

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jul 31 2024

S.C. SUPREME COURT

Certiorari to Greenville County

Honorable R. Lawton McIntosh, Circuit Court Judge

STEVEN LEVON WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000248

APPENDIX

JOANNA K. DELANY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MELODY J. BROWN
Senior Assistant Deputy Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3727

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MAY 11-12, 2016	1
APPLICATION FOR POST-CONVICTION RELIEF	423
RETURN.....	435
AMENDED RETURN.....	444
MOTION FOR A MORE DEFINITE STATEMENT.....	456
AMENDED APPLICATION FOR PCR.....	462
CONDITIONAL ORDER OF DISMISSAL DATED JUNE 4, 2021	463
CONDITIONAL ORDER OF DISMISSAL DATED JUNE 7, 2021	465
PCR HEARING TRANSCRIPT DATED SEPTEMBER 13, 2021	467
RESPONDENT’S EXHIBIT #1 (NOTE REJECTING PLEA DEAL).....	516
CONDITIONAL ORDER OF DISMISSAL DATED SEPTEMBER 17, 2021.....	517
PCR HEARING DATED MARCH 29, 2023.....	519
APPLICANT’S EXHIBIT #1	546
CONDITIONAL ORDER OF DISMISSAL DATED MARCH 29, 2023	547
ORDER OF DISMISSAL.....	549
INDICTMENTS	576
SENTENCE SHEETS	582

CARLYLE STEELE - DIRECT EXAMINATION BY MR. SMITH

35

1 Verdin, about line 22?

2 (Pause)

3 Q. Do you recall that conversation with Mr. Williams?

4 A. You're reading at line 22 on page 410?

5 Q. That's correct.

6 A. And Mr. -- this is the judge, of course. And, Mr.

7 Williams, I know you were hoping for a particular outcome. I
8 don't know what the outcome will be, but I will say you should
9 have at least some satisfaction in knowing that your attorney
10 has literally put on one of the best cases I have seen tried
11 of this nature. I will also -- I want to thank you for how
12 cordial you have been throughout this whole experience. I
13 thank you for how nice you have been throughout. Is that what
14 you're referring to?

15 Q. That's correct.

16 A. I guess every lawyer thinks this, but I thought I tried
17 the heck out of his case. Got a not guilty on the attempted
18 murder, at least.

19 Q. Okay. So I'm going to ask you now about any Golden Rule
20 arguments. At the time of Mr. Williams' trial what was your
21 understanding of what it meant for a solicitor to make a
22 Golden Rule argument in closing?

23 A. Well, I think they were -- they're not allowed and we're
24 not allowed to put -- to ask the jurors to put themselves in
25 the place of victims in the crime and from the point of the

CARLYLE STEELE - CROSS-EXAMINATION BY MR. ARIAIL

36

1 solicitor. Interestingly enough, most of the instances where
2 the solicitor used the word you, he was talking about a
3 perpetrator as an example rather than a victim.

4 Q. And that will be true during most of those examples that
5 Mr. Williams listed a few minutes ago, is that correct?

6 A. Yes. Those did not strike me as violations of the Golden
7 Rule prohibition. But, again, if I was wrong, and the record
8 reflects that I did not object, then the Court can consider
9 that and give him a new trial if that's appropriate.

10 Q. Okay. Thank you, Mr. Steele.

11 **MR. SMITH:** No more questions, Your Honor.

12 **THE COURT:** Cross-examination, Mr. Ariail.

13 **MR. ARIAIL:** Thank you, Your Honor. May it please the
14 Court?

15 **Cross-examination by Mr. Ariail:**

16 Q. Mr. Steele, how you doing today?

17 A. Good. Good to see you, Mills.

18 Q. Good to see or I wished I could see you. I can't see you
19 on here, but good to talk ---

20 A. I can see you perfectly. And I apologize -- since I'm
21 looking so good, I really would like for y'all to see me.

22 Q. I hear you. I hear you.

23 Well, in regards to Mr. Williams, I know you represented
24 him in regards to these charges. One of the things he raised
25 and what I was trying to understand is there appears to be an

CARLYLE STEELE - CROSS-EXAMINATION BY MR. ARIAIL

37

1 individual by the name of Brittany Bryant that was a witness
2 to the incident. Do you ever remember her name?

3 A. No, sir, I don't.

4 Q. Did you -- and I know you've got the file or other
5 information there. Was there any reference to her in any of
6 the reports or any information you had gotten?

7 A. I don't remember anything like that.

8 Q. All right.

9 A. And to tell you the truth, I looked through the file, but
10 I don't remember looking specifically for a reference to her.
11 But I didn't see anything in my general going through the
12 file.

13 Q. Okay. And you've heard Mr. Williams testify as to
14 Brittany being at the location and seeing the altercation.
15 Did you hear that from him?

16 A. Yes, sir, just now.

17 Q. Okay. And as part of that, I mean, do you remember any
18 conversation with him or any discussion with him about a
19 witness that had, I guess, seen the incident and that he
20 wanted you to talk to?

21 A. I don't remember that.

22 Q. Okay. And if you had heard that, what is your standard
23 way of handling, you know, a witness that is really an
24 eyewitness to the incident?

25 A. I'd gone and found that -- tried to find that person.

CARLYLE STEELE - CROSS-EXAMINATION BY MR. ARIAIL

38

1 Q. Okay. And in this case you don't have anything in your
2 file showing you that you had, you know, gotten her name or
3 that you went out to try to find her?

4 A. No, sir.

5 Q. Okay. Now I know he got into -- he mentioned some of
6 these pictures that were part of the case. Do you remember
7 any issues with the pictures as to what you couldn't see or
8 anything was a problem with them to be able for him to, I
9 guess, fully review his case?

10 A. No. But I will say, Mr. Williams is -- it's very -- the
11 most important case of his life. And he may remember
12 something that I don't. It's been over five years, and I
13 don't remember that.

14 Q. Okay. Was there any discussion as part of your records
15 that he couldn't fully understand the case based on these
16 pictures or needed additional information with regards to
17 that? Do you have anything about that?

18 A. I remember nothing about any pictures.

19 Q. Okay. Now the plea deal we have heard and I guess the
20 one that you had found from Mr. Culbertson, is that correct?
21 It was a previous plea offer.

22 A. I don't know anything about that.

23 Q. Okay.

24 A. But I know they must have offered to come off life
25 without parole.

CARLYLE STEELE - CROSS-EXAMINATION BY MR. ARIAIL

39

1 Q. Okay. So at some point they did, but while you were
2 there did they have any plea discussions with you about that?

3 A. Yeah. And if -- I'm relying partly on my memory and
4 partly just on what they would have done, and that is that
5 they offered to come off life without parole.

6 Q. Okay.

7 A. Yeah, he could have pled to that at that time.

8 Q. Yeah, and that's where your note is that he didn't want
9 to do that?

10 A. That might have occurred right before trial.

11 Q. Okay.

12 A. That note.

13 Q. Yeah, that note. But that showed that he -- from what
14 you've got, and I can't see it, but basically shows that he
15 had turned that down, is that correct?

16 A. Yes. And I was thoroughly in favor of it, don't mind
17 telling you. That's not a risk I would have run if I'd been
18 in his shoes.

19 Q. Right.

20 A. I'm not sure I would ever run that risk.

21 Q. Okay. Now as part of this -- I know we've gone through a
22 little bit of the trial transcript. And I'll just ask some
23 basic, you know, questions in regards to that. You didn't see
24 anything or hear anything during the trial that you believe
25 was a Golden Rule violation, is that what you're saying?

CARLYLE STEELE - CROSS-EXAMINATION BY MR. ARIAIL

40

1 A. No, sir, I didn't.

2 Q. And if you'd heard it, would you have raised that, I
3 guess?

4 A. Yes, sir, I would have.

5 Q. And also, the comment that Mr. Williams raised by Judge
6 Verdin about the weapons, do you remember having a discussion
7 with Mr. Williams as to why he believed that was a personal
8 opinion on her behalf?

9 A. I don't believe either he or I thought that was
10 significant at the time. I think that's right out of the
11 charge book. Anything she was reading ---

12 Q. A lot of different weapons that are standard weapons that
13 are out of there, is there anything that you saw with that
14 that raised any concern to you?

15 A. To me, no.

16 Q. Okay.

17 **MR. ARIAIL:** Your Honor, I have no further questions.

18 **THE COURT:** Redirect?

19 **MR. SMITH:** Your Honor, may I have just a moment, please?

20 **THE COURT:** Yes, sir.

21 **MR. WILLIAMS:** Your Honor, could I ask one question?

22 **THE COURT:** No, sir. You can ask -- you can talk to your
23 attorney. If you want to talk to your attorney we can mute
24 this, and y'all can speak in confidentiality. And you have --
25 you have a way to get to him, Mr. Ariail?

CARLYLE STEELE - CROSS-EXAMINATION BY MR. ARIAIL

41

1 **MR. ARIAIL:** I don't know -- if there's somebody in that
2 room, or if I can give a call, or if they can give me a
3 number, I can call directly there.

4 **THE COURT:** Okay. Who is in the room ---

5 **MS. McCOY:** This is Ms. McCoy. I'll give him the number.

6 **THE COURT:** Okay. And then we'll stop and take a break
7 and make sure that you mute and also, Mr. Williams, you need
8 to mute as well or get to a position where we can't hear it
9 over the virtual courtroom, okay? Would you go ahead and give
10 Mr. Ariail that number?

11 **MS. McCOY:** 896-2429.

12 **THE COURT:** Mr. Ariail, ---

13 **MR. ARIAIL:** 803-896-2429?

14 **MS. McCOY:** Yes, sir.

15 **MR. ARIAIL:** Okay. Great. I'll call right now. Thank
16 you.

17 **THE COURT:** Okay. Make sure you're muted, Mr. Ariail.
18 And, Mr. Williams, make sure you're muted, please.

19 (Whereupon the court proceeding was paused at 12:03 pm)

20 (Whereupon court reconvened at 12:05 pm)

21 **MR. ARIAIL:** We're good, Your Honor.

22 **THE COURT:** Okay. Thank you. All right. Mr. Williams,
23 you can go ahead and un-mute yours. And, Mr. Ariail, your
24 witness.

25 **MR. ARIAIL:** And this is in regards to Mr. -- I guess I

CARLYLE STEELE - CROSS-EXAMINATION BY MR. ARIAIL

42

1 can ask Mr. -- well, trying to figure kind of where we are.
2 Yeah, I closed my case out. Then Mr. Steele came back in and
3 I had no further questions for Mr. -- if Mr. Steele's still
4 there, I can ask him a couple of questions if that's ---

5 **MR. STEELE:** Can you hear me?

6 **THE COURT:** Yeah.

7 **MR. ARIAIL:** If I can ask a couple of questions of Mr.
8 Steele, Your Honor, that'd be fine with me.

9 **THE COURT:** Okay, sir.

10 **Cross-examination by Mr. Ariail Continued:**

11 Q. Mr. Steele, real quick. I just want to understand, do
12 you have anything in your file showing what the plea offer was
13 for Mr. Williams?

14 A. No, sir.

15 Q. Okay. You say your recollection, it might have been they
16 took off the life without parole, is that correct?

17 A. I'm sure of that.

18 Q. Okay. But you have nothing to say whether or not it was
19 a straight-up plea, or if it was a range, or anything of that
20 nature, do you?

21 A. No. But it would have been very, very significant to get
22 rid of life without parole.

23 Q. Okay. But there's nothing that you have in your file
24 that can show that or any documentation about that?

25 A. No. I can look again. I can look again right now, but,

CARLYLE STEELE - REDIRECT EXAMINATION BY MR. SMITH

43

1 no, I don't think so.

2 Q. Okay.

3 **MR. ARIAIL:** I have no further questions, Your Honor.

4 **THE COURT:** Mr. Smith, any additional witnesses?

