

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Abbeville County

Honorable B. Alex Hyman, Circuit Court Judge

KYRON J. L. BAILEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000926

APPENDIX

GARY H JOHNSON
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

T. CRUISE MITCHELL
Assistant Attorney General
PO Box 11549
Columbia, SC 29201-1549
(803)734-3970

ATTORNEYS FOR RESPONDENT

RECEIVED

Aug 29 2024

S.C. SUPREME COURT

INDEX

INDEX	i
PLEA TRANSCRIPT DATED SEPTEMBER 23, 2020	1
APPLICATION FOR POST-CONVICTION RELIEF	36
RETURN.....	44
AMENDED POST-CONVICTION RELIEF APPLICATION.....	57
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOVEMBER 28, 2023 ...	59
ORDER OF DISMISSAL.....	91
INDICTMENT(S).....	106
SENTENCING SHEETS.....	122

State of South Carolina
County of Abbeville

Court of General Sessions

State of South Carolina	)	
	)	
	)	Transcript of Record
v.	)	2018-GS-01-00103
	)	2018-GS-01-00609
Kyron James Lamar Bailey	)	2018-GS-01-00610
	)	2018-GS-01-00611
<u>Defendant.</u>	)	2018-GS-01-00612
		2018-GS-01-00643

September 23, 2020
Abbeville, South Carolina

B E F O R E:

The Honorable Eugene C. Griffith, Jr., Judge.

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

Micah Black, Senior Assistant Solicitor
Attorney for the State

Scarlet Moore, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E XWITNESSPAGE

No Witnesses.

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

No Exhibits.

P R O C E E D I N G S

- - -

THE COURT: All right. Mr. Black, are you ready?

MR. BLACK: Yes, sir, Your Honor. Thank you. May it please the Court?

THE COURT: Yes, sir.

MR. BLACK: Your Honor, Kyron Bailey is here. He is pleading on five sets of charges. He is represented by Scarlet Moore of the Greenville Bar.

He is pleading to a DV second degree. That is 18-GS-01-103. He is pleading to a strong-armed robbery, 18-GS-01-611.

In consideration, the State is dismissing an assault and battery first, as well as an assault and battery second.

He's also pleading to a burg second charge, a violent attempted murder charge, and armed robbery. Those are 18-GS-01-639, -640, and -643.

In consideration of those pleas, Your Honor, the State is dismissing a possession of a weapon during the commission of a violent crime, as well as a conspiracy charge.

And, Your Honor, we have negotiated a range. You should be able to tell that from your sheet, a

1 range of 10 to 20 years.

2 On the DV second charge, obviously, we're
3 asking for time served. He has about 825 days
4 credit. The DV second carries zero to three, so
5 we're asking for a recommendation of time served on
6 that particular charge.

7 THE COURT: Okay. Your name is Kyron James
8 Lamar Bailey?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Your indictment starting with
11 18-GS-01-611 is for strong-armed robbery. It
12 alleges that you, while in Abbeville County, on
13 January 27th of '18, did while armed with a gun take
14 by force some goods from Katori Evans, in violation
15 of 16-11-330. It's my understanding you're going to
16 plead to the offense of strong-armed robbery; is
17 that right?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Also, Indictment 6 -- 18-GS-01-643.
20 That indictment is for armed robbery. It alleges
21 that you, while in Abbeville County, on May 14th of
22 '18, did while armed with a deadly weapon take
23 goods, an AR-22 and a cell phone from Angela Donald
24 in violation of 16-11-338. It's my understanding
25 you're going to plead guilty on that indictment to

1 the offense of armed robbery.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Indictment 18-GS-01-103 for
4 domestic violence. That indictment alleges on
5 November 13th of '17, while in Abbeville County, you
6 caused physical harm to a member -- to a household
7 member, Kwashante Spencer (phonetic), causing fear
8 of imminent peril and having a prior conviction.
9 This being in violation of 16-25-20. It's my
10 understanding you're going to plead to domestic
11 violence in the second degree on that indictment.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Indictment 18-GS-01-639, burglary
14 second degree, the violent provision. It alleges
15 that you, while in Abbeville County, on May 18th --
16 I'm sorry -- May 14th of 2018, did enter a dwelling
17 belonging to Angela Donald and Ms. Baker without
18 consent, and did commit a crime, did come along with
19 a weapon, this being in violation of 16-11-311. And
20 it's my understanding you're going to plead guilty
21 on that indictment to burglary second degree, the
22 violent provision.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And, lastly, Indictment
25 18-GS-01-640, indictment for attempted murder. It

1 alleges that you, while in Abbeville County, on the
2 14th of May of '18, did unlawfully with malice
3 attempt to kill Angela Donald in violation of
4 16-3-29. It's my understanding that you're going to
5 plead guilty to the offense of attempted murder; is
6 that right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Ms. Moore, you represent Mr. Bailey
9 in these five matters?

10 MS. MOORE: I do.

11 THE COURT: Okay. Did you explain to him the
12 elements of each of these five offenses and the
13 potential punishment he faces?

14 MS. MOORE: Yes.

15 THE COURT: Do you have a belief that if he
16 were to proceed to trial -- seems like there's two
17 instances, the burglary and the armed robbery and
18 that set of facts, and then there's a DV case. On
19 either one concerned with two trials, if he were to
20 proceed to trial, do you think based on your
21 examination of discovery provided to you by the
22 State, your own investigation, that more probably
23 than not he would be convicted on those charges?

24 MS. MOORE: Yes.

25 THE COURT: And are you in agreement with his

1 decision to enter these five pleas?

2 MS. MOORE: Yes.

3 THE COURT: All right. Sir, I'm going to have
4 you placed under oath if you don't mind.

5 THE CLERK: Raise your right hand.

6 THE DEFENDANT: (Complying.)

7 THE CLERK: The evidence you're about to give
8 the Court be the truth, the whole truth, and nothing
9 but the truth?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. Sir, in the last 24
12 hours, have you taken any alcohol, drugs, or
13 medication of any type?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you clearheaded right now?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you suffer from any disability
18 whatsoever which would affect your hearing, your
19 understanding of why you're here and what you're
20 doing?

21 THE DEFENDANT: No, sir.

22 THE COURT: You have a constitutional right on
23 each of these to be tried by a jury of your peers.
24 If you want to plead guilty, you've got to give up
25 certain constitutional rights knowingly. Do you

1 understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: During a trial, if you were to ask
4 for one, the State bears the burden of proving you
5 guilty beyond a reasonable doubt. And for that
6 reason, the State has to call its witnesses and
7 present its evidence first.

8 Your attorney's allowed to present defenses for
9 you, cross-examine the State's witnesses, allow them
10 to challenge introduction of the State's evidence.
11 You're not required to testify. The State's not
12 allowed to call you as a witness or even comment on
13 your silence if you choose to not testify. Now, you
14 could testify, but it would be during your portion
15 of the trial, not during the State -- the State's
16 case-in-chief. Do you understand these rights the
17 Constitution affords you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Is it your decision, after having
20 spoken with your attorney, to waive all those
21 rights -- the trial, defenses, confrontation, the
22 right to remain silent -- those rights?

23 THE DEFENDANT: Yes, sir, it is.

24 THE COURT: It's your decision to waive all
25 those rights when you plead guilty on these five

1 charges?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you waiving your rights freely
4 and voluntarily?

5 THE DEFENDANT: Yes, sir, I am.

6 THE COURT: All right. I'm going to ask the
7 State to give me a summary of the two instances, and
8 I'm going to come back and ask you is that
9 sufficient to what you understood the State's
10 accusing you of.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Solicitor, tell me what happened.

13 MR. BLACK: Judge, there's actually three
14 incidents, so I'll start with the first two
15 incidents. The victims on those cases are not
16 present. I have a couple of Court's exhibits. I've
17 got a 9-1-1 call that I would like for Your Honor to
18 hear, as well as some photographs that I -- the
19 defense has already seen. I'll pass those forward
20 at the appropriate time.

21 Judge, as far as the domestic violence case,
22 that happened on November the 13th of 2017. It
23 happened about 5:00 a.m. in the morning. The victim
24 in this case, Kwashante Spencer, contacted law
25 enforcement. She stated that she and her boyfriend

1 had got into an argument. Her boyfriend being, of
2 course, Mr. Bailey. Mr. Bailey was upset that some
3 other individuals were messaging her on her Facebook
4 app. The argument turned physical. Mr. Bailey did
5 choke her during this physical altercation, and
6 there was a child present during this altercation.

7 As far as the armed -- there's another armed
8 robbery, Judge. That happened on January 26th of
9 2018. This happened at [REDACTED] Meadow Drive here in the
10 city of Abbeville. The victim in this case is
11 Katori Evans. Mr. Evans stated that he was driving
12 home in his -- he was driving a moped. He pulled up
13 to the house and he walked around the back of his
14 house and he was approached by two individuals. He
15 recognized one of the individuals by being
16 Mr. Bailey. He did not -- he did not know who the
17 other individual was.

18 There was some small talk. They were talking
19 to Mr. Evans about particularly going out and
20 hanging out. Mr. Evans said, "Look, I can't do
21 that. I got to work in the morning. We've got to
22 be at work at 7:00."

23 At that point, the men kind of surrounded him.
24 One individual had a gun. That person that had the
25 gun was not Mr. Bailey, but Mr. Bailey proceeded to

1 go through that victim's pockets while the other guy
2 held him at gunpoint. When the victim initially did
3 not comply with turning over his wallet, money, and
4 credit cards, he was struck over the head with that
5 gun. Of course, that was not done by Mr. Bailey.
6 Mr. Bailey was going through his pockets.

7 Judge, as far as this other case, this occurred
8 on May 14th of 2018 about 11:00 o'clock in the
9 morning. The victims -- you're somewhat familiar
10 with this case, Judge, because Kobi Young is a
11 codefendant. He pled on August the 5th when you
12 were holding court here. He was represented by
13 Michael Gambrell and he pled -- he was not
14 sentenced. His sentencing was put off until the
15 trial of Mr. Bailey was to be finished, but then he
16 will be sentenced to burglary. And he had agreed to
17 testify and he allocuted on the record if you
18 remember.

19 THE COURT: Uh-huh.

20 MR. BLACK: Judge, I do want to play the 9-1-1
21 call, but I'll give the brief facts. Do you want us
22 to play the 9-1-1 call at this time?

23 THE COURT: Just give me the facts. I'm not
24 certain I need to hear the 9-1-1 call. I mean, I've
25 heard the facts of the other plea. Just go ahead

1 and give me the facts. The 9-1-1 call is generally
2 so excited, it's difficult to hear. Just give me a
3 summary of the facts.

4 MR. BLACK: Yes, sir. This happened on May the
5 14th of 2018 at 11:00 a.m. like I said. The victim
6 in this case, she's sitting right behind me, is
7 Ms. Angela Donald. Her daughter was also present in
8 the house, Ms. [REDACTED] (phonetic). They were
9 sitting in their own home at [REDACTED] Johnson Street in
10 Due West minding their own business, you know,
11 watching TV, just hanging out that morning.

12 And three individuals came into that particular
13 house. Two of the individuals had masks on. One of
14 the other individuals did not have a mask. That
15 individual was Kobi Young, Your Honor, that you
16 heard the plea from. Ms. Baker identified him as
17 having the mask.

18 She said that initially they went in, the guy
19 with the gun, which is Mr. Bailey, went back to
20 Ms. Baker's room where she was in her bedroom and
21 she was on her phone. Mr. Bailey had his gun. He
22 took her gun and then kind of moved to the other end
23 of the house where Ms. Donald was. The intent was
24 to go inside and steal an AR-22-style rifle. They
25 thought it was a shotgun. They then learned that

1 there was this -- they had this gun at this
2 particular house and they were going on -- they were
3 going inside that residence to take this gun.

4 Two individuals walked into the room.
5 Ms. Donald was in her bedroom where the gun was
6 located. And I think that they were shocked
7 initially because they were expecting her not to be
8 there. They went on in there and took the gun.

9 At that point, Mr. Bailey came across the house
10 and kind of helped them out. Of course, he had a
11 gun. Ms. Donald initially put up a fight against
12 the two individuals that were unarmed, but when she
13 saw Mr. Bailey, things kind of changed because he
14 had -- he had a handgun in his hand, a 9 millimeter
15 handgun, and he pointed it directly at Ms. Donald.

16 Two individuals secured the firearm. They
17 raced out of the room and out of the house. And at
18 that point, the codefendant said they heard some
19 gunshots.

20 Ms. Donald was trying to contact 9-1-1, and
21 actually the 9-1-1 call picks up the audio. And as
22 soon as you hear the 9-1-1 call, you hear a
23 progression of gunshots, probably about five or six
24 gunshots.

25 She was -- she was shot multiple times to the

1 arms and you have one shot to the chest. Quite
2 frankly, it's a miracle that she made it.

3 Of course, law enforcement showed up very
4 quickly. Chief Maxwell, who's here in the
5 courtroom, showed up very quickly. He was one of
6 the first ones on the scene. EMS showed up. They
7 had to air lift her to Greenville. You know, they
8 were in a desperate measure to save Ms. Donald's
9 life.

10 THE COURT: And she's the one here in the
11 middle?

12 MR. BLACK: She is. Yes, sir, Your Honor.

13 THE COURT: Okay.

14 MR. BLACK: And, of course, law enforcement
15 began their investigation. They started hearing, of
16 course, some chatter on the streets. They started
17 following up with some of those leads, Judge.

