually, then even after you got out of
5 lockup, it was still a couple more years before you went to
6 your sentencing, wasn't it?

7 A Yes. Because I was already, I was doing time, I was doing
8 30 years for my previous charge, but I won my appeal, so that
9 was, I was back and forth from county to prison.

10 Q Okay. I gotcha. But you believe that they're not giving
11 you credit for your 2,887 days, isn't that correct?

12 A A hundred percent, sir.

13 THE COURT: Two thousand eight hundred and how many?

14 MR. GRIFFITH: 2,887.

15 THE COURT: Okay. Thank you, sir.

16 MR. GRIFFITH: And I have no further questions.

17 THE COURT: Alright. Mr. Jones?

18 MR. JONES: Nothing from the State, Your Honor.

19 THE COURT: Alright. Before you step down. Where is
20 it in the order where it says that? I think I've got copies of
21 the order, but if you'd ---

22 MR. JONES: Judge, may I approach?

23 THE COURT: Yes, if you don't mind.

24 MR. JONES: Your Honor, we have, this is the
25 sentencing sheet, and Mr. Griffith, you can correct me if I'm

1 wrong. The sentencing sheet for the indictment that's the
2 basis of this case, 2018-GS-31-81, doesn't have it on it. It's
3 the indictment for his pre-existing offense, 2013-GS-25-31, do
4 you have that? It's the Hampton County one. See if that's on
5 the next page.

6 THE COURT: That's on the next page?

7 MR. JONES: I don't know if it's, let me see if I
8 have a spare copy.

9 THE COURT: Well, I'll look through these others,
10 too. I just want to make sure...

11 MR. GRIFFITH: Your Honor, may Mr. Green sit down?
12 Unless you have questions.

13 THE COURT: Mr. Green, you can go ahead and step
14 down. If I have a question, you'll still be under oath.

15 MR. GREEN: Yes, sir.

16 THE COURT: But you'll just need to tell me from over
17 there, okay? Thank you, sir.

18 MR. JONES: Here you are, Your Honor. That should be
19 the sentencing sheet.

20 THE COURT: Alright. Okay. And Mr. Jones, you can
21 explain this to me just so I'll...

22 MR. JONES: Certainly, Your Honor.

23 THE COURT: He pled guilty in Hampton County on
24 November 4th, 2020 and got credit for 2,887 days, correct?

25 MR. JONES: Yes, Your Honor, that's my understanding.

1 THE COURT: Okay. When he pled guilty in ---

2 MR. JONES: In 2021?

3 THE COURT: --- in 2021, there's no reference to that
4 in any of the sentencing orders, is that correct?

5 MR. JONES: Your Honor, the sentencing sheet for that
6 one has a check mark by the Defendant is to be given credit for
7 time served.

8 THE COURT: Right. But it never lists how many days?

9 MR. JONES: It does not list how many days, Your
10 Honor.

11 THE COURT: Okay. And ---

12 MR. JONES: In addition, in the transcript of Mr.
13 Green's plea hearing on the 2021 plea, that's the 2018, Lee
14 County charges, on page 12, if you have the transcript before
15 you?

16 THE COURT: I do.

17 MR. JONES: Alright. Judge Griffin, at the end of
18 his sentencing, says that his sentence is to be committed to
19 the State Department of Corrections for a determinate term of
20 18 years concurrent with the current active sentences in SCDC
21 and he is to be given credit for whatever time that he has
22 served on this charge. It also does not explain how many days
23 that should be.

24 THE COURT: But they could easily do the math and see
25 how long he'd been in jail, couldn't they?

1 MR. JONES: Yes, Your Honor.

2 THE COURT: Is there a reason why he wasn't given
3 credit by ---

4 MR. JONES: Your Honor, I am not aware.

5 THE COURT: Okay.

6 MR. JONES: The State's position in this as explained
7 in our return is that as Mr. Griffith has explained, this is
8 not a PCR matter. This is a matter for, under Al-Shabazz to be
9 brought up before the, either through SCDC's internal
10 procedures or failing that, through an appeal to the
11 administrative law courts.