5 **MR. SMITH:** No, Your Honor. But I'd like to know, can I
6 ask two or three questions of Mr. Steele after the -- his
7 redirect?

8 **THE COURT:** Yes, sir.

9 **MR. SMITH:** Okay.

10 **Redirect Examination by Mr. Smith:**

11 Q. Mr. Steele, you testified you don't remember the exact
12 details of the plea offer. Do you have any doubt that Mr.
13 Williams rejected it?

14 A. No. That's why I got him to write it down or got him to
15 sign his name to it. We always anticipate these kinds of
16 things.

17 Q. Okay.

18 A. There's a word for that, but we won't use it here.

19 Q. Okay. Isn't it true that there was security camera
20 footage admitted into evidence at trial?

21 A. I don't remember that.

22 Q. I'd refer you here to page 239 of the transcript, please.

23 A. Okay.

24 Q. Will you agree with me that beginning on line 12 the
25 witness is describing a security camera system that covered at

CARLYLE STEELE - REDIRECT EXAMINATION BY MR. SMITH

44

1 least a portion of the site of the robbery?

2 A. Yeah, I see that.

3 Q. Okay. And if you'll look over on page 241 will you agree
4 with me that that recording was admitted into evidence?

5 A. Yes, sir.

6 Q. Okay. And now if we look at page 303.

7 A. Yes, sir.

8 Q. Will you agree with me that the victim there is saying
9 that that exhibit is an accurate recording of the scene of the
10 robbery?

11 A. Yes, sir.

12 Q. Okay. And it was published to the jury?

13 A. Yes, sir.

14 Q. Okay. If there had been another alibi witness there
15 isn't it fair to say that she would have been caught on some
16 of the cameras with the two robbers?

17 A. I suppose.

18 Q. Okay. Thank you, sir. No more questions.

19 **THE COURT:** Mr. Ariail.

20 **MR. ARIAIL:** No re-cross, Your Honor.

21 **THE COURT:** All right. Thank you. Does that end the
22 State's case?

23 **MR. SMITH:** Your Honor, that's the State's case. In
24 light of Mr. Steele's testimony, I don't think there's any
25 need for me to hold the record open except ---

1 **THE COURT:** Well, I'll go over something on that. Mr.
2 Ariail, ---

3 **MR. ARIAIL:** Yes, Your Honor.

4 **THE COURT:** --- do you have anything in rebuttal?

5 **MR. ARIAIL:** I do not, Your Honor.

6 **THE COURT:** Okay. The only issue that I think needs to
7 -- that the record needs to be open on is this idea that Mr.
8 Culbertson was given a plea from ten to 20 years. I think
9 that that needs -- the record needs to be held open to see
10 what -- if that occurred and what happened with it if, in
11 fact, it did.

12 But as far as the other grounds in this case, first,
13 there's not been a Golden Rule violation. And that would go
14 into prosecutorial misconduct. There's certainly no urging of
15 the jury to take the shoes of any victim. There wasn't any
16 urging to take the shoes of anybody, actually.

17 Judge Verdin, where indicated by the Applicant that she
18 expressed her personal opinion, that was straight from the
19 charge book.

20 The gun having -- that should have -- having been
21 suppressed, there's really no evidence towards that except for
22 the Applicant's testimony. And that doesn't -- from what I've
23 read, it looked like it would have been in plain view.

24 The failure to call witnesses has not been substantiated
25 because we have no witness from that testimony.

1 Also, failure to give the Rule 5 pictures, whatever that
2 really means, those pictures were not in evidence. And so he
3 fails in that regard.

4 So I want to keep the record open, however, for
5 exploration as to whether or not a plea was actually
6 communicated to Mr. Culbertson and whether or not Mr.
7 Culbertson communicated that plea to Mr. Williams. Is this
8 Symmes Culbertson?

9 **MR. ARIAIL:** Yes, Your Honor.

10 **THE COURT:** Okay.

11 **MR. SMITH:** Judge, well, to that I guess I have -- so I
12 guess we're talking about any plea offer made by Mr.
13 Culbertson, but I question -- I understand Your Honor wants to
14 leave the record open, but Mr. Williams did not say that was a
15 deal he wanted.

16 **THE COURT:** Mr. Smith, I'm not asking for argument right
17 now, okay? I'll let you make argument later. However, that
18 does present some issues that was raised by Mr. Williams just
19 a minute ago that he didn't ever get anything from Mr.
20 Culbertson. In fact, the first time he heard about it,
21 allegedly, was when Mr. Steele brought it up to him and said I
22 found this in the file.

23 Credible or not, I think the record needs to be open for
24 the State and Mr. Ariail to consult with the prosecutor as
25 well as Mr. Culbertson. And once you have done that, I need

1 y'all to get back with me so we can reschedule the
2 finalization of this hearing. But ---

3 **MR. SMITH:** Yes, Your Honor. Thank you.

4 **THE COURT:** --- for the record, the rest of the grounds
5 are denied for the reasons I've stated. So, Mr. Smith, if you
6 would be prepared to prepare that part of the order. But we
7 don't need to do it yet until we have all the testimony or
8 information in, okay?

9 **MR. SMITH:** Thank you, Judge.

10 **THE COURT:** All right. Gentlemen, thank you so much.
11 That concludes today's hearing.

12 **MR. STEELE:** Your Honor?

13 **THE COURT:** Sir?

14 **MR. STEELE:** May I make one inquiry?

15 **THE COURT:** You can. I don't know whether I'll answer it
16 or not.

17 **MR. STEELE:** As I understand, my obligation is to send
18 this signed statement to Mr. Smith, and he's going to
19 circulate it to the Court and to Mr. Ariail?

20 **THE COURT:** That's correct.

21 **MR. STEELE:** Okay.

22 **THE COURT:** And, Mr. Smith, while we're here, would you
23 give him the address he needs to send that to?

24 **MR. SMITH:** Absolutely, Judge. It is -- I'm sorry, I
25 don't know it off the top of my head. It'll take me a second.

1 **THE COURT:** Do you have Mr. Steele's number?

2 **MR. SMITH:** I do, Your Honor. I could give it to him
3 afterwards.

4 **THE COURT:** Yeah, how about -- how about you just call
5 him and give it to him later, okay?

6 **MR. SMITH:** Okay. I'll do that, Judge.

7 **THE COURT:** All right. Guys, thank you. And, listen, I
8 want to -- I want to hear back from you, both of you, within
9 two weeks. I think that should give you more than plenty of
10 time, but if you need more, if y'all need to contact me, we'll
11 have to discuss it at that point.

12 **MR. ARIAIL:** Thank you, Your Honor.

13 **THE COURT:** All right. Thank you, guys. Y'all take
14 care. Thank you, Mr. Steele.

15 **MR. STEELE:** Thank you, Your Honor.

16 (Hearing Ended at 12:14 pm)

17 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 13th day of September 2021.

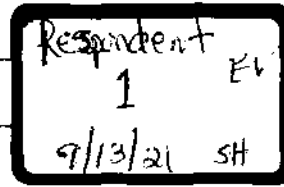
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 10, 2023

s/Susan W. Hudgins

Circuit Court Reporter, Retired

We decline the offer and want
to go to trial -
Stones Wilkins



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-23-0485

STEVEN L. WILLIAMS
APPLICANT

THE STATE
RESPONDENT

ENTERED COMPUTER

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

APPLICANT'S PETITION FOR POSTCONVICTION RELIEF AS TO THE GOLDEN RULE, JURY INSTRUCTIONS, MOTION TO SUPPRESS, FAILURE TO CALL A WITNESS AND FAILURE TO GIVE RULE 5 PICTURES IS DENIED. MR. SMITH TO PREPARE FORMAL ORDER. THE RECORD WILL REMAIN OPEN FOR TWO WEEKS TO ALLOW COUNSEL TO EXPLORE ANY OFFERS MADE TO MR. CULBERTSON, AFTER WHICH BOTH ATTORNEYS TO REPORT TO THE UNDERSIGNED.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

For Clerk of Court Office Use Only

This judgment was entered on the 22nd day of Sept, 2021 and a copy mailed first class or placed in the appropriate attorney's box on this 22nd day of Sept, 2021 to attorneys of record or to parties (when appearing pro se) as follows:

Mills Ariat

Taylor Smith

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickens
CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

State of South Carolina	)	
	)	Circuit Court
<u>County of Greenville</u>	)	2019-CP-23-0485

Steven Williams	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina	)	

March 29, 2023
Greenville, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge.

A P P E A R A N C E S (All present by video or telephone):

R. Mills Ariail, Jr., ESQ
Attorney for the Plaintiff

J. Emory Smith, Jr., ESQ
Attorney for the State

Frances Marcu
Proofreader

<u>I N D E X</u>				
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Steven Williams				
Mr. Ariail	4		20	
Mr. Smith		9		
Manning Culbertson				
Mr. Ariail	10			
Mr. Smith		12		
Walker Miller				
Mr. Smith	14			
Mark Moyer				
Mr. Smith	16			
Mr. Ariail		18		

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
P-1	Letter dated January 26, 2015		8

THE COURT: On the record. This is Stephen L. Williams v. State of South Carolina. It's a post-conviction relief action.

Previously there was a Form 4 signed by myself resulting from a prior hearing where I denied relief as to the allegations of Golden Rule, the jury instructions, the motion to suppress, failure to call a witness, and failure to give Rule 5 pictures. I left the record open to allow counsel to explore whether or not any offers were made to Mr. Culbertson, after which they were -- the attorneys were to report back to me.

So the purposes of this hearing is on the issue of whether or not an offer was made to Mr. Culbertson and transmitted -- or relayed over to Mr. Williams.

That being said, Mr. Ariail, are you ready to proceed?

MR. ARIAIL: Yes, Your Honor. I'm ready to proceed.

THE COURT: All right. Call your witness.

MR. ARIAIL: Thank you.

Mr. Williams, how you doing today?

THE PLAINTIFF: Good.

MR. ARIAIL: Okay. Can you hear me?

THE COURT: Are you going to call him as your witness?

MR. ARIAIL: I am. I'm going to ask him a couple of questions in regards to that, if I can.

THE COURT: All right. Let me swear him in right quick,

please.

All right. Mr. Williams, raise your right hand.

STEVEN WILLIAMS, after being duly sworn, testified as follows:

THE COURT: Very good.

All right. Your witness, Mr. Ariail.

MR. ARIAIL: Thank you.

DIRECT EXAMINATION

BY MR. ARIAIL:

Q Mr. Williams, how you doing today?

A Yes, sir.

Q Can you hear me okay?

A Yes, sir.

Q Okay. We want to go back. I understand we've had some questions in regards to a plea offer that potentially was made to you. When you were represented by Mr. Culbertson, did you have any discussions with him in regards to a plea offer or plea offers that were made regarding the charges that you had?

A Mr. Culbertson -- Mr. Culbertson was never my lawyer. He got fired in the beginning. My lawyer was Carlyle Steele.

Q Okay. But let me go back through and just answer my question in regards. I know Mr. Steele came in and did this. What we're trying to seek today is information regards to Mr. Culbertson and a plea offer that was made to him and relayed to you. Do you remember having any discussions with him in

regards to a plea offer?

A I don't know -- I never seen Mr. Culbertson but one time, and he never came to me with no deal period.

Q Okay. Do you remember receiving any type of plea offer from him? I guess it would be on a letterhead, and we can -- it might come into evidence here in a little bit. But it basically was -- it indicated it came from the Solicitor's Office to Mr. Culbertson and said there was no recommendation as to a sentence. Do you remember that?

A I don't know this -- I don't know nothing Mr. Culbertson, sir.

Q Okay. You don't remember seeing a letter on January 26th, 2015 about that; is that correct?

A Was the letter -- what did -- what did it -- what did the letter -- what did the proposed letter said?