18 They also showed a photo lineup a couple of
19 days after the fact to Ms. Donald. In that photo
20 lineup, they showed Kobi, who was Mike Gambrell's
21 client. They showed that photograph lineup to
22 Ms. Donald. When she saw that picture, Kobi wasn't
23 wearing a mask. He had a hood on. And when she saw
24 that picture, she -- you know, she got down in her
25 chair and said, "Oh, my god. That's him. That's

1 him. He was there."

2 Based on that, law enforcement interviewed
3 Mr. Young. Mr. Young, he was a juvenile at the
4 time. I believe he was 15 years old. His case
5 ultimately progressed in Family Court and then
6 showed up in General Sessions. Mr. Young initially
7 denied having any involvement. "I don't know what
8 you're talking about. I had nothing to do with
9 this."

10 And law enforcement, you know, continually
11 talked to him and said, "Look, man. She -- she's
12 identified you as being there."

13 He eventually came around and said, "Yes. I
14 was there." I think there was some guilt associated
15 with obviously what had happened.

16 His mother -- Kobi's mother and Ms. Donald,
17 they actually -- I mean, this is Abbeville. They
18 know each other, so it kinda goes back in that
19 sense. They -- they know -- they know each other.

20 Kobi said, "Yeah, I was there." He also
21 identified Kyron Bailey as being there, and he
22 identified Kyron as being the shooter. He stated,
23 "Kyron had the gun. A carload of them had gone over
24 there." He -- you know, he said he didn't see Kyron
25 shoot Ms. Donald, but he had the gun. He walked in

1 the house with the gun. As he is exiting the house,
2 he heard those -- those shots ring out.

3 Ultimately, Judge, Mr. Bailey was arrested and,
4 of course, he's been in the detention center since
5 his arrest. And I believe that was mid-June of
6 2018. And those, Judge, are the -- those are the
7 basic facts of this case.

8 THE COURT: And what is it, Ms. -- the mother?

9 MR. BLACK: Donald.

10 THE COURT: -- Donald -- Ms. Donald because she
11 was friends with Young's mother, she had familiarity
12 with him?

13 MR. BLACK: She did.

14 THE COURT: So she wasn't -- he wasn't a
15 stranger. He was a youngster that had grown up as a
16 child of the friend of hers.

17 MR. BLACK: Ms. -- yes, sir. Kobi's mother,
18 Ms. Young, and Ms. Donald are acquaintances. They
19 know each other. Of course, Kobi and his mother
20 live here in Abbeville. They live in Due West, but
21 they still know each other.

22 THE COURT: She was familiar with him. He
23 wasn't a total stranger.

24 MR. BLACK: That's correct.

25 THE COURT: So he somewhat knew where he was?

1 MR. BLACK: Kobi tells law enforcement that he
2 didn't know that that was her house, but he -- he
3 knows the folks involved, yeah.

4 THE COURT: All right. Mr. Bailey, you heard
5 the summary of facts regarding the domestic
6 violence. Those facts are what happened on that
7 incident?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And I understand the State's
10 recommending time served of 800-some-odd days that
11 you've done. That doesn't seem to be the biggest
12 worry you have pleading today.

13 The other thing is the armed robbery of the
14 fellow that you were a participant, but not the one
15 that was armed.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Is that what happened with him?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And then the burglary, the going
20 into the home, is that what happened?

21 THE DEFENDANT: Yes, sir, it is.

22 THE COURT: You understand I took the plea from
23 Mr. Young some time ago?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: A month -- a couple of months ago

1 and he was -- he's not been sentenced. You
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: As far as I understand the
5 negotiations, they're dismissing a couple of related
6 charges. Your range of sentencing is no less than
7 10, no more than 20. Does that sound right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Time served on the DV?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you understand that upon being
12 committed to the Department of Corrections, you're
13 going to be classified as a violent offender. And
14 you don't have the opportunity for the same programs
15 as nonviolent offenders. Do you understand that?

16 THE DEFENDANT: Yes, sir, I do.

17 THE COURT: You also understand that you're
18 going to have two convictions for most serious
19 crimes. The attempted murder and the armed robbery
20 are most serious crimes, meaning those are big
21 strikes. And I believe -- no. I take that back.
22 And the burglary second is a serious conviction.

23 If you get accused of another most serious
24 crime, no question you'll have enough strikes on
25 your record and the State -- the State could seek a

1 life without parole sentence if something happens in
2 the future. It may be arguable -- an arguable, but
3 a serious charge, not one of these most serious --
4 serious ones, such as the burglary second, that may
5 enable the State to seek a life without parole.

6 Let's just work on it from that premise. These
7 three convictions can be used against you later if
8 you get a charge in the future. After your
9 sentences on this, you get charged with a serious or
10 most serious conviction, the State potentially can
11 ask for life without parole on that new charge later
12 on down the road. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you also understand that
15 burglary is an enhanceable crime, meaning you get
16 two burglaries on your record, they could charge you
17 with a third one having two priors and elevate the
18 burglary charge up to a burglary first degree. Do
19 you understand that could be used against you also?

20 THE DEFENDANT: Yes, sir, I do.

21 THE COURT: The domestic violence, likewise, is
22 an enhanceable offense. You have a conviction for
23 domestic violence and you get accused of a domestic
24 violence third degree, which is a lesser degree,
25 having a prior conviction could elevate it up one

1 notch. And if there are other enhanceable
2 provisions in there like in front of a child or
3 obstructing contact with a cell phone, those kind of
4 things, those are all enhanceable. So a conviction
5 can be used against you, as well as other statutory
6 enhancements. Things can raise a domestic violence
7 to a higher level. Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, have you had enough time to
10 speak to Ms. Moore about all five of these charges,
11 the three instances?

12 THE DEFENDANT: Yes, sir, I have.

13 THE COURT: The DV, strong-armed robbery, and
14 the burglary, attempted murder, and the armed
15 robbery, those -- those are the three incidents.
16 Has she explained your rights to have a trial by
17 jury?

18 THE DEFENDANT: Yes, sir, she has.

19 THE COURT: You don't want a trial?

20 THE DEFENDANT: No, sir.

21 THE COURT: Are you giving up your right to
22 defend yourself at trial here today freely and
23 voluntarily?

24 THE DEFENDANT: Yes, sir, I am.

25 THE COURT: Do you understand that by virtue,

1 if you're pleading to these most serious convictions
2 and they're violent offenses under the law, that
3 you're not going to be entitled to a parole release.
4 Do you understand that? These are non-parolable
5 offenses? Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: If you get released, it'll be after
8 you serve 85 percent of the time imposed by the
9 Court. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And upon that release, it'll be a
12 community supervision release where you can be
13 supervised. It's very similar to parole, but it's
14 called something different. It's not parole. Do
15 you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Has anybody promised you anything
18 other than the range of 10 to 20 years at 85 percent
19 to get you to plead guilty?

20 THE DEFENDANT: No, sir, they haven't.

21 THE COURT: Anybody threatened you or coerced
22 you or tried to trick you into pleading guilty here
23 today?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you had an opportunity to

1 discuss all aspects of this plea with Ms. Moore?

2 THE DEFENDANT: Yes, sir, I have.

3 THE COURT: And have you understood those
4 conversations with her?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you satisfied with the advice
7 she's given you, even though under these
8 circumstances it's a lot of trouble you're facing?

9 THE DEFENDANT: Yes, sir, I have.

10 THE COURT: You need any more time with her
11 today?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you understand you have a
14 limited number of days, after I accept this plea,
15 during which time to file a notice of intent to
16 appeal?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you pleading guilty because you
19 are, in fact, guilty of committing these five
20 offenses?

21 THE DEFENDANT: Yes, sir, I am.

22 THE COURT: And are you entering this plea here
23 today freely and voluntarily?

24 THE DEFENDANT: Yes, sir, I am.

25 THE COURT: Regarding Indictments 18-GS-01,

1 Indictment -639, -640, and -643, I find that Kyron
2 James Lamar Bailey made a free, knowing, intelligent
3 decision to plead guilty to burglary second degree,
4 violent, attempted murder, and armed robbery.

5 As well as Indictments 18-GS-01-611 and
6 18-GS-01-103. Those two indictments, Mr. Bailey's
7 made a free, knowing, intelligent decision to plead
8 guilty to one count of strong-armed robbery and one
9 count of domestic violence in the second degree.

10 He's entered all five pleas with the advice of
11 counsel and an attorney with whom he states he's
12 satisfied and he's had enough time. The State has
13 provided more than ample facts to support all five
14 pleas, and the Court will accept it.

15 And I've been presented permanent restraining
16 orders regarding the victims of these separate
17 instances. Are you aware of that, Mr. Bailey?

18 THE DEFENDANT: Yes, sir, I am.

19 THE COURT: Do you have any objection to those
20 restraining orders?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Ms. Moore, let me hear
23 from you.

24 MS. MOORE: Thank you, Judge. First of all, we
25 wanted to thank the victim and her family and also

1 the solicitor for negotiating with us regarding
2 these cases.

3 Judge, I'm going to let my client speak to this
4 Court today regarding his position or his thoughts
5 towards the victim today and the victims of these
6 crimes, but I just would ask that the Court listen
7 to what he has to say and sentence him accordingly.

8 Judge, I think it is clear from our negotiated
9 sentence that it would be a cap of 20, that
10 everything is run concurrently.

11 THE COURT: I didn't go through. I presumed
12 that too, but I did not put that on the record.

13 MS. MOORE: Yes, sir.

14 THE COURT: Mr. Bailey, do you understand the
15 recommendation is the time you'll get will all run
16 concurrently?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay.

19 MS. MOORE: And next also, Judge, he is
20 currently on probation, but pursuant to our
21 calculations, we do believe that he's very close to
22 maxing out of that probation; but, nevertheless, the
23 agreement with the solicitor is that any probation
24 revocation would also be run concurrent. That is
25 considered a different matter.

1 Again, Judge, we just -- we both -- myself as
2 well as my client just want to express gratitude to
3 the victim as well as the solicitor in negotiating
4 with us regarding these matters, and I am going to
5 let my -- my client speak to the Court.

6 Your Honor, my client is here with several
7 family members, including his mother, Ms. Reed.
8 I've been in contact with her throughout the course
9 of this representation. At the appropriate time, if
10 it is appropriate, I do believe that his mother
11 would like to address the Court regarding these
12 matters.

13 THE COURT: Okay.

14 MS. MOORE: But we just want to express our
15 gratitude to the solicitor and the victims.

16 THE COURT: Who do you want to present first,
17 his mother or Mr. Bailey first?

18 MS. MOORE: How about his mom?

19 THE COURT: Okay.

20 MR. BLACK: And, Judge -- Judge, I failed to
21 mention this: The State would like to be heard on
22 sentencing, and I believe the victims also would
23 like to address the Court as well. I didn't know
24 how you wanted to handle that, the victims go first
25 or Mr. Bailey?

1 THE COURT: I want to hear from them first.

2 MR. BLACK: Yes, sir.

3 THE MOTHER: Yes, Your Honor. I'm the mother
4 of Kyron Bailey.

5 THE COURT: Tell me your name one more time,
6 ma'am.

7 THE MOTHER: My name is Leslie Bailey. I do
8 want to address Angela first because I do know her.
9 There is no amount of apologizing to her or the
10 family for the changes made during this incident.

11 Your Honor, I plead the mercy of the Court for
12 my son, not that he be forgiven, however, consider
13 the fact that he has a life ahead of him than behind
14 him. Would you take that into account when you're
15 doing your sentencing?

16 THE COURT: Thank you, ma'am.

17 THE SISTER: Tiffany Bailey.

18 MS. MOORE: Judge, his sister is Tiffany
19 Bailey.

20 THE SISTER: I would like to say I'm his
21 sister. She's his mother. I'm a mother as well, so
22 I could not imagine. And it's not that we want to
23 even forget this case; however, he is also more than
24 the State said. From a child, I remember Kyron
25 helping fixing computers and things of that nature.

1 He was skipped up in the third grade to the school
2 to where the opportunity to graduate high school at
3 16 years old. He's a very intelligent young man.

4 He attended church growing up, and I know my
5 mother did the best as a single parent because she
6 made sure both of us attended church. Kyron often
7 led prayer. He does know God, for it is only God
8 who got him this far. And I just want to say to the
9 Court, the family, and everything, that God is still
10 in charge and he is with us all through all of this.

11 But I just want to let the Court know that he
12 is more than the monster that these charges say he
13 is. He made some mistakes. At the time of this,
14 they made choices for everybody -- everybody
15 involved. As a young adult, he did these things and
16 he did not think about them. He did them simply on
17 impulse. I made mistakes, as I'm sure everyone here
18 today can say they have.

19 And as my mother stated, would you take that
20 into consideration? He is so much more than these
21 things, and I pray that we can move past and the
22 victim as well.

23 THE DEFENDANT: I want to start off by
24 apologizing to the victim's family. I apologize. I
25 was in a bad time in my life at that time. Ever

1 since then, I wanted to reach out to the family to
2 apologize. And because doing this right here since
3 I've been incarcerated, I've lost multiple immediate
4 family members, including my brother and my aunt on
5 the same day as my grandfather's funeral. I just
6 recently lost my father to cancer. It made me
7 realize that time, it affected my actions on not
8 just me, but people around me.

9 I want to thank the solicitor, Micah Black, for
10 giving me the opportunity to come up and let
11 everybody know that I'm guilty, but I'm very
12 remorseful for it. And I know I don't expect y'all
13 to forgive me, but once again, I want to apologize.
14 I apologize. And I can only imagine what would go
15 through my mind if it was my mother.