12 THE COURT: Okay.

13 MR. GRIFFITH: And Your Honor, pardon me.

14 THE COURT: Yes.

15 MR. GRIFFITH: We would argue that we do understand
16 that it's not a PCR issue, Your Honor, but if Your Honor, to
17 the extent an order from Your Honor for them to revisit may or
18 may not influence SCDC, we would ask for at least that, Your
19 Honor.

20 MR. JONES: And Your Honor, I've had this matter come
21 up before in other cases or similar matters and my response has
22 been if Your Honor wants to include at the end of an order that
23 this matter, because it's not suitable for PCR should be
24 dismissed but without prejudice to his right to raise a similar
25 challenge under Al-Shabazz, under the procedures outlined in

1 that case, then that would be fine. And that also, I think,
2 would give Mr. Griffith something to corroborate his position
3 before SCDC that this is a matter for them to adjudicate.

4 THE COURT: Well, I'll certainly be glad to sign an
5 order as you suggested, but in that order I believe, I don't
6 mind putting in that he should be given credit for that time
7 because it just doesn't, there's nothing to, even though I have
8 no control over it, there's nothing to indicate to me that when
9 he pled he did not think he was going to get credit for all the
10 time he had been in jail.

11 MR. JONES: Yes, Your Honor, and that is reflected on
12 the sentencing sheet and in the transcripts as far as I can
13 tell.

14 THE COURT: And Judge Griffin seemed to be clear, he
15 said it's going to be concurrent with his present sentence and
16 give him credit for whatever time that he has served. But I
17 don't think, you know, that I can order that, okay? I mean ---

18 MR. GRIFFITH: Well, Your Honor, if Your Honor would,
19 as you suggested, at the bottom, if once the order is prepared
20 that somewhere in there it just said that you will order that
21 he should be given time ---

22 THE COURT: I'd just say it appears to this Court
23 that he should be given credit just as the sentencing Judge
24 told him he was going to get, you know?

25 MR. JONES: Thank you, Your Honor.

1 THE COURT: If y'all will prepare that order and send
2 it to me, I'll be happy to sign it and nobody will be happy
3 with it, okay?

4 MR. JONES: Alright. Thank you, Your Honor.

5 THE COURT: Good luck.

6 MR. GRIFFITH: Thank you, Your Honor.

7 THE COURT: Good luck, Mr. Green.

8 (Whereupon the hearing ended at 2:24 pm.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
)
)
)
)
COUNTY OF LEE)

I, the undersigned Lisa G. Amick, Official Court Reporter for the Third 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 proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Sumter, South Carolina, on the 1st day of March 2023.

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

February 28, 2024

Lisa G. Amick

Lisa G. Amick

Court Reporter

My commission expires: June 30th, 2025

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 04/05/22

C0667

GREEN, DALONTE - FBI # 967669MD7 SID# SC02024039 SCDC # 00363923
 OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
 INSTITUTION ..: TURBEVILLE CORR INST DORM.....: EA0221B
 SECURITY/CUST.: 2 ADULT-STRAIGHT SENTENCE RACE....:B SEX...:M
 CURR INCARC SENT...: 18 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 08/02/2036
 CENTRAL MONITORING.: YES PROJ PAROLE DATE: 00/00/0000
 SOCIAL SECURITY #...: ██████████ EWC JOB...: SANITATION WORKER PL
 EDUC PGM.: NO CURR EDUC PROGRAM
 EWC LEVEL: 2F5 EEC LEVEL:
 ASSIGNMENT...: CAFETERIA

CURRENT PROGRAM...: NO CURRENT PROGRAM
 AGE...: 28 DATE OF BIRTH...: ██████████

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE		
	YRS	MOS	DYS		START	V/NV	CATEGORY
VOLUNTARY MANSLAUGHTER	18	0	0	LEE	4/19/2021	V	4
VOLUNTARY MANSLAUGHTER	18	0	0	HAMPTON	12/ 9/2012	V	4

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

5/24/18	POSSESSION OF A WEAPON	CONVICTED	MAJOR
7/25/16	ASSAULT/BATTERY OF INMAT	DROPPED	CHARG INMATE WEAPON
11/15/15	POSSESSION OF A WEAPON	DROPPED	MAJOR