Q The letter basically states your charges, and then it lists that there's no recommendation as to sentence. And then it goes on to say "Defendant is facing a sentence of LWOP if convicted at trial. If defendant is willing to plead guilty without a recommendation and cooperate with the prosecution of the codefendant, if necessary, please let me know." Do you remember receiving or getting any information in regards to that?

A I never received that. I never received that, sir. But like I said before I never did receive no plea -- no plea

anyway, so I never did see no letter like that from Mr. Culbertson.

Q Okay. That was the other question I was kind of going into. So during Mr. Culbertson, did you have any discussions with him in regard to a plea or trial or anything of that nature? Did you hear me, Mr. Williams?

A Sir?

Q Did you hear me?

A I didn't hear you what you said.

Q Okay. Did you have any discussions with Mr. Culbertson in regards to a plea or going to trial in regards to these charges?

A I -- I talked to Mr. Culbertson before -- before he got terminated when (indiscernible) get me some kind of good plea on the day or whatever. But they had came to me -- they had came to me after that with the LWOP. It was -- they didn't come to me with no plea. They made me go to trial and take the life sentence.

Q Okay. So you don't remember anything -- discussions with him about any type of plea offer?

A No, sir. Like I said, me and Mr. Culbertson didn't talk -- we ain't talked but once or twice and -- and I fired him because he told my people that if they give him the money -- money, he'll make things go a little quicker.

Q Okay.

A That's why he got terminated.

Q Okay. I understand that.

MR. ARIAIL: Your Honor, and I've got -- Mr. Smith has provided a copy of a letter dated January 26, 2015 that is to Mr. Culbertson about -- it appears to be a plea offer. I have the first page of it. I would like to make that an exhibit. I don't know the best way to do it. We can certainly email it afterwards. Mr. Smith has a copy of it, too.

THE COURT: Mr. Smith, do you have any objection to that being admitting?

MR. SMITH: No objection.

THE COURT: I can't hear you.

MR. SMITH: No objection.

THE COURT: All right. If you would, Sam, get with my law clerk. I can't remember if there are other exhibits that had already been admitted in this case. So just work with her, and she'll help you get those marked and admitted. Okay?

(WHEREUPON, Plaintiff's Exhibit No. 1 was received into evidence.)

MR. ARIAIL: All right. I'll --

THE COURT: Megan Hilton.

MR. ARIAIL: Great. We'll send that letter this afternoon. That's the only exhibit I have for this witness, Your Honor. And that's all the questions I have for him.

THE COURT: Can you put that on the screen? Are you able

to do that?

MR. ARIAIL: Let me see if I can do anything.

THE COURT: If you're not, it's okay.

MR. ARIAIL: I think I can share. Hold on one second. Let me try to do this, Your Honor. I can -- here is the share screen that I have. Let's see. That work right there, Your Honor? Can you see that?

THE COURT: I can.

MR. ARIAIL: And I'll go down.

THE COURT: Okay.

MR. ARIAIL: And that's only -- I don't have the signature page, Your Honor. And I don't know, Mr. Smith, if you do, but -- so I don't know which solicitor if it was from Walker or Mr. Moyer. I'm not sure which one.

MR. SMITH: That's all I have.

MR. ARIAIL: Okay. That's what I'll be submitting, Your Honor. And that's all the questions I have for Mr. Williams at this time.

THE COURT: Very good. All right. Do you mind if you take that down?

Mr. Smith, any questions you'd like to ask this witness?

CROSS-EXAMINATION

BY MR. SMITH:

Q Mr. Williams, did you want -- you wanted your trial, didn't you?

A No, like I said, I would have took a good plea if it had -- if one had been offered to me. There wasn't no plea offered to me. He made me go to trial and he made me go -- only thing -- only thing he did -- only thing they gave me was LWOP papers. They didn't give no recommendations whatsoever. And like I said, if he had gave me a good plea offer, I might have even took the plea. But you ain't never gave me no plea.

MR. SMITH: No more questions, thank you.

THE WITNESS: You made me go to trial.

MR. SMITH: That's all the questions I have, Your Honor, for this witness.

THE COURT: All right. Very good.

Call your next witness, Mr. Ariail.

MR. ARIAIL: Thank you, Your Honor. I call Mr. Culbertson.

THE COURT: Okay. Mr. Culbertson, raise your right hand.

MANNING CULBERTSON, after being duly sworn, testified as follows:

THE COURT: All right. Very good.

Your witness, Mr. Ariail.

MR. ARIAIL: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ARIAIL:

Q Mr. Culbertson, how you doing today?

A Oh, pretty good.

Q Thank you for attending this. I just want to ask you a few questions in regards to your representation of Mr. Williams. Do you remember how long it lasted? It seemed like it was a brief stint if I'm not mistaken.

A I do not recall very much about my representation in this case. It would have been for a very short period of time because while I initially had it, it was rather quickly transferred over to Carlyle Steele.

Q Okay. As part of this and you've just seen, and I think if you didn't I can put it back up, it looks like an offer letter that was sent to you on 1/26/2015. Do you remember receiving a copy of that letter?

A Not a copy.

Q Okay.

A Not -- I just don't have any memory of it.

Q And I understand that. It's been a while back, eight years or so. Just for my understanding of this, and we've read what the plea offer says, at any time during this time you represented him was -- did the solicitor's office or any of the solicitors withdraw the life without parole sentence that he was potentially facing?

A Not -- no, sir, not that I recall.

Q Okay. Do you remember having any conversations with Mr. Williams in regards to this plea offer or any negotiations that could be done to get that life without parole off the

table?

A Quite honestly, I have very limited memory of my involvement in all of this. So no, I don't really recall conversations with Mr. Williams.

Q Okay. So based upon your remembering of this, at no time did they withdraw the life without parole off the table for Mr. Williams during your representation of him?

A That would be correct.

Q Do you recall what his position was in regards to going to trial or wanting to plea at that time?

A The only memory I have would be of him -- and I don't recall if he specifically requested what the offer was. I would have told him -- had there been an offer, I certainly would have told him. But as I recall, he was not interested in any sort of offer that included an LWOP sentence.

Q Okay. And I think that's his position today that he didn't get a sentence that took LWOP off the table. Is that your understanding?

A That's my -- that's accurate. Yes.

MR. ARIAIL: Okay. I have no further questions, Your Honor.

THE COURT: Mr. Smith?

MR. SMITH: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. SMITH:

Q Mr. Culbertson, if you had gotten a plea offer from the solicitors, would you have told Mr. Williams about that offer?

A Absolutely, yes.

Q Okay. If Mr. Williams had told you that he wanted to take any offer, would you have told the solicitors?

A Yes, absolutely.

Q Okay. And was it your understanding that he wanted a trial?

A To be honest, I don't -- I really have very limited memory of this case at all. I do not have a clear memory as to what his position on trial was. I just don't recall. Now, I -- and I hate to jump back in here. Whatever offer or whatever position he would have maintained in regards to the charges, I would have notated that within the file, and I don't have that file any longer. I don't know where it is. I would have turned it back into the PD's office. PD's office would have turned it over to Mr. Steele. And PD's office tells me that they have no idea where the file is now.

MR. SMITH: Your Honor, may I say just something for the record to follow up on that? I did also call the public defender's office, and it's my understanding that whatever notes Mr. Culbertson would have put in the file were handed over to Mr. Carlyle Steele, who's passed away since we had our hearing in 2021, and at this point his file is missing. So we don't know what happened with that. I just want to put that

on the record.

So okay, no more questions for Mr. Culbertson. Thank you.

THE COURT: Any redirect, Mr. Ariail?

MR. ARIAIL: No, Your Honor. Thank you.

THE COURT: All right. Any other witnesses?

MR. ARIAIL: No other witnesses, Your Honor. That is our case.

THE COURT: Thank you, sir.

Mr. Smith?

MR. SMITH: Yes, Your Honor. I have the two solicitors here, and I would just call each one of them to testify about what offers they extended. So I'll start with Mr. Walker Miller.

THE COURT: Okay. Mr. Miller, would you raise your right hand?

WALKER MILLER, after being duly sworn, testified as follows:

THE COURT: All right.

Your witness, Mr. Smith.

DIRECT EXAMINATION

BY MR. SMITH:

Q Yes. Mr. Miller, can you testify about your involvement in Mr. Williams' criminal case?

A I came on the case later. The case was, I believe, in a

trial posture at the time I was at the office. I was newer then. I can't remember what year we went to trial. I talked to Mark if he had any trials coming up that I could assist on, and he mentioned this case. And so that was how I became involved in the case and then helped prepare the trial and helped prosecute at trial. As far as my understanding of offers, I wouldn't have formally made any offers on the case. But what was indicated to me the whole time was essentially Mr. Williams wasn't going to plead to anything and it was just a trial.

Q Okay. And who indicated that to you?

A That would have been Carlyle Steele.

Q Okay. And so it sounds like maybe by the time you were working on the case, Mr. Culbertson had already been relieved?

A I believe so because my entire recollection of the defense attorney was Mr. Steele.

MR. SMITH: Okay. Okay. No more questions for Mr. Miller.

MR. ARIAIL: I have no questions, Your Honor.

THE COURT: Thank you, sir. May this witness be excused?

MR. ARIAIL: I have no objection.

THE COURT: All right, then. Mr. Miller, thank you so much. You're excused.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. Call you next witness, Mr. Smith.

MR. SMITH: It would Mr. Mark Moyer.

THE COURT: Okay. Mr. Smith, if you would talk a little bit louder. I can barely hear you, buddy.

THE COURT: Okay. I call Mr. Mark Moyer.

THE COURT: All right. Mr. Moyer, raise your right hand.

MARK MOYER, after being duly sworn, testified as follows:

THE COURT: All right. Your witness, Mr. Smith.

DIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Moyer, can you tell me about your involvement in Mr. Williams' criminal case?

A Again, so I -- I was assigned the -- the case early on. I believe it had initially been with Mr. Fretwell (phonetic). I had the codefendant. And so Mr. Williams' case was transferred to me. I made a plea offer pretty standard for a case like this for someone who's eligible for life without parole that -- that we would allow a -- a guilty plea prior to serving notice of life without parole if he was willing to plead guilty and to cooperate with the codefendant if necessary. At that time, I had no idea if I would need his cooperation or not as I didn't know what the codefendant was going to do. And I -- I sent that to Mr. Culbertson. I do not recall if I ever heard back from Mr. Culbertson or not about whether Mr. Williams wanted the plea or would accept the

plea.

The case was transferred to Carlyle Steele. I don't recall why. The same offer was made to Mr. Steele. I made a note in my file on -- I'm referring to -- I'm referring to a note right now, August 24th of 2015. I wrote in the file per Carlyle Steel dash trial. I then also received -- well, numerous letters came to the office addressed to me, to Mr. Fretwell, and to Walt Wilkins (phonetic) from the defendant, Stephen Williams, who I can't recall if he was in the detention center or in Department of Corrections. In any case that came from either jail or prison, and he -- he was basically making plea offers to -- to me saying that he -- giving his terms, which were always that it would have to be a nonviolent charge and would get probation or very minimal time. Mr. Steele ended up telling -- again, told us that it was a trial, and it ended up on the trial docket. And I believe -- well, I believe we extended the -- the offer right up until trial of -- of lifting the -- the life without parole notice, and it continued to be rejected. And we went to trial, and he was convicted.

Q Did you extend an offer for a range of 10 to 30 years?

A Yeah. So it would have been -- it would have been lifting the life without parole notice. And so the charges, as I recall, have a maximum of 30. I don't recall if I -- if I told the defense that I would recommend a floor or not. But

I do know I would have agreed to lift the life without parole notice if he pled guilty.

MR. SMITH: Okay. Your Honor, that's the only question I had. That's it.

THE COURT: Mr. Ariail, cross-examination?

MR. ARIAIL: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ARIAIL:

Q Mr. Moore, how you doing today?

A I'm doing well, sir. Thank you.