16 And I thank you, Mr. Black, for denying my bond
17 for so long because it allowed me to have the chance
18 to clean myself up and reestablish a relationship
19 with God. I just want to thank the judge for
20 accepting my plea. That's all I want to say.

21 THE COURT: Anything else?

22 THE DEFENDANT: No, sir.

23 MS. MOORE: Your Honor, we did have a bond
24 hearing twice in this case, which bond was denied.
25 Thank you, Judge.

1 THE COURT: All right. Mr. Black, let me hear
2 from one of your victims or both. I'll hear from
3 both of them, but who's going first?

4 MR. BLACK: Yes, Your Honor. Thank you.
5 Lachina is going to go first. This is the victim's
6 husband. I do want pass up these photographs,
7 State's 2 through 10, just for Your Honor to look
8 at. These are just some photographs of the crime
9 scene so you kind of have an idea of what happened.

10 THE COURT: State your name for me.

11 THE VICTIM'S HUSBAND: Lachina Donald.

12 THE COURT: Spell your first name for me.

13 THE VICTIM'S HUSBAND: L-a-c-h-i-n-a.

14 THE COURT: Okay.

15 THE VICTIM'S HUSBAND: This is kind of hard. I
16 really don't know the family like my wife knows the
17 family, but what they took from us is -- that's a
18 lot. The things I have to go through with my family
19 now, they have changed my life forever. And there's
20 nothing I can -- there's nothing I can -- there's --
21 there's -- there's nothing else I can say.

22 As fas my wife, it's killing my wife and my
23 daughter, these things, you know, we talk about
24 them. It's been two years going on and we done made
25 some progress, but there's nothing he can do that's

1 going to put us back to where we were.

2 So I -- when I look at her, you know, I have to
3 look at what she goes through and things of this
4 nature, and I don't know what I'm going to do. I
5 don't know what I can do, let me put it this way.
6 But to reestablish my security, my -- the things I
7 have lost in this ordeal, it's just been real hard.

8 I have no ill-will against the family or
9 anything. I understand people do things, but it's
10 really no excuse for what really happened in this
11 situation, so I'll just let the Court handle it.
12 That's all.

13 THE COURT: All right.

14 THE VICTIM: Hello, Your Honor. I don't
15 know -- I don't even know where to begin. Just
16 to -- I hear the family. I accept what they're
17 saying, but this is a lot for me. I mean, I've been
18 going through this for two years. I've been
19 nervous. I've been scared. I've been watching over
20 my back. I've been trying to do -- I don't know,
21 Your Honor. I'm just nervous. I'm upset. My life
22 has been like totally -- I was the type that was
23 outgoing and spoken. Now, I'm nervous to speak to
24 people. I'm nervous to be at home by myself. I'm
25 nervous to ride by myself.

1 Like my husband said, I don't -- I don't hold
2 nothing against the family. I just don't know why
3 he had to do what he done to me. I -- I -- I tried
4 to let -- I was all willing to let him take whatever
5 he want just so he wouldn't do what he did to me.

6 And then to put my daughter, when I couldn't
7 get her response to know where she was okay, the
8 thoughts that was going through my mind, scars that
9 I got to go through. I mean, my arm still hasn't
10 totally healed. The scars here on my chest, the
11 scars that I have to look at every day, I don't
12 know. Nobody can understand what I went through,
13 you know. And I just -- I just don't know why. I
14 just don't know why, why it had to be me, but I want
15 some type of justice -- some type of justice.

16 THE COURT: Okay. Thank you, ma'am.

17 MR. BLACK: And, Judge, just to kind of wrap
18 all that up. I met with the family numerous times
19 over the course of prosecuting all the codefendants
20 in this case, and I know this weighed very heavily
21 on not only Ms. Donald but Mr. Donald as well. It
22 weighed on them a heck of a lot. And I don't think
23 that there's a day that goes by that they walk by
24 that location right outside their bedroom door that
25 she doesn't have a flashback of that moment.

1 If you listen to the 9-1-1 call, you can hear
2 Ms. Donald telling them, "Take what you want. Take
3 what you want. Leave." And as she's trying to put
4 her hands over her head, as she's described to me,
5 and get them out of there with what that have,
6 Mr. Bailey pulls the trigger six times. Shoots her
7 directly in the chest. Shoots her right here at the
8 bottom of the stomach and the arm several times.
9 You know, it's really -- it's really a homeowner's
10 worst nightmare. I mean, it's something that
11 probably goes through all of our minds, but we don't
12 ever expect it to happen to us. And they literally
13 -- they had it happen. This is something that
14 they're still trying to overcome.

15 So, of course, we would ask that you sentence
16 him appropriately. I'm not going to ask for a
17 number, Judge, but I -- I think it's a very clearly
18 a situation where two people are in their own home
19 minding their own business and this isn't something,
20 you know, that happened in the streets or wherever
21 that I'm sure you see all the time. This is a
22 completely different situation, so we ask that you
23 take that all -- all of that into account and
24 sentence him appropriately.

25 THE COURT: All right. I'm going to go ahead

1 and pronounce the sentence and I'll sign the
2 restraining orders.

3 On Indictment -611 -- I'm going to start with
4 the domestic violence, Indictment -103,
5 18-GS-01-103, the sentence is 2 years, credit for
6 825 days.

7 On -611, which is the strong-armed robbery, and
8 burglary second degree, which is -639, the sentence
9 on those is 15.

10 On the other two, -643 and -640, which are
11 armed robbery and attempted murder, the sentence on
12 those two is 20. All to run concurrent. All are
13 entitled to 825 days credit under 24-13-40.

14 And I'll sign those three restraining orders
15 while we're sitting here for a few minutes. Any
16 questions?

17 MR. BLACK: No, sir. Thank you, Your Honor.

18 MS. MOORE: No, sir.

19 (The proceedings concluded at 2:43 p.m.)

20 * * * * *

21

22

23

24

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Abbeville County, South Carolina, on the 23rd day of September, 2021.

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

December 20, 2021

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

STATE OF SOUTH CAROLINA

County of AbbevilleKyron James Lamar Bailey 365251

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee county correctional ins
2. Name and location of Court which imposed sentence Abbeville county
Detention center
3. Name(s) of co-defendant(s) (if any) Kobe young, Christian Bozeman,
Nick young
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) DV 2nd degree Warrant # 2017 A0120100141
 - (b) Armed robbery Indictment # 500007
Strong Arm Robbery Warrant # 2018 A0120100013
Burglary 2nd degree # K607081

TRUE COPY
BY Vanessa Clark
ABBEVILLE COUNTY CLERK OF COURT

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

- (a) On September 23, 2020
(b) 20 years
(c) 10 SCD

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ☒
(b) after a plea of not guilty ☐
(c) after a plea of nolo contendere ☐

7. Did you appeal from the judgment of conviction or the imposition of sentence?

no

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. _____
ii. _____
iii. _____

(b) the result in each such Court to which you appealed:

- i. _____
ii. _____
iii. _____

(c) the date of each such result:

- i. _____
ii. _____
iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
ii. _____
iii. _____

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

- (a) I was advised by my lawyer that it was no need to appeal because of
Guilty Plea
(b) _____

(c) _____

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

(a) deficient assistance
 (b) ineffective counsel
 (c) violation of my 8th amendment rights

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

(a) deficient assistance - refused to direct appeal
 (b) ineffective counsel - failed to supply me with rules
 (c) violation of my 8th amendment rights - failed to stay in contact for months

12. Prior to this application have you filed with respect to this conviction: NO

(a) any petition in a State Court under South Carolina Law? _____
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

N/A

(a) which grounds have been presented:

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

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

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

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

(a) N/A

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? NA

(c) your sentencing? yes

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

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

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

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

i. Seannett Bell Moore

ii. _____

iii. _____

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

i. arraignment, and plea

ii. plea

iii. sentencing

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

Sentence reduction
or early release

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

NO

STATE OF SOUTH CAROLINA)

County of Abbeville)

VERIFICATION

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

Kyron Bailey

SWORN to and subscribed before me this 28th
 day of July 2021

[Signature] (L.S.)
 Notary Public

My Commission Expires: 09/04/2021

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

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

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

Kyron Bailey
Applicant

SWORN or affirmed to and subscribed before me this
28th day of July, 2021.

James M. Pike
Notary Public

My Commission Expires: 09/04/2021

COUNTY OF AbbevilleIN THE COURT OF COMMON PLEAS ⁴³State of South Carolina

Plaintiff(s)

vs.

Kyron James Lamar Batley

Defendant(s)

CIVIL ACTION COVERSHEET

2021 -CP- 01 - 00238

Submitted By: _____

Address: _____

SC Bar #: _____

Telephone #: _____

Fax #: _____

Other: _____

E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*☐ JURY TRIAL demanded in complaint.☒ NON-JURY TRIAL demanded in complaint.☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case #
20 ____ -NI- ____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts - Personal Injury

- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399)

Real Property

- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions

- ☒ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief

- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

Judgments/Settlements

- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals

- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOJ (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex/Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____

Date: _____

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (03/2016)

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

Kyron Bailey, #365251,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2021-CP-01-00238

RETURN
(Counsel Appointed)

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2021 JUN 21 10:10 AM

In response to the application for post-conviction relief filed by Kyron Bailey on October 18, 2021, and received by, the State of South Carolina, on October 22, 2021. Respondent makes the following return and requests an evidentiary hearing to resolve the claims as set forth in Applicant's application for post-conviction relief¹. In support of this return, Respondent respectfully shows this Court:

I. Procedural History

Applicant is currently confined in the South Carolina Department of Corrections (SCDC). During its April 2018 term, the Abbeville County Grand Jury indicted Applicant for Domestic Violence, Second Degree (2018-GS-01-0103). Additionally, during its September 2018 term, the Abbeville County Grand Jury indicted Applicant for Assault and Battery, First Degree (2018-GS-

¹ Respondent's return was due on December 21, 2021. *See* Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") However, due to an exceptionally heavy workload, Respondent was unable to complete a return in this time. However, now having completed the return required in this matter and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent requests this Court accept its return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

01-609), Possession of a Weapon during the Commission of a Violent Crime (2018-GS-01-610), Strong Armed Robbery (2018-GS-01-611), Assault and Battery, Second Degree (2018-GS-01-612), Burglary, Second Degree (2018-GS-01-639), Attempted Murder (2018-GS-01-640), Possession of a Weapon during the Commission of a Violent Crime (2018-GS-01-641), Criminal Conspiracy (2018-GS-01-642), and Armed Robbery (2018-GS-01-643). Applicant was represented by Scarlet Bell Moore, Esquire. Senior Assistant Solicitor Micah Black of the Eighth Circuit Solicitor's Office prosecuted the case.

On September 23, 2020, Applicant appeared before the Honorable Eugene C. Griffith, Jr., circuit court judge and, pursuant to negotiations between the State and Applicant, plead guilty as indicted to Domestic Violence, Second Degree; Strong Armed Robbery; Burglary, Second Degree; Attempted Murder; and Attempted Robbery. As a result of Applicant's guilty plea, all of Applicant's remaining charges were dismissed. Judge Griffith sentenced Applicant to imprisonment for a term of twenty years for Armed Robbery and Attempted Murder, fifteen years for Strong Armed Robbery and Burglary Second Degree, and two years for Domestic Violence Second Degree. All sentences were to run concurrent. Applicant did not appeal his conviction or sentence.

II. Facts Giving Rise to the Conviction

Domestic Violence, Second Degree (2018-GS-01-103)

On November 13, 2017, at approximately 5:00am, Kwashante Spencer contacted law enforcement to report a fight between herself and her boyfriend, Applicant. Tr. p. 10-11. Applicant was upset with Ms. Spencer due to another individual messaging Ms. Spencer on Facebook. Tr. p. 11. The altercation became physical and Applicant choked Ms. Spencer in the presence of a child. Tr. p. 11. Applicant was subsequently arrested.

Armed Robbery and Associated Charges (2018-GS-01-609, -610, 0611, -612)

On January 26, 2018, Katori Evans drove his moped back to his house on [REDACTED] Meadow Drive in Abbeville, South Carolina. Tr. p. 11. As Mr. Evans walked to the back of his house, he was approached by two individuals, one being Applicant. Tr. p. 11. Applicant, and the other individual spoke with Mr. Evans for a period of time and asked him if he wanted to go hang out with them. Mr. Evans stated "Look, I can't do that. I got to work in the morning. We've got to be at work at 7:00." Tr. p. 11. At that point, Applicant and the other individual surrounded Mr. Evans, the unidentified individual had a gun and pointed it at Mr. Evans, while Applicant went through Mr. Evans' pockets. Tr. p. 11-12. When Mr. Evans attempted to stop Applicant, Mr. Evans was struck over the head with the gun. Tr. p. 12.

Attempted Murder and Associated Charges (2018-GS-01-639, -640, -641, -642, -643)

On May 14, 2018, at approximately 11:00am, the victims Angela Donald, and her daughter Khalia Baker were sitting inside their house at [REDACTED] Johnson Street when Applicant and two other individuals entered their house, with the intent to steal a gun owned by Ms. Baker. Tr. p. 13. Applicant and one individual had on masks, the other individual did not. Tr. p. 13. Applicant, while wielding a gun, went to Ms. Baker's room, where Ms. Baker was sitting and talking on the phone. Tr. p. 13. Applicant looked for the gun in Ms. Baker's room and then proceeded to the other side of the house where Ms. Donald was located. Tr. p. 14. Ms. Donald attempted to fight Applicant's unarmed accomplices, however once Applicant entered he pointed his handgun at Ms. Donald while the two other individuals secured Ms. Donald's gun. Tr. p. 14. As the two accomplices left the house, they heard six gunshots. Tr. p. 14. Once Applicant ran away, Ms. Donald called 911 and informed them she had been shot multiple times. Tr. p. 14-15. Police showed Ms. Donald a photo lineup which contained one of Applicant's accomplices, Kobi Young, to which Ms. Donald

stated “Oh, my god. That’s him. That’s him. He was there.” Tr. p. 15-16. Based on this information, Abbeville Police interviewed Kobi Young, who initially denied having any involvement in the robbery. Tr. p. 16. Eventually, Mr. Young informed police that he was involved in the robbery and identified Applicant as the individual who shot Ms. Donald². Tr. p. 16-17. Applicant was ultimately arrested in June 2018. Tr. p. 17.