NON-ASSAULTIVE DISCIPLINARIES:

3/15/18	POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
9/28/17	COMPUTER ENTRY ERROR/NO	DROPPED	CHARG
8/22/16	POSSESSION OF CONTRABAND	CONVICTED	MAJOR
8/22/16	POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
7/25/16	USE, POSS NARC, MARIJ, UNAU	DROPPED	CHARG
11/23/15	POSS. OR/ATTEMPT TO POSS	DROPPED	MAJOR

HISTORY OF MOVEMENTS:

4/19/21	TURBEVILLE	INCARCERATED	RETURN FROM COURT
4/19/21	LEE CO	AUTH ABSENCE (AWL)	TO COURT
3/15/21	TURBEVILLE	INCARCERATED	SPECIAL PROJECTS
2/18/21	EVANS	INCARCERATED	ADMINISTRATIVE
2/11/21	LIEBER	INCARCERATED	MEDICAL
11/12/20	KIRKLAND	INCARCERATED	RESENTENCED OTHER
9/20/18	UNK	RELEASE	SENT REMANDED/OVERTURNED
2/13/18	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
2/13/18	KIRKLAND	INCARCERATED	MEDICAL
1/24/18	BROAD RIVER	INCARCERATED	RETURN FROM COURT
1/24/18	LEE CO	AUTH ABSENCE (AWL)	TO COURT
11/20/17	BROAD RIVER	INCARCERATED	RETURN FROM COURT
11/20/17	LEE CO	AUTH ABSENCE (AWL)	TO COURT
7/26/17	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
6/19/17	LEE	INCARCERATED	ADMINISTRATIVE
6/19/17	KIRKLAND	INCARCERATED	MEDICAL
6/ 6/17	LEE	INCARCERATED	ADMINISTRATIVE
6/ 6/17	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
7/19/16	LEE	INCARCERATED	MEDICAL
7/17/16	PRISMA HEALTH T	AUTH ABSENCE (AWL)	MEDICAL

GREEN, DALONTE - FBI # 967669MD7 SID# SC02024039 SCDC # 00363923 (CONTINUED)
 5/ 8/15 KIRKLAND INCARCERATED NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
SANITATION WORKER PL	10/06/21	0/ 0/ 0		2F5
WARDKEEPER ASSISTANT	09/28/21	10/ 5/21	PROMOTION	2F5
WARDKEEPER ASSISTANT	07/09/21	9/19/21	LATERAL TRANSFER	2F5
WARDKEEPER	03/03/21	7/ 7/21	PLACED IN ST/SP CUSTODY	2F5
WARDKEEPER ASSISTANT	01/21/21	2/18/21	INSTIT TRANSFER	2F5
WARDKEEPER ASSISTANT	01/11/18	9/20/18	RELEASED/PAROLED	3F5
GENERAL WORKER	06/14/17	7/26/17	PLACED IN ST/SP CUSTODY	3F5
WASH RACK ATTENDANT	05/01/17	6/13/17	UNSAT JOB PERFORM	3F5
GENERAL WORKER	03/23/17	4/30/17	LATERAL TRANSFER	3F5
MACHINE OPERATOR	05/20/16	7/19/16	PLACED IN ST/SP CUSTODY	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
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NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

STATE OF SOUTH CAROLINA
COUNTY OF LEE

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

Dalonte Green, #363923

) Case No.: 2022-CP-31-00064

Applicant,

v.

) **ORDER OF DISMISSAL**

State of South Carolina,

Respondent.



This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Dalonte Green (“Applicant”) on March 21, 2022. The Court convened an evidentiary hearing into the matter on March 1, 2023, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Timothy L. Griffith, Esq. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant has not met his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (“SCDC”). On July 15, 2017, Applicant, who was incarcerated at the Lee Correctional Institution within SCDC¹, stabbed fellow inmate Christopher Ray to death with a shank. The encounter was captured on video clearly depicting the stabbing. Thereafter, the Lee County Grand Jury indicted

¹ Applicant was incarcerated within SCDC following a November 4, 2020, guilty plea to voluntary manslaughter arising out of Hampton County (2013-GS-25-00031). The Hampton County plea and sentence is not being challenged in this action.