Q Great. I mean, I've got the letter and maybe I just want to make sure for clarification purposes that a letter that went out on January 26, 2015 -- that would be from you, correct, to Mr. Culbertson?

A That's correct.

Q Okay. I just didn't have a signature page. I wanted to make sure of that. In my review of this, and I've done some criminal law, as you're well aware, but I want to make sure on this offer, this didn't -- it didn't specifically lift the LWOP as part of the deal, did it? From my review of this.

A Well, you know, I just read it again just now. It probably could have been worded better, but that was the intent. And that's certainly what I told Mr. Steele when we had the conversation, is that it would be that he would not be found guilty. And I think it's implicit in the letter because

it says no recommendation as to sentence. Of course, if you plead guilty to a charge after notice had been made on a defendant, then really recommendation or not makes no difference since the life without parole is mandatory. So you know, I think although it could have been worded better, it is implicit in that offer that -- that it would have been just a guilty plea to those charges.

Q Okay.

A And again, I did -- I did have conversations with Mr. Steele. I don't recall if I had that conversation with Mr. Culbertson, but I certainly had a conversation with Mr. Steele in which that was made clear.

Q Okay. And just so I understand the conversation with Mr. Steele. In this one, you believe Mr. Steele understood that if he was to plead guilty, that he would be facing, I guess, that range for the armed robbery or attempted murder, which would've been 10 to 30; is that correct?

A Well, let's see. Armed robbery? Yes. Armed robbery is minimum of ten, right. It would have been a 10 to 30 range. That's correct.

Q 10 to 30? And I don't have another plea offer. The reason I'm asking is I don't have anything in my file or that I've seen that recommended specifically between 10 to 30. Do you remember -- have anything that extended that offer to Mr. Steele in your file?

A I don't. I do not recall. I'm sorry.

Q And the reason I guess we're talking the 10 to 30, that would have been the range those charges would have fallen within if the LWOP wasn't on the table, correct?

A Right. Right. And of course, taking into -- assuming they were run concurrent of course.

Q Correct. I know. That doesn't bring in the consecutive issue in regards to it. But from your conversations with Mr. Steele, I'm just trying to make sure I understand. He was aware the LWOP could be taken off and then he would plead straight up to these charges. That would be up to a judge to make a decision as to what the sentence would be, correct?

A Yes, I did. And we heard back that -- that Mr. Williams was just not interested in pleading guilty, and that, again, that was kind of confirmed in the letters that we received from him.

Q Okay. And that was your notation in the file, I think, that you put that says that you talked with Mr. Steele. It appears to be -- and I think I had it on 8/24/2015 that it was going to be set for trial?

A That's correct.

Q And then after that, it was tried and no plea was -- I guess no plea -- additional plea conversations took place about that, correct?

A We had -- and I can't remember specific dates or

anything, but I know we had several conversations with Mr. Steele leading up to the trial in which he just said that Mr. Williams just was not interested in a plea of any kind.

MR. ARIAIL: Okay. I have no further questions, Your Honor.

THE COURT: Mr. Smith, any redirect?

MR. SMITH: No, Your Honor.

THE COURT: I'm sorry?

MR. SMITH: No, Your Honor.

THE COURT: All right. Thank you.

May Mr. Moyer be excused?

MR. ARIAIL: No objection, Your Honor.

THE COURT: All right. Thank you, sir. You are excused. All right. Any additional witnesses, Mr. Smith?

THE WITNESS: Thank you, Your Honor.

MR. SMITH: State's case, Your Honor.

THE COURT: Mr. Ariail, anything in reply?

MR. ARIAIL: Your Honor, if I could just call my client back for a couple of questions, if that would be okay.

THE COURT: That would be fine.

Mr. Williams, you are still under oath.

THE WITNESS: Yes, sir.

REDIRECT EXAMINATION

BY MR. ARIAIL:

Q Mr. Williams, you've heard the testimony from Mr. Miller,

Mr. Culbertson, and Mr. Moyer, correct? You're sitting here today?

A Yes, sir.

Q Okay. Were you aware at any point in time under the representation of Mr. Culbertson or Mr. Steele that the life without parole could be taken off the table if you pled to the charges without a recommendation?

A I mean, anybody -- anybody offer me no plea. I mean, they can't show me no plea agreement, anything. So you know ain't nobody offer me no plea. They made me go to trial. I would've took a -- I would've took a good plea. Ain't nobody told me about plea the third or none of that, so I would've took that. You think I want to go to trial and face a life sentence? No, I would've took that. Ain't nobody -- ain't nobody took no plea agreement because nobody -- because they never offered me no plea period.

Q Okay. And just I'm going to summarize really quick. You don't recall the January 26, 2015 letter that was sent to Mr. Culbertson; is that correct?

A Me -- me and my time with Mr. Culbertson was so short. I don't remember seeing that letter.

Q Okay.

A Mr. Culbertson wasn't my lawyer but for a couple months.

Q Okay. And I know --

A (Indiscernible).

Q Then I know Mr. Culbertson came in. You don't have any conversation, received any information from him where you were relayed information that the solicitor's office was willing to take life without parole off the table to let you plead to those charges; is that correct?

A If you -- if you looking at that letter, that letter don't never state nothing about taking no life -- life -- life off the table. That letter -- that letter saying something else. That letter said (indiscernible) take my life off of it.

Q Okay. Let me just maybe summarize a little bit easier here. No attorney that has represented you has told you that you could plead to these charges and get life without parole taken off the table; is that correct?

A No, sir. Last time -- look, look. When we talked last time, Mr. Steele was still giving whatever here but whatever. I don't know -- I didn't know that he had passed. I just heard that today. But I had told Mr. Steele he couldn't come up with no plea agreement because ain't nobody don't came up with no plea agreement period.

MR. ARIAIL: Okay. I have no further questions, Your Honor.

THE COURT: And Mr. Culbertson, you are also free to go. I'm sorry. I didn't tell you that earlier. All right.

First, I want to go back and reiterate that I've already

denied the grounds alleging the violation of Golden Rule, any allegations as to the jury instructions given, the motion to suppress, failure to call a witness, and failure to give Rule 5 pictures. I'm also denying it as to the failure to relate an offer.

Allegedly, from the last hearing, the offer was to be between 10 and 20 years, which is not the case. It was an offer that would -- I agree with Mr. Moyer. It certainly could have been worded better, but it was clear to me that what LWOP was taken off the table and it would have been a straight up plea, although it would have been up to 30 years or even up to the judge being able to stack those on top of each other as a straight up plea.

The evidence of that letter that was given to Mr. Culbertson, there's no evidence that it was given to Mr. Williams by Mr. Culbertson. There's no evidence that it wasn't. There's just no evidence one way or the other. So I will give Mr. Williams the benefit of the doubt and find that it wasn't.

However, that's really not the point at this juncture because Mr. Culbertson was only on the file for a little bit of time. Thereafter, Mr. Steele took over and the offer was still valid. It was made by Mr. Culbertson to -- I mean Mr. Steele to Mr. Williams, and the file indicates that it was rejected. And that is the State's file when Mr. Steele was

referring back to it. Mr. Williams will not accept the plea or any plea.

And therefore, while Mr. Williams does testify that he would have accepted a plea up to 30 years, the State's file indicates otherwise, and I think it's more credible than what he has testified to at this hearing. And quite frankly, I think under the circumstance with the file from the public defender being gone, it's been such a long time, Mr. Culbertson can't remember any more than he can, and it's understandable. But all things considered, the State's file indicates pretty obviously the offer was relayed to Mr. Williams and it was denied. So I'm going to deny that grounds for relief.

Mr. Williams, you will have 30 days to appeal after the order has been filed and signed by the Court.

Mr. Smith, would you prepare me an order, send it to Mr. Ariail, then send it to me after you all agree or disagree as to its terms. If you can't agree as to its terms, just give me the underlined version, which you'll can't agree with, and I'll do it myself. Okay?

MR. ARIAIL: Your Honor, and I'll send that exhibit to everybody here in a second just to make sure we got that.

THE COURT: Okay. And Megan Helton Mills is my law clerk.

MR. ARIAIL: Okay.

THE COURT: And Megan, are you still on?

THE LAW CLERK: Yeah, I'm here. I put my email in the chat box for everyone.

MR. ARIAIL: I'll check down here before we sign off, make sure I got it.

THE COURT: All right. Guys, thank you so much.

Thank you, Mr. Williams.

MR. SMITH: Thank you all. I appreciate it.

THE COURT: All right. Have a good day. Bye-bye.

MR. SMITH: Thanks. See you all. Bye-bye.

(End of Transcript of Record)

CERTIFICATE OF PROOFREADER

State of South Carolina)
)
County of Greenville)

I, FRANCES MARCU, a court-approved proofreader, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 29th day of March, 2023.

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

June 19, 2023

A handwritten signature in cursive script that reads "Frances Marcu". The signature is written in dark ink and is positioned above a horizontal line.

Frances Marcu, CDLT-136
Proofreader

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

1/26/2015

SYMMES CULBERTSON
305 E. NORTH STREET STE 123
GREENVILLE, SC 29602

RE: Plea Offer for State v. Steven Levon Williams

Dear Symmes Culbertson :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
2014A2330205171	Armed robbery
2014A2330205173	Possession of a Weapon During Violent Crime
2014A2330205177	Possession of a Firearm by a Person Convicted of a Violent Crime
2014A2330205286	Conspiracy
2014A2330205287	Assault and Battery in the First Degree
2014A2330205288	Attempted Murder

The State will make the following sentence recommendations/negotiation:

No recommendation as to sentence. Defendant is facing a sentence of LWOP if convicted at trial. If defendant is willing to plead guilty without a recommendation and cooperate with the prosecution of the co-defendant (if necessary), please let me know.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019-CP-23-00485

ENTERED COMPUTER

STEVEN L. WILLIAMS
PLAINTIFF(S)

THE STATE OF SOUTH CAROLINA
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

APPLICANT'S PETITION FOR POST-CONVICTION RELIEF ON THE SOLE ISSUE OF WHETHER ANY PLEA OFFER WAS CONVEYED TO APPLICANT BY EITHER DEFENSE ATTORNEY IS DENIED. MR. TAYLOR SMITH, ESQ. TO PREPARE A FORMAL ORDER, ALSO

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge
SCRPC Form 4C (02/2017)

2155

Judge Code

3-29-23
Date

For Clerk of Court Office Use Only

This judgment was entered on the 4 day of Apr, 20 23 and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of Apr, 20 23 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ORDER OF DISMISSAL

After consideration of the testimony given at the hearings, and after reviewing and considering the record, arguments presented by counsel, and the controlling case law, this Court finds that Applicant has failed to carry his burden of proof. Consequently, this Court DENIES relief for the specific reasons set out in this order.

General Procedural History

Applicant is presently confined in the South Carolina Department of Corrections in Lee Correctional Institution pursuant to orders of commitment of the Greenville County Clerk of Court. During its March of 2015 term, the Greenville County Grand Jury indicted Applicant for armed robbery (2015-GS-23-00238), first-degree assault and battery (2015-GS-23-00241), possession of a weapon during the commission of a violent crime (2015-GS-23-00238), and possession of a firearm by a person convicted of a violent crime (2015-GS-23-00240). Applicant was also indicted for attempted murder (2015-GS-23-0239). C. Carlyle Steele, Esq., represented Applicant on the charges.

A jury trial was held on May 11-12, 2016. The Honorable Letitia H. Verdin presided. During trial, Applicant pleaded guilty only to possession of a firearm by a person convicted of a violent crime, and his sentencing was deferred until the conclusion of trial.² At the conclusion of trial, Applicant was convicted as indicted of armed robbery, first-degree assault and battery, and possession of a weapon during the commission of a violent crime. He was found not guilty of attempted murder. Judge Verdin sentenced Applicant to imprisonment for life for armed robbery,

proposed order along with copies of the trial and PCR hearing transcripts to opposing counsel and the undersigned to aid in review of the proposed final order of dismissal.