III. Current Application

Applicant commenced this PCR action on October 18, 2021. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective Assistance of Counsel
 - a. Refused to file direct appeal
 - b. Failed to provide Rule 5 discovery materials
 - c. Failed to stay in contact for months

As requested relief, Applicant is seeking “Sentence Reduction or Early Release.”³

² Kobi Young informed police that he did not see Applicant shoot Ms. Donald, but that Applicant was the one holding the gun, and as Mr. Young was running out of the house he heard gunshots.

³ The relief Applicant seeks is not available because the Uniform Post-Conviction Procedure Act does not provide a vehicle for sentence reduction. *See Clark v. State*, 259 S.C. 378, 382–83, 192 S.E.2d 209, 210 (1972) (*per curiam*) (holding that an inmate cannot seek a “time cut” in his sentence via post-conviction relief if the sentence was within the statutorily defined limits); John H. Blume, *An Introduction to Post-Conviction Remedies, Practice and Procedure in South Carolina*, 45 S.C. L. Rev. 235, 268 n.103 (1994) (noting that “[t]he lack of jurisdiction to reduce otherwise proper sentences seems not to be widely recognized by many inmates who file pro se applications seeking a reduction in their sentences”). If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original indictments. *See generally Singleton v. State*, 313 S.C. 75, 85–86, 437 S.E.2d 53, 59–60 (1993) (discussing section 17-27-20(B) and the appropriate relief in PCR cases); *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating that even under the assumption that all the allegations were true, the relief to be granted on PCR is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (“We now clarify the proper remedy is a new trial.”).

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

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion

of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn,

judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to File Direct Appeal

When counsel has consulted with the defendant regarding the right to appeal, "[c]ounsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." *Roe v. Flores-Ortega*, 528 U.S. 470, 478 (2000). Accordingly, the one-year limitations period in which to file a petition for post-conviction relief does not apply where defendant was denied a direct appeal of his conviction due to ineffective assistance of counsel. *Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

In *Wilson*, the defendant instructed his attorney to appeal his conviction and the attorney

failed to do so. Wilson filed a PCR application alleging ineffective assistance of counsel, which the PCR judge summarily dismissed for failing to file within the applicable statute of limitations. *Id.* at 217, 559 S.E.2d at 582. Because Wilson “ha[d] not received either a direct appeal from his conviction or a PCR hearing,” the Court reversed and remanded to the PCR court to conduct an evidentiary hearing to determine if Wilson knowingly and intelligently waived his right to direct appeal. *Id.* at 218–19, 559 S.E.2d at 583; *see id.* at 217, 559 S.E.2d at 582 (2002) (“To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.”); *but see Bonnette v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (“Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.”). The Court explained that “policy would be frustrated if the one year statute of limitations for PCR claims applied where the applicant was denied his direct appeal due to ineffective assistance of counsel, and then was denied his right to a PCR application because of the one year statute of limitations.” *Wilson*, 348 S.C. at 218, 559 S.E.2d at 583.

Accordingly, where an applicant establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the applicant may petition our Supreme Court for review of direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35.⁴ *See Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986) (establishing procedural

⁴ In *White*, the PCR judge found the applicant did not knowingly and intelligently waive his right to direct appeal due to ineffective assistance of counsel. 263 S.C. at 117, 208 S.E.2d at 39. As a result, the PCR court directed PCR counsel to attempt to secure a belated appeal to the Supreme Court from his original conviction and sentence. *Id.* On appeal, our Supreme Court explained that it did not have jurisdiction to entertain a belated direct appeal absent the timely filing of notice of appeal. *Id.* at 119, 208 S.E.2d at 39. However, because the *post-conviction relief appeal* was properly before it, the Court reviewed the trial record and all issues properly raised as if the direct appeal had been perfected. *Id.* at 119, 208 S.E.2d at 39–40. The Court ultimately held “that there was no reversible error in the trial and that there was not an arguably meritorious ground of appeal, even if notice of intention to appeal had been timely served.” *Id.* at 119, 208 S.E.2d at 40.

guidelines for *White* review when the PCR judge determines the applicant did not freely and voluntarily waive his appellate rights). The Court, upon an appeal of the post-conviction relief decision, will review the lower court record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. *White*, 263 S.C. at 119, 108 S.E.2d at 39–40.

The State submits Applicant cannot meet his burden showing he is entitled to a belated appeal pursuant to *White*. Applicant failed to present any facts that would show he communicated to counsel his desire to appeal, or instructed counsel to file an appeal. However, because this allegation likely raises questions of fact not conclusively refuted by the record, the State requests an evidentiary hearing solely on this issue. Therefore the State requests an evidentiary hearing to address the issues raised in the application for post-conviction relief. *See Toney v. State*, Op. No. 2019-MO-006 (S.C. Sup. Ct. filed February 6, 2019) (unpublished decision cited only for its procedural guidance) (where an applicant for post-conviction relief has established he did not knowingly and voluntarily waive his right to a direct appeal, the applicant is entitled to a full evidentiary hearing on the merits of his application).

Failure to Provide Discovery

Applicant alleges his Counsel was ineffective for failing to provide Applicant with a copy of the discovery in his case. This allegation is without merit.

An applicant who alleges his or her defense attorney was ineffective in failing to provide a copy of the discovery materials must show how the outcome of trial would have been different had the attorney provided such a copy; the applicant must show what evidence could have been discovered or what other defense could have been prepared. *Harris v. State*, 377 S.C. 66, 75-76,

659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)).

Applicant asserts Counsel did not provide a copy of discovery to him, however Applicant has failed to explain how the outcome of his case would have been different, or what evidence could have been discovered if Applicant was provided a copy of discovery. Therefore, Applicant has failed to demonstrate how Counsel's performance was ineffective. However, Applicant's allegation of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

Counsels' failure to communicate with Applicant

Applicant asserts Counsel was ineffective for failing to stay in contact with Applicant for months leading up to Applicant's guilty plea. However, Applicant has failed to explain how Counsel's communications with Applicant prejudiced Applicant. Therefore, this allegations is without merit.

"[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id. See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses

counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial); *Smith v. State*, 404 S.C. 493, 500-01, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief). *Hill* makes clear that the prejudice prong ordinarily requires “something more” than simply a defendant’s assertions that but for counsel’s deficient performance he would not have plead guilty but would have gone to trial. *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009 (citing *Hill*, 474 U.S. at 58-59)).

Though Applicant alleges Counsel was ineffective for failing to communicate with Applicant for months. Applicant has failed to show how additional time communicating with or consulting with Applicant would have resulted in a different outcome in Applicant’s case. Applicant has merely stated Counsel was ineffective for failing to communicate with Applicant, therefore this allegation is without merit. However, Applicant’s allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. at 265, 305 S.E.2d at 248 (“ Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

V. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

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

VI. Any and All other Allegations

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

VII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL J. NEUBAUER
Assistant Attorney General

By:



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

January 13, 2022

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 TH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	Case No.: 2021-CP-01-00238
Kyron James Lamar Bailey, #365251	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	
_____	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on October 18, 2021, to add the following:

1. Ineffective assistance of counsel of Scarlet B. Moore, Esquire
 - a. Failure to adequately engage in plea negotiations with the Solicitor and relay any offers to the Applicant in an appropriate time and manner.
 - b. Failure to adequately prepared the case for trial, thus forcing the Applicant to take a plea deal instead of going to trial like the Applicant had requested since the beginning of her representation.
 - c. Failure to provide the Applicant with a copy of the discovery in his case until after he pleaded guilty.
 - i. Counsel did not explain the charges and possible sentences adequately to the Applicant.

Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006); see also Love v. State of South Carolina, 428 S.C. 231, 834 S.E.2d 196 (2019).

Respectfully submitted,

Ashley A. McMahon

ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN LAW, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

November 17, 2023

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Zachary W. Jones
Assistant Attorney General
zacharyjones@scag.gov

This 17th day of November, 2023.

Ashley A. McMahon

ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
Filed November 22 A.D. 200 23
at 9:50 o'clock A M
Shandul Briggs
Clerk of Court

1 STATE OF SOUTH CAROLINA

2 -----x

3 KRYON J.L. BAILEY,

4 Petitioner,

5 Case No.

6 -against-

2021-CP-01-00238

7 STATE,

8 Respondent.

9 -----x

10 November 28, 2023

11 Abbeville, S.C.

12
13 B E F O R E:

14 HONORABLE B. ALEX HYMAN

15
16 A P P E A R A N C E S:

17 ASHELY A. MCMAHAN

18 Attorney for the Petitioner

19
20 CRUISE MITCHELL

21 Attorney for the Respondent

22
23 Aileen Butler

24 Official Court Reporter

25

I N D E XWITNESSDIRECTCROSSREDIRECTRECROSS

KRYON BAILEY

Ms. McMahan

7

Mr. Mitchell

12

SCARLETT MOORE

Mr. Mitchell

14

30

Ms. McMahan

20

E X H I B I T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NO.

DESCRIPTION

I.D.

EVD.

(NO EXHIBITS RECEIVED.)

THE COURT: All right Mr. Mitchell.

1 MR. MITCHELL: May it please the Court, Your
2 Honor. This is Post Conviction Relief matter of
3 Kyron Bailey v State. Case number
4 2021-CP-01-00238. I am Cruise Mitchell on the
5 behalf of the State. Applicant is present and
6 represented by counsel, Ashley McMahan.
7 During the 2018 Abbeville County Grand Jury
8 indicted applicant for domestic violence second
9 degree. Additionally, during the September 28th
10 term the Abbeville County Grand Jury indicted
11 applicant for assault and battery first degree,
12 possession of a weapon during the commission of a
13 violent crime, strong armed robbery, assault and
14 battery second degree, burglary second degree,
15 attempted murder, possession of a weapon during
16 take commission of a violent crime, criminal
17 conspiracy and armed robbery.

18 Applicant was represent by Scarlet L. Moore,
19 Esq. Sr. Assistant Michael Black of the 8th
20 Circuit Solicitor's Office prosecuted the case.

21 On September 23, 2020 applicant appeared
22 before the Honorable Eugene C. Griffith Jr. and
23 pursuant to negotiations between the State and
24 applicant pleaded guilty as indicted to domestic
25 violence second degree, strong armed robbery

1 burglary second degree, attempted murder and
2 attempted armed robbery. As a result of that
3 guilty plea all applicant's remaining charges
4 were dismissed.

5 Judge Griffith sentenced applicant to prison
6 for a term of 20 years for armed robbery and
7 attempted murder, 15 years for strong armed
8 robbery and burglary in the second degree and two
9 years for domestic violence second degree. Those
10 sentences to run concurrent.

11 Applicant did not appeal his conviction or
12 sentence.

13 THE COURT: And Mr. Mitchell, do you happen
14 to know how much time he could have received?

15 MR. MITCHELL: In total Your Honor, I'm not a
16 hundred percent sure. I know assault and battery
17 first degree I believe carries up to twenty.
18 Murder carries up to 30. Armed robbery I believe
19 also carries up to 30 and then all three
20 possession charges are five years each. So he is
21 facing substantially more exposure than what he
22 plead guilty to.

23 THE COURT: Okay. Thank you.

24 All right, Mr. Bailey, the State has read
25 into the record the procedural history and I do

1 want you to understand PCR is not a trial. PCR
2 is asking me to look at your previous plea and
3 determine whether or not your attorney was
4 effective in his counsel to you, but I do want
5 you to understand my hands are somewhat tied as
6 to what I can do. If it I do find that he was
7 ineffective you would be granted a new trial and
8 be go back to the beginning. The State would be
9 able to revisit the charges they dismissed and
10 try you on those as well. I just wants to make
11 sure you understand that is where I stand on
12 this. That's the only thing that I can do in
13 this matter.

14 Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Do you still want to
17 proceed here today?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Thank you.

20 MS. AVERY: Your Honor, the applicant calls
21 Mr. Bailey to the stand.

22 KYRON J. BAILEY, called as a witness, was
23 sworn by the clerk and testified as follows:

24 THE COURT: Mr. Bailey, if you would please
25 make sure you speak into the microphone clearly

1 so the court reporter can hear you. Thank you,
2 sir.

3 DIRECT EXAMINATION

4 BY MS. MCMAHAN:

5 Q. Did you file this PCR application?

6 A. Yes, ma'am.

7 Q. Who was your attorney that was representing you?

8 A. Scarlet Moore.

9 Q. Was she appointed or retained?

10 A. Appointed.

11 Q. And was she your attorney right after you got
12 arrested or shortly thereafter?

13 A. It was a conflict of interest so she was
14 appointed afterwards.

15 Q. Conflict of interest with the public defender's
16 office?

17 A. Yes, ma'am.

18 Q. Because you had some co-defendants, right?

19 A. Co-defendants were represented by the same
20 attorney's office.

21 Q. So they asked Miss Moore to come in and take the
22 case?

23 A. Yes, ma'am.

24 Q. And when did you first meet with her?

25 A. I want to say months after she really was

1 appointed to me.