Applicant for murder, possession of contraband by an inmate, and possession of a weapon during a crime of violence (2018-GS-31-0081). Applicant was represented by Lir P. Derieg, Esquire. The case was prosecuted by Assistant Solicitor Paul M. Fata of the Third Circuit Solicitor's Office.

On March 9, 2020, a pre-trial hearing to determine if Applicant was entitled to immunity under the Protection of Persons and Property Act (S.C. Code Ann. §§ 16-11-410 through -450) was convened before the Honorable George M. McFaddin, circuit court judge. Following a full hearing, including the presentation of multiple witnesses and exhibits as well as argument from both parties, Judge McFaddin denied Applicant immunity. A written order summarizing the court's finding was dated March 27, 2020, and filed on March 30, 2020.

On April 19, 2021, Applicant appeared before the Honorable R. Kirk Griffin, circuit court judge, and pled guilty to the lesser-included offense of voluntary manslaughter. Pursuant to a plea agreement reached between Applicant and the State, the State dismissed the two related charges and agreed to a negotiated eighteen-year term of imprisonment to be served concurrently to Applicant's unrelated sentence.

Following a thorough plea colloquy, Judge Griffin accepted Applicant's guilty pleas and sentenced Applicant to eighteen years of imprisonment to be served concurrent to his unrelated sentence pursuant to the plea agreement. Applicant did not appeal his plea or sentence.

Present Application

In his application for post-conviction relief, Applicant alleges he is entitled to relief based on the following grounds:

10(a): "[T]rial counsel failed to have prison officials calculate his sentence correctly according to § 16-3-50 (voluntary manslaughter)."

11(a): "Petitioner contends prison officials have erroneously calculated his sentence, sentence-related credits, and custody status. . . ."

10(b): "[T]rial counsel failed to protect clients 'liberty' interest according to the statutory right to sentence-related credits."

11(b): "The State having created the right to good time and itself recognizing that is deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment 'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the State-created right is not arbitrarily abrogated. . . ."

10(c): "[I]neffective assistance of counsel during his prosecution for Voluntary manslaughter."

11(c): Applicant asserts counsel failed to ensure the State adhered to the original plea agreement for an eighteen-year sentence with credit for time-served since July 15, 2017.

As requested relief, Applicant states he is seeking a new sentencing hearing only.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcripts of Applicant's plea proceeding, the records of the Sumter County Clerk of Court regarding the subject conviction, and the records of the present post-conviction relief action. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the

pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Calculation of Sentence

At the hearing, Applicant presented a sentencing sheet, dated November 4, 2020, for his Hampton County conviction on Indictment No. 2013-GS-25-00031. That sentencing sheet reflects that Applicant, charged with murder, pled guilty to the lesser-included offense of voluntary manslaughter in exchange for a negotiated sentence of 18 years' imprisonment. A box has been checked reflecting that Applicant is to receive credit for time served. Above that line is a handwritten note: "2,887 Days." Applicant argues this sentencing sheet reflects he was to receive 2,887 days credit towards his Hampton County sentence.

Subsequently, on April 19, 2021, Applicant pled guilty before Judge Griffin to a charge of voluntary manslaughter, Indictment No. 2018-GS-31-00081 in Lee County, arising out of a homicide he committed during his incarceration on the Hampton County charge. The State allowed Applicant to plead guilty in exchange for a negotiated sentence of 18 years' imprisonment, concurrent with the sentence Applicant was already serving. (GP Tr. p. 4). The transcript of that plea proceeding reflects that the sentence was to run "concurrent with the active sentences in SCDC." (GP Tr. p. 12). In addition, Applicant was to receive "credit for whatever time that you have served on this charge." (GP Tr. p. 12). Likewise, the sentencing sheet for the Lee County conviction on Indictment No. 2018-GS-31-00081 reflects that Applicant's 18-year sentence is to run concurrent to his "current active sentences in SCDC" and that he was to receive credit for time served.