² A stipulation was read to the jury that “the defendant Steven Levon Williams stipulated and admitted that he was in possession of the revolver in evidence in this case on June 6th, 2014.” (Tr. 291).

ten years for first-degree assault and battery, five years for possession of a weapon during the commission of a violent crime, five years for possession of a firearm by a person convicted of a violent crime, with all sentences running concurrently, and with credit for time served. On May 16, 2016, the solicitor, in his discretion, dismissed an additional charge of criminal conspiracy. Applicant timely appealed.

Appellate Defender John H. Strom of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, represented Applicant on appeal. Appellate counsel perfected the appeal in the form of an *Anders*³ brief. After the required review, the Court of Appeals dismissed the appeal by unpublished opinion. *State v. Williams*, Unpublished Opinion No. 18-UP-151 (S.C. Ct. App. filed April 11, 2018). The Court of Appeals issued the remittitur on April 30, 2018.

Post Conviction Relief Allegations

The original *pro se* application was filed on February 1, 2019, and raised the following claims as paraphrased by Respondent:

1. An illegal search and seizure occurred in obtaining the gun [found in Applicant's car after arrest], and due process required the trial court suppress the gun as evidence;
2. Ineffective Assistance in failing to call witnesses favorable to the defense;
3. Ineffective Assistance of counsel for failing to disclose Rule 5 pictures;
4. Ineffective Assistance for failing to secure a plea deal before trial when defendant faced a life without parole sentence.

On January 14, 2020, Applicant's appointed PCR counsel filed an amended application alleging:

1. Golden Rule Violation;
2. Prosecutorial Misconduct;

³ *Anders v. California*, 386 U.S. 738 (1967).

3. Trial Court Error in which the Judge [included] a provision where she expressed her own opinion in the charge.

At the beginning of the first PCR hearing, this Court reviewed the allegations to be presented with counsel, phrasing the claims as:

There was alleged violation of the Golden Rule, there's prosecutorial misconduct, the judge [e]xpressed her personal opinion in the final charge, the judge should have suppressed the gun, [and] also ineffective assistance of counsel for failing to call a witness, failing to get proper Rule 5 pictures and failure to secure a plea.

(PCR Tr. 4).

Counsel for the State objected and asserted he had received notice of only two issues that would be presented: the Golden Rule argument and the challenge to the trial court's instruction. (PCR Tr. at 5). This Court resolved that the issues as reviewed at the beginning of the hearing would be heard. (PCR Tr. at 5).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearings and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance Claims

For claims that trial counsel provided ineffective assistance, this Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701,

706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. It is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is the applicant’s burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRCPP. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”).

General Summary of Facts from Trial

A few minutes before 6:00 pm on June 6, 2014, while the victim, Juan Cabrera, was preparing to close the tire shop where he worked, he saw Applicant stop his black Mercedes sedan nearby. (Tr. 294-295 and 283). As the 6:00 pm closing time approached, Applicant pulled the Mercedes into the shop. The victim saw two black males exit the vehicle. (Tr. 296). He had never seen either of the two men before. (Tr. 303). The victim asked Applicant (who he identified in court) if he could help him. (Tr. 296). Applicant demanded money in response, while the passenger⁴ came around toward the victim and shot him with a stun gun. (Tr. 297-298). Applicant pulled out a black revolver and again demanded money. (Tr. 297-298). The victim was pushed back toward the building, and decided to give the robbers the money that he had in his pocket, approximately \$150.00 dollars, but rather than handing the money over, he threw the bills into the air, some landing on a fan. (Tr. 299-300 and 279). Applicant began to pick up the bills. (Tr. 300-301, 318). The man with the stun gun began to hit the victim, but, as they fought, the victim was able “to put him on the ground,” after which the victim felt blows to his back. Applicant used the

⁴ The passenger, also referenced as the “second man,” was co-defendant Leviticus Young. (See Tr. 123-124, defense opening statement). The defense contended that Young and the victim had a prior “beef,” and Young assaulted the victim. (Tr. 124). However, the evidence at trial supported that Appellant and Young worked together to commit armed robbery. And, as noted, the victim testified he did not know the men before the robbery. (Tr. 303).

revolver to hit the victim in the back of head. (Tr. 300). Applicant then went to back to the Mercedes. At some point, the second man threw tires toward the victim. (Tr. 305). The victim picked up a piece of metal and hit the second man. (Tr. 301-302). The second man finally got to the car and he and Applicant left in the Mercedes. (Tr. 303). The victim testified that he did not have his phone with him to call the police, so he got in his car and followed the Mercedes. (Tr. 320-321).

During the chase, the victim stopped to ask a bystander to call for help. (Tr. 306. 310). Eventually, after the victim “bumped” the Mercedes with his own car, Applicant hit a telephone pole, stopping the car. (Tr. 310). After the bump, but before hitting the pole, Applicant shot at the victim. (Tr. 311). The victim drove off to find help. (Tr. 312). He went back toward the tire shop but met officers responding. (Tr. 312). The victim explained what had happened and they took him back to the Mercedes where he could identify the robbers. (Tr. 312).

Stephanie Bishop testified she saw the chase, and the victim stopped “desperate for help,” so she called 911. (Tr. 142-144). Another witness, Robert Cullum, heard a shot, saw the Mercedes lose control, and called 911 for assistance. The passenger ran, but the driver, Applicant, remained in the seat. (Tr. 157-161). Cullum’s mother, Karen Brown, also saw the car hit the telephone pole, and one man running away. (Tr. 168-169). Emergency personnel eventually arrived at the scene. A fireman, while attempting to aid the driver in the Mercedes, saw a small revolver under the driver’s seat. (Tr. 179-181). The fireman alerted law enforcement and a deputy similarly saw the gun “sticking out” from the under the driver’s seat. Inspection of the gun allowed the deputy to determine only one shot had been fired. (Tr. 195 and 204). As part of the investigation, security video from the tire shop area was recovered. (Tr. 240).

Applicant was taken into custody from the Mercedes. At booking, he had \$130.79 in cash,

but no wallet. (Tr. 329).

Golden Rule Argument

At the first evidentiary hearing, Applicant testified that the solicitor made a golden rule argument when he used “you” while addressing the jury. (PCR Tr. 22-23). Applicant referenced the State’s arguments at the following trial transcript pages: 370, line 4; 371, line 15; 375, line 5; and 378, line 11. (PCR Tr. 22-24).⁵ Applicant contended that the solicitor committed prosecutorial misconduct based on presenting an improper, golden rule argument.

Former counsel testified that he was aware of what constitutes a golden rule argument, essentially one that “ask[s] the jurors to put themselves in the place of the victims,” but that he did not view the argument as such. (PCR Tr. 35-36; *see also* 39-40). The questions posed to counsel indicated to this Court that Applicant was attempting to raise an ineffective assistance of counsel claim based on a failure to object. Consequently, this Court evaluates the claim as one of ineffective assistance of counsel.

At the close of the hearing, having reviewed the arguments identified by Applicant, this Court agreed with counsel. (PCR Tr. 45). The argument referenced reflected only that the solicitor used a neutral reference to “you” as describing an individual generically. (Tr. 370-371 and 375-378). He did not ask the jurors to put themselves in the victim’s shoes. This does not constitute a golden rule argument.

A good guide to what constitutes a “golden rule” argument may be found in how our Supreme Court has defined the argument:

⁵ Applicant also identified a portion of the trial judge’s instruction as support of a golden rule argument. (PCR 24, citing Tr. 406). First, the judge’s instructions to the jury are not argument. Second, the instruction is an ordinary instruction defining “express malice” which does not ask the jurors to place themselves in the place of the victim. This portion of Applicant’s argument fails to show support for his ineffective assistance claim.

Jurors are sworn to be governed by the evidence, and it is their duty to consider the facts of the case impartially. A Golden Rule argument *asking the jurors to place themselves in the victim's shoes* tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice.

State v. Reese, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) (emphasis added) (citations omitted). A “‘Golden Rule’ type argument” is one asking the jury “to ‘speak for’ the victim ... to set aside their impartiality and, instead consider the evidence from the subjective position of the ... victim.” *Brown v. State*, 383 S.C. 506, 516–17, 680 S.E.2d 909, 915 (2009). In essence, though precise wording may differ, the concern remains whether the perspective is skewed by an argument such that emotion displaces impartiality. *See Von Dohlen v. State*, 360 S.C. 598, 610, 602 S.E.2d 738, 744 (2004) (acknowledging that an argument asking to view the evidence from the victim’s position may not be labeled a “Golden Rule” argument, but if it appeals to emotion and affects impartiality, it is a “Golden Rule” argument and improper).

This Court, in light of the above guidance from our Supreme Court, has again reviewed those complained of portions⁶ of the argument and finds counsel was not deficient in failing to raise an objection. The portions of the State’s closing argument identified include:

“I don’t know if you noticed this picture. ... you want to rob a place that has money. It doesn’t necessarily have to be a lot of money but you want an easy target” and continues in the scenario with references to “you want” “you know” or “You had a gun”

(Tr. p. 370, lines 4-11).

... I’m kind of trying to break this down in the simplest terms I can for you is that if you caused injury to another person during the

⁶ To fairly assess the complained of portion, the argument must be considered in context, and not just the immediate context, but in context of the entire trial record. *Reese*, 370 S.C. at 38, 633 S.E.2d at 901. This Court considered such context when evaluated the portions cited by Applicant.

commission of a robber, you have committed assault and battery in the first degree.

(Tr. 371, lines 13-18).

... Someone says give me your money. I'm not just going to hand over my money. But you pull out the stun gun, which you're not going to bring out, then you point a gun in my face and you say give me your fucking money. You know it's serious. You know its's real. And it's two against one in that little space.

(Tr. 375, lines 5-11).

... After you just committed a robbery, you probably don't want to be on the main roads. It makes sense you want to take back roads, which they did towards Steven Williams' house.

(Tr. 378, line 11-15).

Notably, these arguments in large measure do not involve the victim at all, but what the robbers likely thought. This Court finds that those arguments do not and could not constitute a golden rule argument at all. One portion of the argument identified on p. 375 tends to refer to the victim not wanting to give up his money, but that is proper argument on the facts and inferences from the testimony, most specifically, the victim's testimony. That is not improper as it never veers from objective consideration of the evidence. *See Von Dohlen*, 360 S.C. at 612-613, 602 S.E.2d at 745-746 ("golden rule arguments urg[e] the jury to subjectively analyze a case solely or primarily from the victim's view point" and essentially encourage "jurors to abandon their impartiality"). Further, the argument is squarely based on the victim's testimony:

Q: ... you said he pulled the gun on you and said, give me the fucking money. What happened after that?

A: After that, I tried to go back to the building because they tried to push me back. I was in the middle of the building. And I decided give the money because he put the gun on me, in my face.

(Tr. 299). Essentially, the argument goes to the credibility of the victim's testimony which

supported that the money was given over to the robbers – a point that the solicitor is certainly entitled to make. *See State v. Busse*, 439 S.C. 104, 109, 886 S.E.2d 208, 211 (2023) (“A prosecutor arguing forcefully during closing argument that the jury should believe a particular witness is well within her proper role as a zealous advocate, so long as the argument is based on evidence admitted during trial.”); *see also Randall v. State*, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004) (“A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony.”); *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996) (a solicitor’s argument “should stay within the record and reasonable inferences to it”). Notably, this is a logical and limited response to the defense’s argument in closing.

The defense had indicated to the jury in the opening statement that there was some sort of “beef” between Young and the victim. (*See* Tr. 124). In cross-examination of the victim, the defense had the victim acknowledge that he never called the police, and essentially challenged why the victim gave chase rather than calling the police. (*See* Tr. 321). The victim explained he did not have his cell phone and he did not want the robbers to get away. (Tr. p. 321-322). In closing, the defense emphasized that the victim admitted not calling the police and posited “if these events had occurred the way Mr. Cabrera said they occurred he wouldn’t have done that” but would have called the police. (Tr. 359-360).