2 Q. And were you in detention center the whole time?

3 A. Yes, ma'am.

4 Q. And when you first met with her do you remember
5 what you guys talked about?

6 A. I asked could I have a bond.

7 Q. What did she say about that?

8 A. She said she would get me set up for a bond
9 hearing.

10 Q. And you had a bond hearing, right?

11 A. Yes, ma'am, .

12 Q. What happened in that bond hearing?

13 A. I was denied.

14 Q. Did you ever go back up again?

15 A. No, ma'am.

16 Q. And how long were you in the detention center
17 total?

18 A. Eight hundred and twenty-five days.

19 Q. So almost three years?

20 A. Yes, ma'am.

21 Q. Two and three quarters years, somewhere around
22 there?

23 A. Yes, ma'am.

24 Q. And so you didn't have another bond hearing
25 after that one that was denied?

1 A. No, ma'am.

2 Q. And how many times do you think you met with
3 Miss Moore total?

4 A. Three.

5 Q. Did she go over the discover with you, like the
6 State's evidence that they had?

7 A. Yes, ma'am.

8 Q. And when you were talking to her what did you
9 tell her you wanted a trial or you wanted to plead
10 guilty?

11 A. I wanted a trial.

12 Q. So tell us about that? Why did you want a
13 trial?

14 A. Because I feel like the evidence that was
15 against me was not enough to convict me.

16 Q. So you felt that the facts that were there
17 wouldn't be enough to convict you in what?

18 A. There was an a lot of inconsistent statements.

19 Q. Okay, like whose statements were inconsistent?

20 A. Colby Christian and Need. None of them matched
21 up. All of them said different things.

22 Q. And you wanted to be able to ask them about that
23 if they testified?

24 A. Yes, ma'am.

25 Q. Was there any indication that they were going to

1 testify against you if you went to trial?

2 A. Need was the one that had the statement against
3 my at first.

4 Q. Okay, and when you asked Miss Moore about that
5 what did tell you?

6 A. She showed me the video and towards the end,
7 like right before my trial she told me she didn't think
8 I shouldn't take it to trial because Colby was going to
9 testify against me and that he had took a plea deal in
10 return for his statement. His testimony against me.

11 Q. So she said she didn't think it was a good idea
12 for you to go to trial?

13 A. Yes, ma'am.

14 Q. And what did you tell her about that?

15 A. I needed to talk to my mother.

16 Q. Okay, and what was the -- was there a plea offer
17 given to you at that time too?

18 A. At the time I think it was zero to twenty.

19 Q. Were you suppose to be coming up for trial soon
20 at the time that you plead guilty?

21 A. It was the pandemic so it kept being pushed
22 back.

23 Q. So, so you plead over video, right?

24 A. No, ma'am. I went to the courthouse.

25 Q. Your bond hearing was on video?

1 A. The court house.

2 Q. Okay. So when you went into the courthouse did
3 you talk to Miss Moore that day that you plead guilty?

4 A. Yes, ma'am.

5 Q. What did you guys talk about then?

6 A. That the victim was not in agreement with the
7 plea deal, zero to 20 because they didn't want the
8 possibility of me going home. So the solicitor went
9 back on the plea deal and turned into ten to twenty
10 instead of zero to twenty.

11 Q. And so what made you decide instead to plead
12 guilty and not have a trial?

13 A. Because Miss Moore stated that with Colby Young
14 confessing to the crime and putting me there, nine times
15 out of ten I would loose at trial.

16 Q. Okay. Did she talk about the possible sentences
17 that you could get?

18 A. I already did my own research.

19 Q. Okay, so if all those were run consecutively did
20 she tell you that you could end up with basically with
21 life?

22 A. Yes, ma'am she stated first degree burglary by
23 itself carried a life sentence.

24 Q. Were all these charges from one incident or more
25 than one incident?

1 A. More than one incident.

2 Q. So if you hadn't plead that day when did you
3 think your case may have gone to trial, maybe the next
4 year or so?

5 A. Probably so.

6 Q. Were you brought over that day specifically just
7 to plead guilty or talk to Miss Moore or both?

8 A. For a plea negotiation.

9 Q. Is there anything else you want Judge Hyman to
10 know about your PCR?

11 A. No.

12 Q. Answer any questions the attorney general has.

13 CROSS EXAMINATION

14 BY MR. MITCHELL:

15 Q. Good afternoon Mr. Bailey.

16 A. Good afternoon.

17 Q. Do you recall during your guilty plea the judge
18 going over certain rights you would be waiving by
19 entering a guilty plea?

20 A. Yes, sir.

21 Q. And you waived your right to a jury trial, is
22 that correct?

23 A. Yes, sir.

24 Q. And you also waived all your rights to any
25 defenses you may have and confronting any witnesses that

1 may testify against you?

2 A. Yes, sir.

3 Q. And the solicitor actually recited the facts, I
4 believe it was from three different -- all these charges
5 were from three separate incidents?

6 A. Yes, sir.

7 Q. And then when the judge asked you whether you
8 agreed to the facts as true did you admit to the facts?

9 A. Yes, sir.

10 Q. And when asked whether you were satisfied with
11 your attorney did you respond in the affirmative?

12 A. Yes, sir.

13 Q. And do you remember saying you needed no more
14 time with your attorney to discuss this case?

15 A. Yes, sir.

16 MR. MITCHELL: No further questions Your
17 Honor.

18 THE COURT: All right.

19 MS. MITCHELL: I have no further questions.

20 THE COURT: Mr. Bailey you can step down.

21 MS. MCMAHAN: At this time the applicant
22 rests.

23 MR. MITCHELL: Your Honor, the State calls
24 Miss Scarlet Moore.

25 SCARLET BELL MOORE, called as a witness, was

1 sworn by the clerk and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MITCHELL:

4 Q. Good afternoon Miss Moore?

5 A. Good afternoon.

6 Q. How long have you been practicing law?

7 A. In October of 2023 it was 22 years.

8 Q. And a lot of your practice has been in criminal
9 law?

10 A. It has. I went to law school when I was 30
11 years for the purpose of being a criminal defense lawyer
12 and so for the past 22 years I've substantially done
13 criminal defense. So, yes.

14 Q. And how did you come to represent Mr. Bailey in
15 this case?

16 A. Well, as I recall and looking over my notes Mr.
17 Bailey had been incarcerated for approximately 11 months
18 when I was appointed and our circuit defender at the
19 time, Jenny Nelson, approached me about taking the case
20 because there were multiple co-defendants in Abbeville
21 and I think she had ran out of attorneys to represent
22 the defendant. So she asked me if I would be willing to
23 take the case of Mr. Bailey and I said yes.

24 Q. And do you recall how many times you met with
25 Mr. Bailey prior to trial or prior to the guilty plea?

1 A. My notes -- so in total, I have that I met with
2 him five times and then also had two legal phone calls
3 as we approached closer to trial I spent several hours
4 with him on at less two occasions at the Abbeville
5 County Detention Center.

6 Q. And during those meetings did you review
7 discovery with Mr. Bailey?

8 A. We did. We did. So I was appointed in April of
9 2019. I received a letter that was postmarked from Mr.
10 Bailey May 3rd of 2019 where he specifically talks about
11 the Rule five discovery and that he;s been over it and
12 he has a lot of thoughts about it and he definitely
13 wants to speak to me about his thoughts and so it's not
14 unusual for -- when I basically inherent cases --
15 especially an 11th month mark -- that my clients had
16 already reviewed the discovery either because it has
17 been given to them or some times in the jail they'll
18 shall discovery. I don't remember which one it was with
19 Mr. Bailey, but I know he did mention that to me.

20 We also had a June 7, 2019 legal phone call with
21 Mr. Bailey where he again reiterated that he had
22 reviewed the discovery. He wanted to meet with him and
23 discuss the discovery and so I did visit with him in
24 August of 2019. He again gave me his thoughts about the
25 discovery that he had reviewed. At this time I had not

1 provided any discovery to him, but subsequently I did.
2 He appeared -- my notation is that we appeared for two
3 bond hearings. Appeared September of 2019, which was
4 denied and then the judge gave us leave in six months to
5 request bond which we did in April of 2020. And at this
6 time I did go to the Greenwood County Detention Center
7 in April of 2020 to meet with him. So we were together
8 and he told me that he -- something to the effect that
9 he had not reviewed the discovery and so that was
10 surprising to me given the letter that he wrote me, the
11 communication that we had, especially in my meeting with
12 him, so I spent about 45 minutes to an hour going --
13 because I had my file with me -- going through what I
14 had to shown him and he seemed to indicate he had
15 already seen it. So subsequently we were noticed for
16 trial the week of September 28, 2020. Roughly about a
17 month prior to that I did go to the Abbeville County
18 Detention center. I reviewed all of the electronic
19 discovery that I had.

20 We watched all the interviews of his
21 co-defendants. We looked through the phone dump. We
22 looked at all of the -- the incident reports. Spent a
23 lot of time together. Also, I ordered a copy of all
24 three defendants allocutions. I received Coby Young's
25 allocution which I also went over with Mr. Bailey and

1 told him about Mr. Young basically implicating him in
2 the allocution. So I'm very satisfied that not only did
3 Mr. Bailey indicate to me that he had seen the
4 discovery, but I also thoroughly went over all the
5 discovery with him at least on three occasions.

6 Q. And based on the discovery did you say the case
7 against Mr. Bailey was strong?

8 A. I would say -- I would say it's strong any time
9 you have a co-defendant allocution. And he was -- it's
10 my understanding is Mr. Coby Young -- and Mr. Bailey
11 testified about him -- his sentencing was actually
12 deferred and so he had an incentive not only did
13 allocute on the record and give specifics about what had
14 happened, but he also had his sentencing deferred. So
15 the thing is you just simply never know what a jury is
16 going to do and as you can see Mr. Bailey was facing a
17 lot of very serious charges. If we had gone to trial
18 there was no deal on the table and so certainly when you
19 got co-defendants testifying against you and we watched
20 all the interviews of all the co-defendants and multiple
21 co-defendants named Mr. Bailey and obviously the most
22 serious event involving the shooting of the victim.

23 Q. Did you feel it was in Mr. Bailey's best
24 interest to accept this plea offer?

25 A. I absolutely did. You know at the time I know

1 that he had previously been convicted very shortly
2 before these current charges and I believe he was still
3 on probation. That's my recollection. I know he had
4 plead guilty to events kind of similar to the case where
5 I was appointed for Mr. Bailey and so we had to deal
6 with that and so that was very serious. And given the
7 fact of what he could have been facing a negotiated
8 range of ten to twenty I did believe it was in his best
9 interest. But make no mistake, you know, public
10 defenders come in all different personalities and
11 philosophies and that type of thing. I do not pressure
12 my clients to do anything at all. I never have and I
13 never will. If Mr. Bailey had wanted a trial that is
14 precisely what we would have done, but certainly given
15 what he was facing and especially when you got multiple
16 sets of charges and a probation violation I did believe
17 that was in his best interest and we did have an
18 opportunity to argue for less than 20 in front of judge
19 Griffith.

20 Q. So you never pressured him into taking a guilty
21 plea?

22 A. Absolutely never.

23 Q. And before the guilty plea hearing did you
24 explain to him the consequences of all of his charges
25 and how much time he could have many possibly faced?

1 A. I did. I had him initial an advisement of
2 rights form, and so that certainly is always an
3 opportunity for me to actually sit down with my clients
4 and so it's right here. He initialed, you know, all of
5 the rights that he had. The fact that he still wanted
6 to go forward. It even covers issues like appeal. It
7 covers PCR's. You know, I put the penalty for the
8 charges, the negotiated 10 to 20 to be determined by the
9 judge. We did -- I did list out the charges that he
10 would be pleading to. We did talk about the elements of
11 the crime. I believe I gave him every opportunity to
12 answer all the questions -- it gave me the opportunity
13 to answer any of his questions that he might have had
14 about the process. And so also I knew he had already
15 been through the process in previously taking a plea and
16 being on probation.

17 Q. So, accepting a plea offer was his own choose?

18 A. Absolutely, it's his choose.

19 Q. And reviewed all the discovery with him before
20 trial?

21 A. Absolutely. I'm very satisfied. We looked at
22 all the pictures on the phone dump. We looked at all
23 incident reports. He watched all videos of the
24 co-defendants and their interviews. So, I'm very
25 satisfied. And again, not only that, he also wrote me

1 and told me he had looked at it. So I'm very satisfied
2 that he thoroughly knew what the evidence was.

3 MR. MITCHELL: Miss Moore, I have no further
4 questions for you. Thank you.

5 MS. MOORE: Thank you.

6 THE COURT: Ms. McMahan.

7 CROSS EXAMINATION

8 BY MS. MCMAHAN:

9 Q. The letters that he wrote you, do you still have
10 those?

11 A. I have one of them, yes.

12 Q. What was he -- was it just indicating that he
13 had thoughts on the discovery or was he actually giving
14 you his actual thoughts about the discovery in the
15 letter?

16 A. Okay. So I can read from them?

17 Q. Sure.

18 A. Okay. He told me that he had been incarcerated
19 for almost 11 months without a bond which was a concern
20 for me and he said and I've also have not received a
21 preliminary hearing yet. I have also reviewed my Rule
22 five several times and have made notes at multiple
23 points of interest. And then he proceeds to go through
24 those points of interest.