Before the Court is a "Record Summary Report" from SCDC regarding Applicant, dated April 5, 2022. That report reflects that April 19, 2021—the date of Applicant's guilty plea before

Judge Griffin—is the “sentence start date” for Applicant’s Lee County sentence.² The report also reflects that Applicant’s projected “maxout date” is August 2, 2036, which appears to be consistent with 85% of an 18-year sentence beginning on April 19, 2021. Applicant argues this shows SCDC has failed to give him any credit for time served on his Lee County sentence.

At the PCR hearing, Applicant clarified that he was not challenging the performance of his counsel, but only the calculation of his remaining sentence by SCDC. Therefore, the Court finds the allegations of ineffective assistance of counsel raised in Applicant’s original PCR application have been abandoned, and Applicant’s only real complaint is that SCDC has erred in denying him credit for time served.

Whatever may be the merits of this complaint,³ it is not a matter for PCR. “PCR is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence* as authorized by section 17-27-20(a) (1985).” *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (emphasis in original), *see also id.* at 369, 527 S.E.2d at 749–50 (holding that calculation of sentencing credits and other conditions of confinement may not be raised in a PCR proceeding). In this case, Applicant does not attack the *validity* of his conviction or sentence; instead, he attacks the calculation of his sentence by SCDC. The proper avenue for claims of this nature is review pursuant to the Administrative Procedures Act according to the procedure outlined in *Al-Shabazz*.

² The “sentence start date” for Applicant’s Hampton County sentence is reflected as December 9, 2012, which appears consistent with the application of 2,887 days credit from the November 4, 2020, plea to the Hampton County charge.

³ It appears to this Court that Judge Griffin’s ruling as reflected in the guilty plea transcript and on the April 19, 2021, sentencing sheet expressly indicate that Applicant was to receive credit for time served, although the amount of credit is not specified. However, this is an issue to be handled in an *Al-Shabazz* proceeding, not on PCR.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any grounds justifying a grant of post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. **Nothing in this order shall be construed to bar Applicant from raising an administrative challenge to SCDC's calculation of his sentence through the procedure set forth in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000).**

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 2nd day of January, 2024.



EDGAR W. DICKSON
Presiding Judge
Third Judicial Circuit



, South Carolina

WITNESSES

✓ Tyrone Smith

DOCKET NO. 2013GS2500031

The State of South Carolina
County of Hampton

COURT OF GENERAL SESSIONS

April Term 2013

ARREST WARRANT NUMBER

2012A2510200035

Date of Arrest: December 10, 2012

THE STATE

VS.

Dalonte Green

ACTION OF GRAND JURY

TRUE BILL

4-25-13

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020

CDR Code:0116

Foreperson of Petit Jury

Date:

INDICT 5-7-15

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Hampton

STATE

) INDICTMENT/CASE#: 2013GS2500031

VS.

Dalonte Green

) A/W#: 2012A2510200035

AKA:

) Date of Offense: 12/01/2012

Race: Black Sex: Male Age: 27

) S.C. Code §: 16-3-10

DOB: [REDACTED] SS#: [REDACTED]

) CDR Code #: 0116

Address: PEDRO RD, Vamville, SC 29944

DL# [REDACTED] SID# [REDACTED]

) SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Voluntary Manslaughter

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT VIOLENT SERIOUS

MOST SERIOUS

MANDATORY OPS §17-25-45
(BSC w/minor 1* or CSC w/minor 3*)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentence to Grand Jury, (def's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Reed Evans 79925 (Solicitor) (SC Bar #) Dalonte Green (Defendant) [Signature] (Attorney for Defendant) 14267 (SC Bar #)

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

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 2887 Days
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment _____

Payment Terms: _____

Set by SCOPPPS

Recipient:		
*Fine:		\$ _____
§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 61.6 (Public Def/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/each	\$ _____
3% to County (if paid in installments)		\$ <u>3.75</u>

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk: M. Linda D. Neades
Court Reporter: Cathy L. Gering

MP-SCCA/217 (04/2018)

- Obtain GED
 - Attend Voc. Rehab. Or Job Corp. _____
 - May serve W/E beginning _____
 - Substance Abuse Counseling
 - Random Drug/Alcohol Testing
- Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund
- Other: _____

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

Presiding Judge: [Signature]
Judge Code: 2139
Sentence Date: November 4, 2012