In response, the State argued: “Why would Juan not call 911? He was just robbed at gun point, beat on the head with a gun, hit with a stun gun, kicked in the back and he was in fear for his life and he was mad.” (Tr. 368). In other words, the State argued that the victim was logically and reasonably fearful and decided to give up his cash against his will even though he still later

gave chase attempting to stop the two men.⁷ The State later made the neutral reference to “you” simply as underscoring the credibility of the testimony, again, merely arguing the facts of record and the logical reaction to the events as related in the testimony. There is no deficient performance in not objection to the closing argument.

Critically though, for purposes of this analysis, a careful review of the argument, in context, does not lead to finding there was an appeal to emotion or any encouragement to abandon impartiality. Consequently, counsel was not deficient in failing to object to any of these arguments as improper, golden rule arguments. Applicant has failed to carry his burden under *Strickland*. 466 U.S. at 700 (“Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.”).

To the extent that Petitioner would argue that he was not attempting to raise an ineffective assistance claim, but a freestanding claim of prosecutorial misconduct, Applicant’s issue would be barred by the Simmons doctrine and S.C. Code § 17-27-20(b).

The scope of this Court’s jurisdiction for PCR matters is set out in S.C. Code Ann. § 17-27-20 (A), which provides, in relevant part, for claims “[t]hat the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State.” S.C. Code Ann. § 17-27-20 (A)(1). However, Section (B) places limits on those claims by providing that, “[t]his remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.” S.C. Code Ann. § 17-27-20(B).

⁷ See generally *State v. Keith*, 283 S.C. 597, 598, 325 S.E.2d 325, 325–26 (1985) (“Armed robbery occurs when a person commits common law robbery while armed with a deadly weapon. S.C. Code Ann. § 16-11-330 (1976). Robbery is the crime of larceny accomplished with force, *State v. Brown*, 274 S.C. 48, 260 S.E.2d 719 (1979), while larceny is the ‘felonious taking and carrying away of the goods of another’ against the owner’s will or without his consent. *Id.*” Consequently, the facts as referenced go directly to the charge of armed robbery.

It is intended that a PCR action “take[] the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence” and that PCR “shall be used exclusively in place of them.” *Id.*

Because a PCR action is not a substitute for other available proceedings and/or remedies, particularly those at trial and direct appeal, a PCR applicant cannot assert any issues in his PCR action that could have been raised at trial and on direct appeal. This prohibition has long been recognized. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“Errors in a petitioner’s trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.”); *see also Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“The Simmons rule gives effect to the Legislature’s clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”).

While previously heard or unheard freestanding trial or direct appeal issues are not cognizable, the general factual basis for the previously unheard issues may be reached by and through an allegation of ineffective assistance of counsel. *Drayton*, 312 S.C. at 9, 430 S.E.2d at 520 (“Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel.”) Ineffective assistance of counsel claims constitute the general nature of issues appropriate for post-conviction relief actions. *See, e.g., Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (discussing jurisdiction pursuant to S.C. Code § 17-27-20(A), and finding “A typical PCR

claim of ineffective assistance of counsel falls into this category....”). Consequently, the freestanding claim is barred.⁸

However, the related ineffective assistance claim is denied based on Applicant’s failure to carry his burden of showing deficient performance. Applicant has failed to show a golden rule argument at all; thus, there could be no ineffective assistance in not interposing an objection on the basis of an improper, golden rule argument. Applicant is not entitled to any relief.

Jury Instructions: Alleged Trial Comment on the Facts

Applicant testified that the trial judge indicated her opinion on the facts when, while instructing the jury as to attempted murder, she gave examples of a deadly weapon. (PCR Tr. 20-21). Applicant directed attention to p. 403 of the trial transcript. He testified that charge was repeated on p. 407. (PCR Tr. 20-21). Applicant claimed trial court error.

Former counsel testified that in the opening comments to the jury, Judge Verdin told the jury that they would be determining the facts and to disregard anything that they may take as the judge having an opinion on the facts, and that instruction was repeated at the close of trial as well. (PCR Tr. 33-34). He testified that he did not recall Applicant having any concern at trial, nor did he. (PCR Tr. 34, 40). Counsel considered the charge regarding examples of deadly weapons to be

⁸ There are limited exceptions recognized for this rule, neither of which are applicable here. For an exception to the rule, there should be a showing that the freestanding claim was not available for proper objection and presentation on direct appeal, *see, for example, Jones v. State*, 440 S.C. 14, 24, 889 S.E.2d 590, 596 (2023) (applicant “precluded from raising ... issue during the plea proceeding because conditional guilty pleas are not permitted”), or an objection was made but the issue was still not adequately addressed, *Fortune v. State*, 428 S.C. 545, 559, 837 S.E.2d 37, 44–45 (2019) (“full extent and effect of the assistant solicitor’s misconduct in this case, however, is now subject to review only in a claim for a Fifth and Fourteenth Amendment due process violation. Under these circumstances, we find this is one of the cases we contemplated in *Al-Shabazz* and other cases”). Here, a golden rule argument is not new, an objection was simply not warranted because there was no error in the argument under a gold rule analysis.

standard, “right out of the charge book.” (PCR Tr. 40). Counsel testified that he saw no cause to object. (PCR Tr. 40).

As with the proceeding claim, it appeared to this Court from the nature of the questions asked at the hearing, and the presentation of the case, that Applicant was attempting to raise this claim as a claim of ineffective assistance of counsel for failure to object to the judge’s charge. Consequently, this Court evaluates the claim as one of ineffective assistance of counsel.

At the close of the hearing, this Court indicated the instruction was standard and not an expression of an opinion. (PCR Tr. 45). Having once again reviewed the charge at issue, this Court again finds counsel was not ineffective for failing to object to the charge as expressing a personal opinion on the facts.

As part of her charge on the offense of armed robbery, Judge Verdin instructed the jury as follows:

... the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon during the robbery. A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case.

The following are examples of instruments that may be deadly weapons: a pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a slingshot, metal knuckles, a razor, gasoline, a fire bomb or Molotov cocktail, and lighter fluid. A gun may be a deadly weapon even if it is not operating.

(Tr. 403).

Judge Verdin also instructed on the concepts of express malice and inferred malice as part of the charge on attempted murder. She explained:

Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument, or substance which is likely to cause death or great

bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case.

Again, the following are examples of instruments which may be deadly weapons: a pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a slingshot, metal knuckles, a razor, gasoline, a fire bomb or Molotov cocktail, and lighter fluid. A gun may be a deadly weapon even if it is not operating.

(Tr. 407).

Judges are prohibited from commenting on the facts in the case. *See* S.C. Const. art. V, § 21 (“Judges shall not charge juries in respect to matters of fact, but shall declare the law.”). “A jury instruction is a comment on the facts when it expresses the court’s opinion of a case, thereby imposing the court’s belief on the jury in a way likely to influence it. “ *State v. Brown*, 438 S.C. 146, 151, 881 S.E.2d 771, 774 (Ct. App. 2022). In essence, “a trial judge should refrain from all comment which tends to indicate to the jury his opinion on the credibility of the witnesses, the weight of the evidence, or the guilt of the accused.” *State v. Jackson*, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989). However, should an instruction offend this prohibition, it is still required that “prejudice must be shown to require reversal.” *Litchfield Co. of S.C. v. Sur-Tech, Inc.*, 289 S.C. 247, 253, 345 S.E.2d 765, 768 (Ct. App. 1986).

Nothing indicates any particular “deadly weapon” should be considered over any other. The instruction is a neutral definition with a variety of examples, not setting one example over the others. Further, there is no suggestion included for what findings should be made. This is an instruction on the law, not a comment on the facts. *See generally State v. Philips*, 73 S.C. 236, 53 S.E. 370, 371 (1906) (“In properly defining a reasonable doubt, it cannot be successfully contended that the presiding judge charged upon the facts.”). Given that Applicant has failed to show a comment on the facts, there could be no ineffective assistance in not interposing an objection based on same.

That counsel is not deficient ends the *Strickland* inquiry. *Strickland*, at 700 (“Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.”). It does so here. However, this Court finds, in the alternative, that if deficient performance could be shown, Applicant cannot show prejudice.

The weapon at issue, according to the testimony, was the revolver Applicant possessed during the robbery, and later used to shoot at the victim from the Mercedes. There was no question Applicant possessed the gun: a stipulation was read to the jury that “the defendant Steven Levon Williams stipulated and admitted that he was in possession of the revolver in evidence in this case on June 6th, 2014.” (Tr. 291). The listing of examples, one of which was a gun, did not unfairly underscore or show preference for finding Applicant had possession of a gun – it was a point he conceded. There could be no prejudice. *Strickland*, at 694 (“A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial); *see also Litchfield*, *supra* (similarly requiring a showing of prejudice where instruction veers into a prohibited comment on the facts).

Further, to the extent Applicant should maintain that he wishes to raise a claim of trial court error, such a claim is barred, without exception, by the Simmons doctrine and the statutory provision in S.C. Code Ann. § 17-27-20(b).

However, as to an ineffective assistance claim, the claim is denied based on Applicant’s failure to carry his burden of showing deficient performance. Applicant is not entitled to any relief.

Ineffective Assistance: Motion to Suppress

Applicant testified at the PCR hearing that his counsel, Mr. Steele, discussed the facts of the case with him and, after those discussions, filed a motion to suppress the gun recovered from the Mercedes after the wreck. (PCR Tr. 8). Applicant testified that he told his counsel how “[t]he fireman said he went in the car to secure the car,” and saw “the gun up under the seat.” (PCR Tr.

at 11). Applicant testified that [t]he officer who actually retrieved the gun had to “go in the car and get the gun from under the seat,” thus, in Applicant’s view, this fact demonstrated an “illegal search and seizure because the gun - - the gun was not in plain sight.” (PCR Tr. 12).

At the conclusion of the testimony, this Court found there was “really no evidence” to support a potential suppression motion apart from Applicant’s testimony. (PCR Tr. 45). Further, a review of the trial testimony tended to support the gun would be admissible under the “plain view” theory. (PCR Tr. 45).

Having reviewed the transcript again, this Court affirms its conclusion. The record shows that counsel was not deficient. He moved to suppress the gun, specifically arguing that it “was in his automobile. It was not in plain sight.” (Tr. 51). Counsel called Applicant at the pre-trial hearing on the motion, and Applicant was allowed to testify that the gun was “up under the seat.” (Tr. 53). The State presented the fireman who noticed the gun, Joey Smith. Mr. Smith testified in the pre-trial hearing that he did not initially notice anything while Applicant was sitting in the car; however, after Applicant was removed from the vehicle, when Mr. Smith was checking the car for safety, *i.e.*, turned off and not going to roll, Mr. Smith observed: “... the gun was noticeably under the seat in plain view.” (Tr. 61-62). The gun was in a compartment, but that compartment door was open. (Tr. 67). Mr. Smith informed law enforcement. (Tr. 63). Deputy Chris McAlmont testified that the gun handle was “sticking out from underneath the driver’s seat.” (Tr. 71). The deputy confirmed that he did not open the door to the compartment, rather, it was already open when he saw it. (Tr. 72). The deputy identified pictures of the car that showed the open compartment and the gun. (Tr. 71-73). The trial judge found, based on the testimony and the pictures, that the gun would have been visible, but also denied the motion “on the basis of

inevitable discovery because it most certainly would have been ... located during an inventory search of the vehicle when it was towed.” (Tr. 77).⁹

Based on the evidence of record, there is no basis for finding counsel was deficient. As discussed with his client, counsel filed a motion and argued the motion. The motion was denied based on the facts and law being against suppression and not from ineffective assistance. Applicant has not indicated any fact or circumstance that he contends has changed since the time of the motion, or was unknown at the time of the motion, or that counsel failed to present and argue. He has failed to show any deficient performance in counsel’s handling of the motion to suppress. Consequently, Applicant has failed to carry his *Strickland* burden of proof and is not entitled to any relief.