25 Q. Okay. What were --

1 A. Would you like me to read it?

2 Q. Sure.

3 A. The first point of interest is that the victim
4 handpicked two suspects off of police lineups. I also
5 noted after thoroughly reading the supplemental incident
6 report within my Rule five, the date that my warrant was
7 signed off on by by the judge is completely missing.
8 My second note is that there are eight suspects
9 mentioned in my Rule five. Two were identified by the
10 victim and I conferred over the jail phone -- confirmed
11 -- confessed -- and I confessed over the jail phone so
12 that leaves me with four other suspects, but yet it
13 doesn't state where the police received probable cause
14 to arrest me and the other three suspects were never
15 questioned or arrested. I was never questioned. I
16 never wrote any statements or talked to any
17 investigators. There's no physical evidence against
18 me. Only two written statements against me. One
19 statement is from a co-defendant which is fabricated.
20 It does not even match the evidence collected and the
21 other statement is from a person who is locked up for --
22 for something felonies and was in population with my
23 co-defendant at the time and correctly still is.

24 Q. So when you met with him did you kind of talk
25 about those issues in that letter?

1 A. Yes.

2 Q. Did you go over with him what probable cause the
3 standard was?

4 A. Yes.

5 Q. And did you discuss with him whether or not
6 about the preliminary hearing and what it does?

7 A. I don't recall that. I do not recall that, but
8 I will say that the issue of preliminary hearing, you
9 know, is certainly whether or not there's probable cause
10 and I didn't have any question that there was probable
11 cause and he also was in indicted.

12 Q. Was he already indicted by the time you got the
13 case?

14 A. I don't recall. I don't recall.

15 Q. But he was obviously in indicted at some point?

16 A. Yes, he was.

17 Q. What were the plea negotiations between you and
18 Mr. Black?

19 A. So, I knew that -- I do think Mr. Bailey -- he
20 may recall this more than I do. I knew that we were
21 talking about some type of cap of twenty and that very
22 well may be correct that the victim wanted at least ten.
23 I just don't have any recollection of any of that, but I
24 do know that Mr. Black was okay -- or the victim was
25 okay with a cap of twenty. And so, I don't know if that

1 answers your question. But it certainly was not a
2 situation where I met Mr. Black at the court that day.
3 I just don't have any notes with me. But typically we
4 -- he'll give me an offer. We'll discuss it and I feel
5 like I had plenty of time to discuss the offer with Mr.
6 Bailey.

7 Q. So this was an offer that had been given prior
8 to you getting to trial notice?

9 A. It was given probably concurrently and I do have
10 those notes. I went -- let's see. So I know he was
11 noticed for trial for the September 28th term of court
12 and so it looks like he would have plead like maybe the
13 week before that. Prior to the week of trial. And so,
14 I know that I spoke to Mr. Bailey on September 9th and
15 also spoke to him on September 11th and also spoke to
16 him on September 14th. So again, I just can not
17 specifically remember when Solicitor Black contacted me,
18 but it certainly was not the day that he plead. I know
19 that for a fact.

20 Q. And so you said it was probably going to go to
21 trial the following week?

22 A. That was the very first trial setting was
23 September 28, 2020 and like he said we had Covid issues.
24 That was about the time that they started you know
25 letting us go back into court. It was the first trial

1 setting and certainly I read your amendment. If Mr.
2 Bailey in any way wanted to go to trial or he felt we
3 needed additional time, if he felt we needed additional
4 witnesses, if there was something else then I certainly
5 could have requested a continuance. I have a good
6 working relationship with Solicitor Black as well as the
7 judges and so I don't have any other evidence other than
8 this is the very first trial setting.

9 Q. So I was just trying to remember back in around
10 September, October 2020 is when we were kind of going
11 back to court, but we were having trials where the
12 jurors were sitting very far apart and conducting in
13 sort of a bizarre manner I guess for lawyers?

14 A. That's right.

15 Q. And that would have kind of been around that
16 time, right?

17 A. Right. We actually went to the Abbeville
18 Courtroom. He actually plead in court. One of the bond
19 hearings I did was in person and then the second bond
20 hearing, six months later -- roughly six months later
21 was in fact at the Greenwood County Detention Center
22 remotely at that point. So that would have been when
23 Covid.

24 Q. If he had -- if you were in a trial posture
25 would you have been prepared to go trial if necessary?

1 A. I would have been prepared to go to trial.

2 Q. And what would have been your defense had you
3 gone to trial?

4 A. I think the defense would be -- I do think Mr.
5 Bailey makes good points, the credibility of the
6 witnesses. That would have been our defense. I also
7 seem to recall -- but I didn't have a lot of notes about
8 it -- that Mr. Bailey had given me information about an
9 alibi witness that I had spoken to, but of course that
10 was counterbalanced by the co-defendants naming Mr.
11 Bailey.

12 Q. So it was the strongest evidence against him
13 those co-defendants?

14 A. The co-defendants statements, yes. At least in
15 that one case, on the home invasion case in Due West.

16 Q. And that was the one where one of them had come
17 to court and given a statement on the record.

18 A. That was Coby Young. I did get a copy of that
19 allocution and I did have in my notes that I did call
20 him and -- let's see -- my notes says I did call Mr.
21 Bailey. I called him. That was after I went to see him
22 twice and then I called him -- excuse me, I went to see
23 him three times and then I called him September 16th to
24 discuss the information that I had received from the
25 recently obtained transcripts of the guilty pleas of his

1 co-defendants. So we discussed the transcripts.

2 Q. And at the time that this guilty plea happened
3 do you recall how many trials you had been involved in
4 at that point?

5 A. So I had two criminal jury trials as a
6 practitioner. One was a guilty in March 2012 and the
7 second was a not guilty in March of 2018.

8 Q. A you said you have an advice of rights form
9 that you went through?

10 A. I do, yes.

11 Q. And it talks about appeals. Does it talk about
12 appeals from guilty pleas?

13 A. Let's me refresh my recollection. It does.
14 It's bullet point five. Mr. Bailey, he initialed yes to
15 all the questions that he understood he had the ability
16 to appeal the guilty plea within ten days. He initialed
17 yes, and then it says do you further understand that in
18 order to appeal a guilty plea pursuant to South Carolina
19 Appellant Rule 203 (D)(1)(B)(iv) a detailed written
20 explanation of the issues sought to be appealed and the
21 factual basis for such appeal must also be filed in
22 addition to how that issue was raised and ruled upon by
23 the general sessions court. He indicated -- he
24 initialed yes and then additionally, do you understand
25 that if the required written showing for the appeal is

1 found to be insufficient the Notice of Appeal is likely
2 to be dismissed and he did initial yes.

3 Q. And at any point did he ask you to file an
4 appeal from his guilty plea?

5 A. No. No.

6 Q. So regarding the discovery -- and I just want to
7 clarify. I think you probably already said all this,
8 but you gotten some letters from him that he had gone
9 over the discovery. Had some thoughts about it, but
10 then you met with him again and he said he didn't have
11 the discovery?

12 A. Yes, and so, the sequence of events is that I
13 received the letter from him on May 3, 2019. Then I had
14 a legal phone call with him on June 7th of 2019. In
15 August of 2019 I personally visited with him at the
16 Abbeville County Detention Center. So in the letter of
17 May 3rd and the legal phone call of June 7th and then
18 the in-person meeting in August of 2019 he did discuss
19 his thoughts about the discovery. The first bond
20 hearing was September 11, 2019 and then we had six
21 months. He denied and the judge said you can renew in
22 six months. The second bond was in April of 2020. At
23 that point he asked me about his motion for discovery.
24 I told him he already had that material. He said he did
25 not have it. So at that point I spent approximately 45

1 minutes going over all the discoveries I had in my
2 electronic files and he indicated multiple times he had
3 seen most of the materials that I had shown to him.

4 Q. And then later on you said you went in person
5 and showed all of the electronic stuff?

6 A. Right. I received discovery electronically and
7 so that would have included any incident it reports,
8 essentially any paper reports as well. But then in
9 September I met with him. Again, my notes say three
10 times at the Abbeville Detention Center and that's when
11 we watched all the videos. We watched all this -- his
12 co-defendants were interrogated. So we watched those
13 videos. We looked at his phone dump.

14 Does that answer your question?

15 Q. Yes, ma'am. And you said at one point he was in
16 the Greenwood Detention Center too?

17 A. He was. He was actually moved back. He was
18 actually moved there from Abbeville. I think it was for
19 his protection as I recall. There was an administrative
20 reason why he was moved to Greenwood.

21 Q. Did he end up in Greenwood at the end or did he
22 end up going back to Abbeville?

23 A. As I recall he was in Abbeville because he would
24 have plead in September and that's when I met with him
25 at the Abbeville Detention Center.

1 Q. But he was in Greenwood for some period of time?

2 A. He was.

3 Q. One moment please. Do you recall if Mr. Bailey
4 ever filed anything with O.D.C. against you?

5 A. He did.

6 Q. Do you recall what the outcome of that was?

7 A. Yes. It was dismissed. It was unfounded. In
8 fact, when I received the report I scheduled a legal
9 phone call with him to discuss his case and whether or
10 not he wanted me to continue to represent him and he
11 indicated that he did want me to represent him.

12 Q. So he filed this complaint while you were
13 representing him on these current charges?

14 A. Correct.

15 Q. And was there ever a hearing on that or
16 anything?

17 A. No, there was no hearing and it was dismissed.

18 Q. Do you recall when in the time that you
19 represented him that that complaint went forward?

20 A. It was some time in 2020. It was September 9,
21 2020.

22 Q. So shortly before his guilty plea?

23 A. Right. And I asked him if he wanted me to
24 continue to represent him and he told me that he did
25 want me to represent him and it was dismissed.

1 Q. Do you recall what he said his issues were with
2 you?

3 A. I didn't bring a copy of the complaint. I don't
4 recall.

5 Q. And was there any conversation about how like if
6 you were ended up being relieved or substituted as
7 counsel how much longer his case would have taken?

8 A. I don't recall.

9 MS. AVERY: I have nothing further.

10 THE COURT: All right.

11 MR. MITCHELL: Just briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. MITCHELL:

14 Q. Did he ever filed a motion to relieve you as
15 counsel?

16 A. No.

17 Q. And just to reiterate. He voluntarily choose to
18 continue having you represent him?

19 A. He did.

20 MR. MITCHELL: No further questions.

21 THE COURT: Thank you. You may step down.

22 Mr. Mitchell you may call your next witness.

23 MR. MITCHELL: The State rests, Your Honor.

24 THE COURT: Ms. McMahan, closing arguments.

25 MS. MCMAHAN: Your Honor, I just ask that you

1 review the record as a whole before make being a
2 decision.

3 MR. MITCHELL: Your Honor, the testimony here
4 today shows Mr. Bailey was clearly informed of
5 the consequences of his plea. He reviewed
6 discovery multiple times with Miss Moore. His
7 own testimony of his plea hearing corroborates
8 all of that.

9 I would just submit he has not met his burden
10 entitling him for post conviction relief.

11 THE COURT: Do you have a transcript of his
12 plea.

13 MR. MITCHELL: Yes. What I am going to do is
14 take a little bit of time to read the transcript
15 and I will take it under advisement and let you
16 guys know probably by this afternoon. All right.
17 Thank you.

18 MR. MITCHELL: Thank you, Your Honor.

19 (END OF TRANSCRIPT)
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH 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 in the captioned case, in the Circuit Court for Abbeville County, South Carolina, on the 28th day of November, 2023.

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

June 27 2024

Aileen Butler

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Kyron J. Bailey, SCDC #365251,	)	Case No. 2021-CP-01-00238
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Kyron J. Bailey ("Applicant") on October 18, 2021. On November 28, 2023, a hearing into the matter was convened before the Honorable B. Alex Hyman at the Newberry County Courthouse. Applicant was present and represented by Ashley A. McMahan, Esquire. Assistant Attorney General T. Cruise Mitchell represented the State. At the evidentiary hearing, testimony was taken from Applicant and Scarlet B. Moore, Esquire ("Counsel").

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections. During its April 2018 term, the Abbeville County Grand Jury indicted Applicant for domestic violence, second degree (2018-GS-01-00103). Additionally, during its September 2018 term, the Abbeville County Grand Jury indicted Applicant for assault and battery, first degree (2018-GS-01-00609);

TRUE COPY
 BY *[Signature]*
 ABBEVILLE COUNTY CLERK OF COURT

possession of a weapon during the commission of a violent crime (2018-GS-01-00610); strong armed robbery (2018-GS-01-00611); assault and battery, second degree (2018-GS-01-00612); burglary, second degree (2018-GS-01-00639); attempted murder (2018-GS-01-00640); possession of a weapon during the commission of a violent crime (2018-GS-01-00641); criminal conspiracy (2018-GS-01-00642); and armed robbery (2018-GS-01-00643). Applicant was represented by Scarlet B. Moore, esquire. Senior Assistance Solicitor Micah Black of the Eighth Circuit Solicitor's Office prosecuted the case.

On September 23, 2020, Applicant appeared before the Honorable Eugene C. Griffith, Jr., and, pursuant to negotiations between the State and Applicant, pleaded guilty as indicted to domestic violence, second degree; strong armed robbery; burglary, second degree; attempted murder; and attempted armed robbery. As a result of Applicant's plea, all of Applicant's remaining charges were dismissed. Judge Griffith sentenced Applicant to imprisonment for a term of twenty years for armed robbery and attempted murder; fifteen years for strong armed robbery and burglary, second degree; and two years for domestic violence, second degree; with those sentences to be served concurrently. Applicant did not appeal his conviction or sentence.

STATEMENT OF FACTS

Domestic Violence, Second Degree (2018-GS-01-103)

On November 13, 2017, at approximately 5:00am, Kwashante Spencer contacted law enforcement to report a fight between herself and her boyfriend, Applicant. Tr. p. 10-11. Applicant was upset with Ms. Spencer due to another individual messaging Ms. Spencer on Facebook. Tr. p. 11. The altercation became physical and Applicant choked Ms. Spencer in the presence of a child. Tr. p. 11. Applicant was subsequently arrested.

Armed Robbery and Associated Charges (2018-GS-01-609, -610, 0611, -612)

On January 26, 2018, Katori Evans drove his moped back to his house on [REDACTED] Meadow Drive in Abbeville, South Carolina. Tr. p. 11. As Mr. Evans walked to the back of his house, he was approached by two individuals, one being Applicant. Tr. p. 11. Applicant, and the other individual spoke with Mr. Evans for a period of time and asked him if he wanted to go hang out with them. Mr. Evans stated "Look, I can't do that. I got to work in the morning. We've got to be at work at 7:00." Tr. p. 11. At that point, Applicant and the other individual surrounded Mr. Evans, the unidentified individual had a gun and pointed it at Mr. Evans, while Applicant went through Mr. Evans' pockets. Tr. p. 11-12. When Mr. Evans attempted to stop Applicant, Mr. Evans was struck over the head with the gun. Tr. p. 12.

Attempted Murder and Associated Charges (2018-GS-01-639, -640, -641, -642, -643)

On May 14, 2018, at approximately 11:00am, the victims Angela Donald, and her daughter Khalia Baker were sitting inside their house at [REDACTED] Johnson Street when Applicant and two other individuals entered their house, with the intent to steal a gun owned by Ms. Baker. Tr. p. 13. Applicant and one individual had on masks, the other individual did not. Tr. p. 13. Applicant, while wielding a gun, went to Ms. Baker's room, where Ms. Baker was sitting and talking on the phone. Tr. p. 13. Applicant looked for the gun in Ms. Baker's room and then proceeded to the other side of the house where Ms. Donald was located. Tr. p. 14. Ms. Donald attempted to fight Applicant's unarmed accomplices, however once Applicant entered he pointed his handgun at Ms. Donald while the two other individuals secured Ms. Donald's gun. Tr. p. 14. As the two accomplices left the house, they heard six gunshots. Tr. p. 14. Once Applicant ran away, Ms. Donald called 911 and informed them she had been shot multiple times. Tr. p. 14-15. Police showed Ms. Donald a photo lineup which contained one of Applicant's accomplices, Kobi Young, to which Ms. Donald

stated “Oh, my god. That’s him. That’s him. He was there.” Tr. p. 15-16. Based on this information, Abbeville Police interviewed Kobi Young, who initially denied having any involvement in the robbery. Tr. p. 16. Eventually, Mr. Young informed police that he was involved in the robbery and identified Applicant as the individual who show Ms. Donald. Tr. p. 16-17. Applicant was ultimately arrested in June 2018. Tr. p. 17.

CURRENT APPLICATION

Applicant timely commenced this PCR application on November 16, 2020. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective Assistance of Counsel
 - a. Refused to file direct appeal
 - b. Failed to provide Rule 5 discovery materials
 - c. Failed to stay in contact for months

On November 17, 2023, Applicant amended his application to include the following allegations:

1. Ineffective assistance of counsel of Scarlet B. Moore, Esquire
 - a. Failure to adequately engage in plea negotiations with the Solicitor and relay any offers to the Applicant in an appropriate time and manner.
 - b. Failure to adequately prepare the case for trial, thus forcing the Applicant to take a plea deal instead of going to trial like the Applicant had requested since the beginning of her representation.
 - c. Failure to provide the Applicant with a copy of the discovery in his case until after he pleaded guilty.
 - i. Counsel did not explain the charges and possible sentences adequately to the Applicant.

At the hearing, Applicant proceeded only on these claims. Before this Court are the records of the Abbeville County Clerk of Court regarding the underlying convictions, the plea transcript, Applicant’s records from the South Carolina Department of Corrections, and the records of this post-conviction relief action.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application

by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. Where , the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696–97.

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusive, unless an applicant presents

valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised in the application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Failure to Adequately Consult and Review Discovery with Applicant and Failure to Prepare the Case for Trial¹

Applicant contends Counsel was ineffective for failing to provide Applicant with Rule 5 discovery and failing to stay in contact with him. Applicant further contends Counsel failed to adequately prepare this case for trial. This Court disagrees; and finds Counsel was not ineffective in her consultations with Applicant nor her preparation for trial. This Court finds credible and persuasive the testimony of Counsel, who presented well-recalled testimony of her meetings and discussions with Applicant.

1. PCR Testimony

¹ Allegations 1(b) and (c) of his pro se application and allegations 1(b) and 1(c) of his amended application will be addressed in this section.

Applicant testified Counsel Scarlet Moore was appointed to represent him. Applicant testified Counsel met with for the first time a month after she was appointed. During that first meeting, Applicant explained they discussed setting up a bond hearing. Applicant testified Counsel met with him three times in total. Applicant testified Counsel reviewed discovery with him. Applicant avers he wants a trial because the evidence was insufficient to convict him. Applicant explained he took a plea deal, because Counsel informed him his co-defendant was going to testify against him at trial.

Counsel testified she was appointed due to conflicts between Applicant and the circuit public defender's office. Counsel testified she met with Applicant in person five times and multiple times over the phone. Counsel testified she spent hours reviewing discovery and the Rule 5 materials with Applicant at the detention center. Counsel noted she had a phone call with Applicant where they discussed Applicant's thoughts regarding the discovery. Thereafter, Counsel explained she gave Applicant another copy of the discovery. Counsel testified she thoroughly reviewed discovery with Applicant, including all electronic evidence and co-defendant's statements. Counsel testified the State's evidence against Applicant was strong and she believed a plea was in his best interest. However, Counsel explained she never pressures her clients into pleading guilty; if Applicant wanted a trial, they would have gone to trial. Counsel testified she would have requested a continuance if she felt she needed additional time to prepare for trial. Counsel testified it was Applicant's own decision to plead guilty and he signed an advisement of rights form acknowledging as much.

On cross examination, Counsel reiterated she reviewed discovery with Applicant. Counsel explained the strategy at trial would have been to argue against co-defendant's credibility and possibly present testimony of an alibi witness. Counsel testified Applicant filed a complaint against

her with the Office of Disciplinary Counsel. Following this, Counsel asked Applicant if he still wanted her to represent him and he said yes. Counsel explained the complaint was dismissed without a hearing. Counsel testified Applicant never moved to relieve her.

2. Discussion

This Court finds Counsel was not ineffective in consulting or reviewing discovery with Applicant. At the time of his plea, Applicant asserted that he had enough time to speak with Counsel, that Counsel discussed all aspects of the plea with him, and that he was satisfied with the advice he received from Counsel. Tr. pp. 22–23.

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014)). Admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements. *Id.* at 137–38, 654 S.E.2d at 874; see also *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

Applicant suggests a failure to adequately meet with him prior to the plea. Additionally, Applicant contends Counsel failed to review discovery and adequately prepare for trial. This Court finds Counsel’s credible testimony, and the record of Applicant’s guilty plea, refutes these allegations. There is no established “minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.” *United*

States v. Olson, 846 F.2d 1103, 1108 (7th Cir.1988) (there is no constitutional minimum number of meetings between attorney and client and observes that an experienced attorney may get more out of a single meeting than a neophyte); *Moody v. Polk*, 408 F.3d 141, 148 (4th Cir. 2005); *Campbell v. Polk*, 447 F.3d 270, 279, n.2 (4th Cir. 2006) (“we cannot conclude that the fact that Campbell's counsel only met with him five times before trial made them ineffective.”). “[B]revity of consultation time between a defendant and his counsel, alone, ‘cannot support a claim of ineffective assistance of counsel.’” *Davis v. State*, 44 So. 3d 1118, 1130 (Ala. Crim. App. 2009) (quoting *Murray v. Maggio*, 736 F.2d 279, 282 (5th Cir. 1984)); *White v. Godinez*, 301 F.3d 796, 800 (7th Cir. 2002) (“A brief consultation does not by itself establish that counsel's performance was inadequate.”); *Chavez v. Pulley*, 623 F. Supp. 672, 685 (E.D. Cal. 1985) (“brevity of consultation time between a defendant and his counsel alone cannot support a claim of ineffective assistance of counsel,” especially where the defendant “fails to allege what purpose further consultation with his attorney would have served and fails to demonstrate how further consultation with his attorney would have produced a different result”). Counsel testified she met with Applicant five times in person and several times over the phone. Counsel was clear she thoroughly reviewed all discovery and the Rule 5 materials with Applicant. Applicant even admitted the same at the evidentiary hearing. Thus, this Court finds Counsel was not deficient in consulting or reviewing discovery with Applicant prior to his plea.

Applicant further fails to specify what Counsel did not disclose to him from materials provided in discovery, or what, if anything, could have been achieved had Counsel spent more time with him in consultation regarding the contents of his discovery. *See Smith v. State*, 404 S.C. 493, 500–01, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different

outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief). Thus, Applicant has failed to meet his burden establishing prejudice as to this allegation.

Applicant alleges Counsel failed to prepare the case for trial, thus forcing Applicant to take a plea deal instead of going to trial like the Applicant had requested since the beginning of her representation. Applicant presented no testimony at the evidentiary hearing supporting this allegation. This Court finds Counsel's credible testimony demonstrates her adequate preparedness for trial. Counsel was clear that Applicant's decision to plead guilty was his alone and had Applicant insisted on going to trial then she would have been prepared to go to trial. As mentioned above, Applicant's own admissions at the guilty plea hearing further refute this allegation.

Moreover, Applicant has failed to present evidence or testimony as to how further preparation would have resulted in Applicant proceeding to trial. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Id.* (citing *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Thus, Applicant has failed to prove he suffered prejudice as to this allegation.

Applicant also alleges Counsel did not explain the charges and possible sentences to

Applicant. However, Applicant has failed to present any testimony or evidence supporting this allegation. Thus, he has failed to meet his burden establishing ineffective assistance of counsel as to this allegation. Nevertheless, the record from Applicant's guilty plea refutes this allegation. The plea court engaged in a thorough colloquy with Applicant regarding the charges and negotiated sentencing ranges and Applicant affirmed he understood. Tr. pp. 19–23.

Accordingly, Applicant's claims that Counsel failed to adequately consult and review discovery and failed to prepare for trial are **DENIED**.

Failure to Engage in Plea Negotiations

Applicant alleges Counsel failed to adequately engage in plea negotiations and relay any offers to Applicant in an appropriate time or manner. This Court disagrees and finds Counsel was not ineffective in this regard.

1. PCR Testimony

Applicant presented no testimony as to this allegation. Counsel testified she engaged in plea negotiations with the Solicitor and was able to negotiate a plea offer of a 10–20 year sentencing range.

2. Discussion

This Court finds Counsel adequately engaged in plea negotiations with the Solicitor. Applicant pleaded guilty pursuant to a negotiated sentencing range of 10 – 20 years. On his original indictments, Applicant's potential sentence was *significantly* greater than the 20-year active sentence he ultimately received after pleading guilty. This plea agreement clearly would not have been possible without Counsel's active and competent engagement in plea negotiations with the Solicitor. Therefore, this Court finds Counsel was not deficient in her negotiations with the Solicitor.

Additionally, Applicant has failed to present any evidence or testimony that Counsel failed to communicate a more favorable plea offer to him, or that a more favorable plea offer would have been made had Counsel more adequately engaged in the negotiations. Thus, he has failed to prove prejudice as to this allegation.

Accordingly, this allegation is **DENIED**.

Counsel Refused to File a Direct Appeal

Applicant contends Counsel was ineffective for refusing to file a direct appeal. This Court disagrees, and finds Applicant has not met his burden entitling him to a belated direct appeal. This Court finds credible and persuasive the testimony of Counsel, who presented well-recalled testimony of her meetings and discussions with Applicant.

1. PCR Testimony

Applicant presented no testimony as to this allegation. Counsel testified Applicant signed an advisement of rights form which discussed his right to an appeal. Counsel testified Applicant never asked her to file a direct appeal.

2. Discussion

Counsel has a constitutionally imposed duty to consult with a defendant about an appeal only when there is reason to think (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470, 471 (2000). These elements are much harder to establish when a conviction follows a guilty plea, because a plea both reduces the scope of appealable issues and indicates that the defendant sought an end to judicial proceedings. *Id.* In addition, to prove prejudice, an applicant must demonstrate a reasonable probability that he would have timely appealed but for counsel's deficiency. *Id.* Evidence that there were nonfrivolous grounds for

appeal or that the defendant promptly expressed a desire to appeal is highly relevant to this determination. *Id.* at 472.

Here, this Court finds Counsel had no duty under *Roe* to file a direct appeal on Applicant's behalf. Although Applicant was facing multiple charges for serious crimes, Counsel was able to negotiate a very favorable plea deal for a sentencing range of 10 to 20 years. Applicant was facing substantially more time on his original charges. This Court finds no rational defendant would want to appeal such a favorable outcome. Furthermore, Applicant has presented no evidence or testimony there were any nonfrivolous grounds for appeal or that he express to Counsel any desire to appeal.

Accordingly, this allegation is **DENIED**.

[SIGNATURE PAGE FOLLOWS]

CONCLUSION

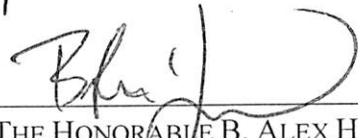
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. This Court finds Applicant freely, knowingly, and voluntarily pleaded guilty. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 21 day of May, 2024.