Ineffective Assistance: Failure to Call Witness

Applicant testified at the PCR hearing that counsel failed to call a witness that he had asked counsel to contact. Applicant testified that he gave counsel Brittany Bryant’s name as a witness who would testify for him in his defense. Applicant testified that he told counsel that Ms. Bryant would testify that there was no armed robbery, but simply “two grown men fighting over this female.” (PCR Tr. 9-10). Applicant testified that his “so-called co-defendant, was going to testify to the same thing.” (PCR Tr. 11). Applicant did not present either witness at the hearing, nor other acceptable substitutes to reflect the potential testimony.

Counsel testified at the PCR hearing that he did not recall the mention of “an individual by the name of Brittany Bryant” as “a witness to the incident.” (PCR 37). Neither did he recall any

⁹ Applicant has not contested this finding of inevitable discovery. This forms a separate basis for admissibility and, being uncontested, prevents a finding of prejudice as to any challenge to the findings regarding the plain view doctrine. Essentially, there could be no reasonable probability of a different result as required under *Strickland* to establish prejudice.

mention of her “in any of the reports or any information [counsel] had gotten.” (PCR 37). Counsel testified he had reviewed his file but had not reviewed specifically for a reference to her. (PCR 37). He did not recall any conversation with his client as to a potential witness at the scene of the armed robbery. (PCR 37). Counsel testified that if he had known about another witness to the event, he would have “tried to find that person.” (PCR 37). He testified his file did not reflect disclosure or investigation of a Ms. Bryant. (PCR 38).

At the close of the hearing, this Court indicated that the claim “has not been substantiated” because Applicant failed to present the witness at the PCR hearing. (PCR Tr. 45). This Court concludes again that Applicant has failed to carry his burden of proof.

Primarily, Applicant has not shown counsel was deficient in failing to investigate and potentially call Ms. Bryant as a witness as there is no credible evidence that Ms. Bryant was a witness. Applicant’s PCR testimony was not credible, especially in light of no prior mention of another witness in either a report or trial testimony. Further, counsel credibly testified that had he learned of a potential witness, he would have attempted to find that witness. Petitioner failed to show deficient representation. *See generally Strickland*, at 691 (“counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances....”). Having failed to show deficiency, no further analysis is required. *Id.*, at 700. However, this Court finds in the alternative that even if considered, Petitioner cannot carry his burden of showing *Strickland* prejudice.

It is Applicant’s burden to “produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.” *Bannister v. State*, 333 S.C. 298, 303, 509

S.E.2d 807, 809 (1998). Applicant did not. Rather, he rested on mere speculation. Applicant has failed in his burden of proof of showing *Strickland* deficient performance and prejudice. *Id.* See also *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (where “witnesses” the Applicant “claimed could have provided an alibi defense did not testify at the PCR hearing,” the Applicant “could not establish any prejudice from counsel’s failure to contact these witnesses.”). Accord *Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (“conjecture” as to testimony insufficient to show omission “would probably change if a new trial” granted).

But again, Applicant is required to prove his PCR allegations by a preponderance of the evidence and Applicant failed to show any deficiency by counsel in regard to the alleged witness. Thus, Applicant is not entitled to any relief.

Ineffective Assistance: Failure to Provide Pictures Pursuant to Rule 5

Applicant testified at the PCR hearing that pictures used at his trial were “blurred all the way through,” were “black and white,” and failed to show anything. (PCR Tr. 12). Petitioner testified “these pictures of the inside of the car and pictures of the outside of the car” failed to show anything of relevance. (PCR Tr. 12-13). He asserted the pictures were “improper Rule 5 pictures.” (PCR Tr. 12). Applicant asserted that the car photos were irrelevant because he was “charged ... for armed robbery inside th[e] shop....” (PCR Tr. 13). Though not clear, based on Applicant’s PCR testimony, his reference to Rule 5 apparently relates to a failure to explain relevance within the Rule 5 disclosure. (See PCR Tr. 15).

Counsel was briefly questioned about pictures generally but did not recall an issue involving clarity of the pictures or importance of the pictures to the case. (PCR Tr. 38).

At the close of hearing, this Court indicated that the precise claim Applicant wished to raise with the allegation of a “failure to give the Rule 5 pictures was unclear,” but even so, no specific

photographs were identified, and none were offered to the Court to review. No basis for finding any deficiency by counsel was presented. This Court affirms its ruling.

In the absence of any clear claim, and the absence of any proof in support of that claim, the claim must necessarily fail. Thus, Applicant has failed in his burden of proof under *Strickland*, and is not entitled to any relief.

Ineffective Assistance: Failure to Secure and/or Relate a Plea Offer Before

Applicant testified at the first PCR hearing that counsel had visited him approximately “four days before the trial,” and informed Applicant that he found a plea offer directed to the prior lawyer, Mr. Culbertson, “for ten to 30” years. (PCR Tr. 18). According to Applicant, counsel wished to “tie up all the loose ends,” but Applicant responded that counsel (Mr. Steele) had not yet provided Applicant a plea offer. (PCR Tr. 18). Applicant testified that counsel (Mr. Steele) “ain’t never brought no plea agreement to me, period.” (PCR Tr. 26). Applicant asserted that Mr. Culbertson “never did show me no plea deal either.” (PCR Tr. 19). Applicant testified that he was not alleging that counsel failed to convey a plea offer, but that “[h]e never did get one.” (PCR Tr. 18).

Counsel testified that he recalled Applicant wanting him to look into a plea offer, and further testified he “would have done it whether he wanted me to or not.” (PCR Tr. 30). Counsel recalled an offer from the State “to take life without parole off,” but he did not recall the specifics otherwise. (PCR Tr. 30-31). Counsel testified that he advised Applicant he “didn’t think he ought to run the risk,” but Applicant maintained his innocence and “wanted to go to trial.” (PCR Tr. 31; *see also* 39). Counsel testified he had Applicant “sign a little piece of paper” from the “file that says, quote, we decline the offer and want to go to trial.” (PCR Tr. 31; Respondent’s Exhibit 1). Counsel further testified that “[d]uring the trial [Applicant] asked me could we get back to a plea without

life without parole,” and counsel asked the prosecution, but the State declined. (PCR Tr. 32-33).¹⁰ Counsel admitted that he did not have the specifics of the plea offer, but was sure that the offer involved taking life without parole off of the table. (PCR Tr. 42). He testified he was also sure that Applicant had rejected that. (PCR Tr. 43). Counsel testified that he did not know about a plea offer to former counsel, and further testified “they must have offered to come off life without parole.” (PCR Tr. 38). Counsel testified Applicant could have taken the offer prior to trial, but he did not. (PCR Tr. 39).

At the close of the evidence, this Court was noted that the testimony indicated Applicant did not receive anything from prior counsel on the prior plea offer and allowed the record to remain “open for the State and Mr. Ariail to consult with the prosecutor as well as [former defense counsel] Mr. Culbertson” and report back to finalize the matter. (PCR Tr. 45-47).

On March 29, 2023, this Court reconvened the hearing and heard additional testimony. Applicant again testified Mr. Culbertson, who only briefly represented him before Mr. Steele, “never came to me with no deal period.” (Mar. 2023 PCR Tr. 6, lines 2-3). Applicant’s PCR counsel introduced a letter dated Jan. 26, 2015, that reflected an offer to plead with “no recommendation as to sentence” in exchange for Applicant’s cooperation in the trial of the co-defendant. The letter also cautioned that Applicant was facing life without the possibility of parole if he went to trial. (Mar. 2023 PCR Tr. 6, lines 16-19). Applicant testified he never saw that letter. (Mar. 2023 PCR Tr. 6). On cross-examination, Applicant complained that he never received

¹⁰ Though Applicant has not claimed error regarding this mid-trial negotiation specifically, this Court observes that there could be no ineffective assistance, either deficiency or prejudice, as “the solicitor would have been under no obligation whatsoever to revive the expired offer.” *Collins*, at 262, 810 S.E.2d at 877.

a “good plea offer” and had he received one, he “might have even took the plea.” (Mar. 2023 PCR Tr. 10).

Mr. Culbertson also testified at the second PCR hearing. He agreed with Applicant that his representation was brief. (Mar. 2023 PCR Tr. 11). He did not recall the State withdrawing the notice of seeking life without the possibility of parole but testified that he would have conveyed an offer by the prosecution. (Mar. 2023 PCR Tr. 11-13).¹¹ He recalled that Applicant “was not interested in any sort of offer that included an LWOP sentence.” (Mar. 2023 PCR Tr. 12).

The Court also heard from two prosecutors in the matter, Walker Miller, Esq., and Mark Moyer, Esq. Mr. Miller testified he came on to the case as it was being prepared for trial and would not have extended any offers, however, he recalled that “what was indicated” to him by Mr. Steele “the whole time was essentially Mr. Williams wasn’t going to plead to anything and it was just a trial.” (Mar. 2023 PCR Tr. 15). Mr. Moyer, who handled the co-defendant’s case, was eventually assigned this case, as well. (Mar. 2023 PCR Tr. 16). Mr. Moyer testified he made a “standard” plea offer “for someone who’s eligible for life without parole,” that the State would allow a plea prior to serving notice if the defendant would “plead guilty and ... cooperate with the codefendant if necessary,” though, at the time, it was not certain that cooperation was even needed. (Mar. 2023 PCR Tr. 16). That offer went to Mr. Culbertson. (Mar. 2023 PCR Tr. 16). When Mr. Steele assumed representation, “[t]he same offer was made to Mr. Steele.” (Mar. 2023 PCR Tr. 17). Mr. Moyer testified that a note from his file dated August 24, 2015, indicated “per Carlyle

¹¹ Mr. Culbertson’s file was missing at the time the hearing. It had been previously turned over the Public Defender’s Office. The Public Defender’s Office advised counsel for the State that “whatever noted Mr. Culbertson would have put in the file were handed over to Mr. Carlyle Steel, who’s passed away since we had our hearing in 2021, and at this point his file is missing. So we don’t know what happened with that.” (Mar. 2023 PCR Tr. 13, lines 19-25).

Steel dash trial.” (Mar. 2023 PCR Tr. 17, 20).¹² Mr. Moyer testified that after that time, Applicant wrote directly to the Solicitor, to another prosecutor who previously had been assigned the case, and to him essentially “making plea offers” on Applicant’s own terms, which involved a plea to a non-violent charge and “probation or very minimal time.” (Mar. 2023 PCR Tr. 17). Mr. Moyer testified: “I believe we extended the ... offer right up until trial” to withdraw “the life without parole notice, and it continued to be rejected.” (Mar. 2023 PCR Tr. 17). He explained that “lifting the notice” would leave a maximum sentence of 30 years, but he did not recall any recommendation for a 10 to 30 year sentence. (Mar. 2023 PCR Tr. 17 and 19-20). He noted that a 10 to 30 range would have to assume concurrent sentences, as well. (Mar. 2023 PCR Tr. 20). Mr. Moyer recalled speaking with Mr. Steele on the matter, but “heard back that - - that Mr. Williams was just not interested in pleading guilty, and that, again, that was kind of confirmed in the letters that we received from him.” (Mar. 2023 PCR Tr. at 20). As to any offers at the time of trial, Mr. Moyer testified, “I know we had several conversations with Mr. Steele leading up to the trial in which he just said that Mr. Williams just was not interest in a plea of any kind.” (Mar. 2023 PCR Tr. 21).

In reply, Applicant maintained he never received an offer to take a life sentence off the table, and faulted defense counsel because “nobody ... came up with no plea agreement period.” (Mar. 2023 PCR Tr. 23).

At the conclusion of the testimony, this Court reaffirmed its ruling on the other claims and addressed the ineffective assistance in plea bargaining allegations related to the remaining claim. (Mar. 2023 PCR Tr. 23-24). Specifically, this Court found Applicant’s testimony that there was a term of years offered was not credible, and, though there was no evidence the January 2015 letter

¹² The trial was held May 11-12, 2016.

was given to Applicant, that fact did not matter as Mr. Steele assumed representation while the offer was still viable, and the offer was rejected. (Mar. 2023 PCR Tr. 24-25). The Court reaffirms that ruling in this Order with additional explanation.

“The United States Supreme Court has held that ‘defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.’” *Collins v. State*, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting *Missouri v. Frye*, 566 U.S. 134, (2012)). “Generally, where defense counsel does not communicate such an offer to the defendant, counsel has rendered ineffective assistance.” *Id.* at 261, 810 S.E.2d at 876–77.

In this case, at the first PCR hearing, Mr. Steele produced a document from his file that, while not reflecting the specifics of the offer, confirmed that Applicant, by his signature, acknowledged a plea was offered and rejected. Further, counsel was sure that the deal was for something other than life without the possibility of parole, and that counsel was “thoroughly in favor of it” (PCR Tr. 39). In the March 2023 hearing, that was confirmed by the notes in the prosecution’s file. Mr. Steele’s testimony, especially supported by the contemporaneous to trial document, and further supported by the note in the prosecution’s file and Mr. Moyer’s testimony, is credible and determinative. Petitioner’s testimony on this matter wholly lacks credibility. There is nothing that supports a specific sentencing range was ever offered. While Petitioner has testified that he would have pled to such an offer, he cannot plead to an offer that was never extended. *See* Rule 14(b), SCRCrimP (“A defendant may waive his right to a jury trial only with the approval of the solicitor and the trial judge.”).

Further, as to the offer that was extended, which was viable at the time of Mr. Steele’s representation, Applicant affirmatively rejected that offer. Again, the Court finds Mr. Steele’s

testimony credible for the reasons cited above. This Court also finds credible Mr. Moyer's testimony as to the plea offer and his testimony that Petitioner was attempting to obtain a favorable plea offer with minimal time and essentially a different, non-violent charge. This further convinces this Court that Applicant was aware of the no-recommendation offer but wished to have a better deal offered. Applicant's own testimony supports this – it was not that he would have accepted the no-recommendation deal, it was “*if he had gave me a good plea offer, I might have even took the plea.*” (Mar. 2023 PCR Tr. 10) (emphasis added). In fact, he admitted “[t]hey didn't give no recommendations whatsoever.” (Mar. 2023 PCR Tr. 10).

“To show prejudice under *Strickland*, a defendant must demonstrate a reasonable probability that: (1) he ‘would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;’ (2) ‘the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;’ and (3) ‘the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.’” *Collins v. State*, at 262, 810 S.E.2d at 877 (quoting *Frye*, 566 U.S. at 147). As found above, Applicant had an offer prior to trial but rejected that offer. Mr. Culbertson may well not have provided a copy of the letter with the offer to Applicant before Mr. Steele assumed representation. That simply is of no moment because the offer was still viable, and Mr. Steele conveyed that offer. Applicant chose to reject that offer. Applicant has not carried his burden of showing deficiency in Mr. Steele's representation, and cannot, at any rate, show prejudice in regard to allegation against Mr. Culbertson.¹³ Applicant is not entitled to any relief.

¹³ This Court acknowledges Mr. Culbertson's testimony that he would have conveyed any offer, but Applicant maintains that he did not see the January 2015 letter produced at the March 2023 PCR hearing. (*Compare* Mar. 2023 PCR Tr. 12 with 6). Counsel is presumed to have rendered competent representation, *Strickland*, at 689; however, the evidence appears to favor Applicant in this Court's view on this narrow point. Even so, Applicant must establish both

CONCLUSION

For the above stated reasons, this Court finds that Applicant failed to carry his burden of proof. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. Applicant's application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this

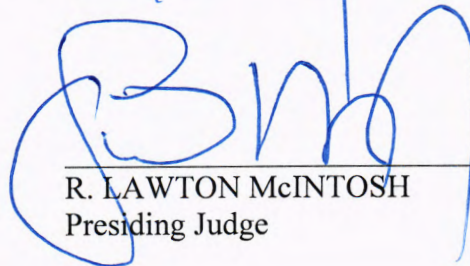
8th

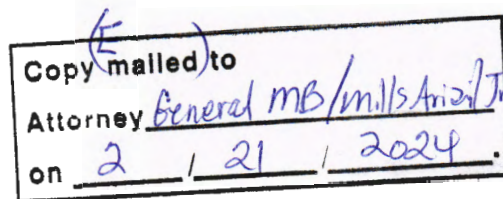
day of

February

2024
21/17

, 2023


R. LAWTON McINTOSH
Presiding Judge



deficiency and prejudice from that deficiency. *Id.*, at 694. The lack of prejudice here is plain and dispositive. *Strickland* even indicates that “[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, ... , that course should be followed.” *Id.*, at 697. This Court finds that Applicant has failed to show *Strickland* prejudice in these circumstances. He is not entitled to any relief.

WITNESSES

Alvin King

Greenville County Sheriffs Office

6/6/2014

ARREST WARRANT NUMBER

2014A2330205177

ACTION OF GRAND JURY

TRUE BILL

Wayne Shepherdson

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

576

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-23-
LMM

000240

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2015

THE STATE

vs.

STEVEN LEVON WILLIAMS

Indictment for

3434

POSSESSION OF A FIREARM BY PERSON
CONVICTED OF A CRIME OF VIOLENCE

VIOLATION § 16-23-0500

ENTERED
ACCT.

FILED

JAN 23 2015

Clerk of Court
Greenville County

A Certified Copy
Paul B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 5-25-16

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF A FIREARM BY PERSON CONVICTED OF A
CRIME OF VIOLENCE

At a Court of General Sessions, convened on

MAR 10 2015

the Grand Jurors of Greenville

County present upon their oath:

That STEVEN LEVON WILLIAMS did in Greenville County on or about the 6th day of June 2014, possess a firearm and/or ammunition within the State, the defendant having been convicted of a crime of violence, to wit: Burglary and Armed Robbery, as defined by Section 16-01-0060. This is in violation of §16-23-0500 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 64155

WITNESSES

Alvin King

Greenville County Sheriffs Office

6/6/2014

ARREST WARRANT NUMBER

2014A2330205171, 2014A2330205173

ACTION OF GRAND JURY

TRUE BILL

Wayne D. Harrison

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty - Count 1
Guilty - Count 2

Mitch Morlock

Foreperson of Petit Jury

Date: 5/12/16

DOCKET NO. 2015-GS-23-

LMM

000238

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2015

THE STATE

vs.

STEVEN LEVON WILLIAMS

Indictment for

0139, 0549

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

VIOLATION § 16-11-0330 and § 16-23-0480

**ENTERED
ACCT.**

FILED

JAN 23 2015

**Clerk of Court
Greenville County**

A Certified Copy

**Paul B. W. Remain
Clerk of Court, C.P. & G.S.
Greenville County, SC**

Dated 5-25-16

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

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

At a Court of General Sessions, convened on

MAR 10 2015

the Grand Jurors of Greenville

County present upon their oath:

COUNT ONE

ARMED ROBBERY

That STEVEN LEVON WILLIAMS did in Greenville County, on or about the 6th day of June, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: money from the person or presence of Juan Ivan ~~Williams~~ ^{*Jr*} *Cabrera*. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That STEVEN LEVON WILLIAMS did in Greenville County, on or about the 6th day of June, 2014, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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

[Signature]
 SOLICITOR

BAR # 64155

WITNESSES

Alvin King

Greenville County Sheriffs Office

6/11/2014

ARREST WARRANT NUMBER

2014A2330205287

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date: 5/12/16

DOCKET NO. 2015-GS-23-
LMM

000241

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2015

THE STATE

vs.

STEVEN LEVON WILLIAMS

Indictment for

3412

ASSAULT AND BATTERY 1ST DEGREE

VIOLATION § 16-03-0600

ENTERED
ACCT.

FILED

JAN 23 2015

Clerk of Court
Greenville County

A Certified Copy

Paul B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC

Dated 5-25-16

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY 1ST DEGREE

At a Court of General Sessions, convened on
County present upon their oath:

MAR 10 2015

the Grand Jurors of Greenville

That STEVEN LEVON WILLIAMS did in Greenville County, on or about the 6th day of June 2014, offer or attempt to injure Juan Ivan Cabrera with the present ability to commit the act, and the act occurred during the commission of a robbery, burglary, kidnapping or theft. This is in violation of §16-03-0600 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 64155

582
STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Steven Levon Williams

AKA:

Sex: M Age: 44

DOB:

Address:

City, State:

DL#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Armed robbery

IN THE COURT OF GENERAL SESSIONS 10-30 years
LWP

INDICTMENT/CASE#: 2015GS2300238

A/W#: 2014A2330205171

Date of Offense: 6/6/2014

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

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

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

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

ATTEST:

Moyer, Mark

64155
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE 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. 2 years

☐ 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 (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: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§ 56-5-2995 (DUI Assessment)	\$12	\$	
§ 56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$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	\$	
Proviso 90.5 (SCCA Surcharge)	\$5	\$	5.00
% to County (if paid in installments)		\$	3.00
TOTAL		\$	133.40

_____ days/hours Public Service Employment

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,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2162
5-12-16

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Steven Levon Williams

AKA:

Race:

Sex: M

Age: 44

DOB:

Address:

City, State:

DL#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Possession of a Weapon During Violent Crime

IN THE COURT OF GENERAL SESSIONS

583

5 year
jail

INDICTMENT/CASE#: 2015GS2300238

A/W#: 2014A2330205173

Date of Offense: 6/6/2014

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moyer, Mark

64155
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 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
the State Department of Corrections.☐ 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 (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: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$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	\$ 5.00
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 3.40
% to County (if paid in installments)		\$ 133.90
TOTAL		

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

Paul B. Wickens

JHC

2162

5-12-16

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Steven Levon Williams

AKA:

Age: 44 Sex: M

DOB:

Address:

City, State:

DL#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Possession of a Firearm by a Person Convicted of a Violent Crime

IN THE COURT OF GENERAL SESSIONS 005 yearINDICTMENT/CASE#: 2015GS2300240A/W#: 2014A2330205177Date of Offense: 6/6/2014S.C. Code § : 16-23-0500(A)CDR Code #: 3434

SENTENCE SHEET

Y CONVICTED OF or X PLEADS

in violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434
☒ 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: Mark Moyer 6/15/15 Steven Williams Calyle Steele 536
 Moyer, Mark SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 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. 2 years

☐ 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 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
% to County (if paid in installments)	\$	\$ <u>3.40</u>
TOTAL	\$	\$ <u>133.40</u>

PTUP

 days/hours Public Service Employment

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,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge Paul B. WickensJudge Code: 2163Sentence Date: 5-12-16

Clerk of Court/ Deputy Clerk

Court Reporter: Johann

SCCA/217 (03/2011)

May, 12 2016 4:19PM TRUE COPY CTR 6

8644678574

P. 2

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

0-10 year

COUNTY OF
STATE

Greenville

VS.

Steven Levon Williams

AKA:

Race:

Sex: M

Age:

44

DOB:

SS#:

Address:

City, State, Zip: Greenville, SC 29611-5422

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault and Battery in the First Degree

INDICTMENT/CASE#: 2015GS2300241

A/W#: 2014A2330205287

Date of Offense: 6/6/2014

S.C. Code § : 16-03-0600(C)(1)

CDR Code #: 3412

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moyer, Mark

SC Bar# 64155

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 2 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. 2 years☐ 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 16-23-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$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	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Paul B. Wickens

Presiding Judge

Judge Code: 2163Sentence Date: 5-12-16