 THE HONORABLE B. ALEX HYMAN
 Presiding Judge
 Eighth Judicial Circuit

Conway, South Carolina

TRUE COPY
 BY Juanita Agnew
 ABBEVILLE COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 Filed 5/29 A.D. 2024
 at 5:30 o'clock A.M.
Shandai Boggs
 Clerk of Court

WITNESSES

Aaron Crowe
Abbeville Police Department

WARRANT NUMBER

2017A0120100141

M. L. Crowe

Foreman of the Grand Jury

Date: 4-2-2018

TRUE BILL

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

April Term, 2018
Indictment # 18GS01-0103

THE STATE

vs.

KYRON JAMES LAMAR BAILEY

INDICTMENT FOR

DOMESTIC VIOLENCE, 2ND DEGREE
SC Code: § 16-25-0020(C)

CDR: 3812

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

TRUE COPY
BY *Vanessa Clark*
ABBEVILLE COUNTY CLERK OF COURT

THE STATE OF SOUTH CAROLINA

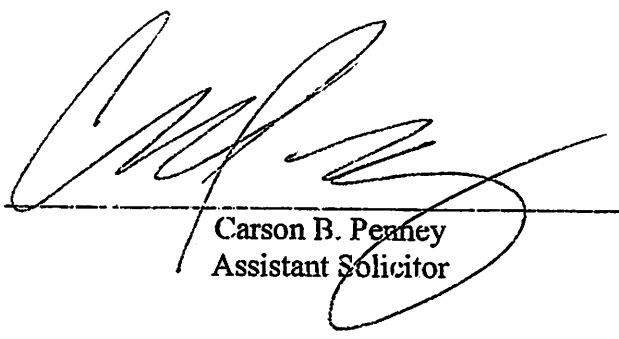
COUNTY OF ABBEVILLE

INDICTMENT FOR**DOMESTIC VIOLENCE, 2ND DEGREE
§16-25-0020(C)**

At a Court of General Sessions, convened on the 2nd day of April, 2018, the Grand Jurors of Abbeville County present upon their oath:

The defendant, Kyrn James Lamar Bailey, on or about November 13, 2017, in Abbeville County, South Carolina, did cause physical harm or injury to Kwasis Lashante Spencer, a household member, or did offer or attempt to cause physical harm or injury to said household member with apparent present ability under circumstances reasonably creating fear of imminent peril. In addition, the defendant has one prior conviction for domestic violence within ten years of the current offense and/or while committing this offense, the defendant impeded the victim's breathing or air flow, all in violation of Section 16-25-0020(C), Code of Laws of South Carolina (1976, as amended).

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


Carson B. Penney
Assistant Solicitor

WITNESSES

Nicholas Oliver Moore
Abbeville Police Department

WARRANT NUMBER

2018A0120100011

TRUE BILL

N. W. Moore

Foreman of the Grand Jury

Date: 9-28-18

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

September Term, 2018
Indictment # 18GS01-0609

THE STATE

vs.

KYRON JAMES LAMAR BAILEY

INDICTMENT FOR

ASSAULT & BATTERY, 1ST DEGREE

SC Code: § 16-03-0600(C)(1)

CDR: 3412

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

M. H. H.

*no pro
plead to other
charges 9-23-2018*

TRUE COPY
BY *V. Clark*
ABBEVILLE COUNTY CLERK OF COURT

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

INDICTMENT FOR**ASSAULT & BATTERY, 1ST DEGREE
§16-03-0600(C)(1)**

At a Court of General Sessions, convened on the 28th day of September, 2018, the Grand Jurors of Abbeville County present upon their oath:

The defendant, Kyron James Lamar Bailey, did on or about January 27, 2018, in Abbeville County, South Carolina, commit the crime of assault and battery in the first degree against the victim, Keytorio Evans, in that the defendant injured the victim and the act occurred during the commission of a robbery, burglary, kidnapping, or theft. All in violation of 16-03-0600(C)(1), Code of Laws of South Carolina, (1976, as amended).

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



Micah E. Black
Assistant Solicitor

WITNESSES

Nicholas Oliver Moore
Abbeville Police Department

WARRANT NUMBER

2018A0120100012

TRUE BILL

OB V. OB

Foreman of the Grand Jury

Date: 9-28-18

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

September Term, 2018
Indictment # 18GS01-0610

THE STATE

vs.

KYRON JAMES LAMAR BAILEY

INDICTMENT FOR

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

SC Code: § 16-23-0490

CDR: 0549

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

M. Blk

*no pro
plead to other
charges*

9-23-2020

TRUE COPY
BY Vanessa Clark
ABBEVILLE COUNTY CLERK OF COURT

THE STATE OF SOUTH CAROLINA

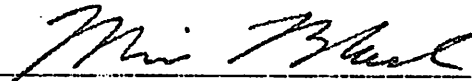
COUNTY OF ABBEVILLE

INDICTMENT FOR**POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME
§16-23-0490**

At a Court of General Sessions, convened on the 28th day of September, 2018, the Grand Jurors of Abbeville County present upon their oath:

The defendant, Kyron James Lamar Bailey, did on or about January 27, 2018, in Abbeville County, South Carolina, while committing the violent crime of Armed Robbery, possess a firearm. All in violation of 16-23-0490, South Carolina Code of Laws (1976, as amended).

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



Micah E. Black
Assistant Solicitor

WITNESSES

Nicholas Oliver Moore
Abbeville Police Department

WARRANT NUMBER

2018A0120100013

TRUE BILL

N. W. Moore

Foreman of the Grand Jury

Date: 9-28-18

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

September Term, 2018
Indictment # 18GS01-0611

THE STATE

vs.

KYRON JAMES LAMAR BAILEY

INDICTMENT FOR

ARMED ROBBERY
SC Code: § 16-11-0330(A)

CDR: 0139

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

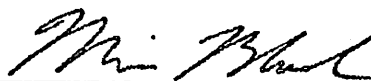
TRUE COPY
BY *Vanessa Clark*
ABBEVILLE COUNTY CLERK OF COURT

THE STATE OF SOUTH CAROLINA**COUNTY OF ABBEVILLE****INDICTMENT FOR****ARMED ROBBERY****§16-11-0330(A)**

At a Court of General Sessions, convened on the 28th day of September, 2018, the Grand Jurors of Abbeville County present upon their oath:

The defendant, Kyron James Lamar Bailey, did on or about January 27, 2018, in Abbeville County, South Carolina, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, take by means of force, threats, or intimidation, goods or monies described as victims wallet and money from the person or presence of Keytorio Evans. All in violation of 16-11-0330(A) 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 cases made and provided.



Micah E. Black
Assistant Solicitor

WITNESSES

Keifer Smith
Abbeville Police Department

WARRANT NUMBER

2018A0120100053

TRUE BILL

Foreman of the Grand Jury

Date: 9-28-18

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

September Term, 2018
Indictment # 18GS01-0612

THE STATE

vs.

KYRON JAMES LAMAR BAILEY

INDICTMENT FOR

ASSAULT & BATTERY, 2ND DEGREE

SC Code: § 16-03-0600(D)(1)

CDR: 3413

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

TRUE COPY
BY Vanessa Clark
ABBEVILLE COUNTY CLERK OF COURT

M. B. L.
Rule pros plead
to other charges
9.23.2020

THE STATE OF SOUTH CAROLINA

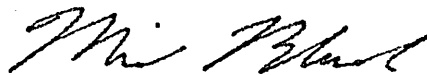
COUNTY OF ABBEVILLE

INDICTMENT FOR**ASSAULT & BATTERY, 2ND DEGREE
§16-03-0600(D)(1)**

At a Court of General Sessions, convened on the 28th day of September, 2018, the Grand Jurors of Abbeville County present upon their oath:

The defendant, Kyron James Lamar Bailey, did on or about April 4, 2018, in Abbeville County, South Carolina, unlawfully injure the victim, Mykel Daquan Coleman, or did offer or attempt to unlawfully injure the victim with present ability to do so, and moderate bodily injury to another person resulted or could have resulted. All in violation of 16-03-0600(D)(1), Code of Laws of South Carolina, (1976, as amended).

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



Micah E. Black
Assistant Solicitor

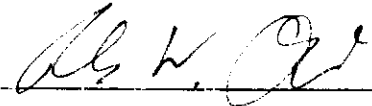
WITNESSES

Blake Gambrell
Due West Police Department

WARRANT NUMBER

K627081

TRUE BILL



Foreman of the Grand Jury

Date: 9-28-18

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

September Term, 2018
Indictment # 18GS01-0639

THE STATE

vs.

KYRON JAMES LAMAR BAILEY

INDICTMENT FOR

BURGLARY, FIRST DEGREE

SC Code: § 16-11-0311

CDR: 0079

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

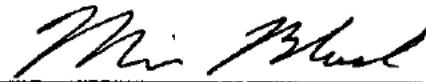
COUNTY OF ABBEVILLE

INDICTMENT FOR**BURGLARY, FIRST DEGREE****§16-11-0311**

At a Court of General Sessions, convened on the 28th day of September, 2018, the Grand Jurors of Abbeville County present upon their oath:

The defendant, Kyron James Lamar Bailey, did on or about May 14, 2018, in Abbeville County, South Carolina, enter a dwelling belonging to Angela Donald and [REDACTED] without consent and with intent to commit a crime therein. The defendant while in the dwelling caused physical injury to a person who is not a participant in the crime and/or displayed what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm and/or used or threatened use of a dangerous instrument and/or was armed with a deadly weapon. All in violation of 16-11-0311, Code of Laws of South Carolina (1976, as amended).

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



Micah E. Black
Assistant Solicitor

WITNESSES

Blake Gambrell
Due West Police Department

WARRANT NUMBER

K627083

TRUE BILL

[Signature]

Foreman of the Grand Jury

Date: 9-28-18

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

September Term, 2018
Indictment # 18GS01-0640

THE STATE

vs.

KYRON JAMES LAMAR BAILEY

INDICTMENT FOR

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR: 3410

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

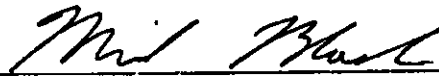
COUNTY OF ABBEVILLE

**INDICTMENT FOR
ATTEMPTED MURDER
§16-03-0029**

At a Court of General Sessions, convened on the 28th day of September, 2018, the Grand Jurors of Abbeville County present upon their oath:

The defendant, Kyron James Lamar Bailey, did on or about May 14, 2018, in Abbeville County, South Carolina, did unlawfully, with malice aforethought, either express or implied, and with the intent to kill, attempted to kill Angela Donald. All in violation of 16-03-0029, Code of Laws of South Carolina (1976, as amended).

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



Micah E. Black
Assistant Solicitor

WITNESSES

Blake Gambrell
Due West Police Department

WARRANT NUMBER

ON INFO

TRUE BILL

Bl. W. Gambrell

Foreman of the Grand Jury

Date: 9-28-18

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

September Term, 2018
Indictment # 18GS01-0643

THE STATE

vs.

KYRON JAMES LAMAR BAILEY

INDICTMENT FOR

ARMED ROBBERY
SC Code: § 16-11-0330(A)

CDR: 0139

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

TRUE COPY
BY *Vanessa Clark*
ABBEVILLE COUNTY CLERK OF COURT

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

INDICTMENT FOR**ARMED ROBBERY****§16-11-0330(A)**

At a Court of General Sessions, convened on the 28th day of September, 2018, the Grand Jurors of Abbeville County present upon their oath:

The defendant, Kyron James Lamar Bailey, did on or about May 14, 2018, in Abbeville County, South Carolina, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, take by means of force, threats, or intimidation, goods or monies described as an AR 22 (firearm) and a cell phone from the person or presence of Angela Donald. All in violation of 16-11-0330(A) 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 cases made and provided.



Micah E. Black
Assistant Solicitor

COUNTY OF ABBEVILLE

STATE VS.

KYRON JAMES LAMAR BAILEY

AKA: Kyron James-Lamar Bailey, Kyron Bailey

Race: Black Sex: M Age: 24

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Abbeville, SC 29620

DL# [REDACTED] SID# [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADS

TO: Domestic Violence, 2nd Degree

In violation of § 16-25-0020(C) of the S.C. Code of Laws, bearing CDR Code # 3812

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☒ Recommendation by the State. T/S

ATTEST:

Micah Black, Assistant Solicitor 101888 SC Bar #

Kyron Bailey
DefendantScalet B. More 72534
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 2 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 18 65 01 - 640 643 639 611☒ 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. 125 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____

☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐☐ 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 (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/ca \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: Emily McMahonCourt Reporter: Anna Scott

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge: JCJudge Code: 7154Sentence Date: 9-23-2017

COUNTY OF ABBEVILLE

STATE VS.

KYRON JAMES LAMAR BAILEYAKA: Kyron James-Lamar Bailey, Kyron BaileyRace: Black Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Abbeville, SC 29620DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADSTO: Strong Armed Robbery 0-15 yearsIn violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As indicted, ☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Micah E. Black
Micah E. Black, Assistant Solicitor101119
SC Bar #Kyron Bailey
DefendantSeaneet B. Moore
Attorney for Defendant 72534
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 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 Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 18 GS 01-640, 643, 639, 103☒ 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. 825 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐☐ Set by SCDPPPS

TRUE COPY
BY Vanessa Clark
ABBEVILLE COUNTY CLERK OF COURT

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

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

Proviso (Public Def/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 \$ _____

3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: [Signature]Judge Code: 2154Sentence Date: 9-23-2020

COUNTY OF ABBEVILLE

STATE VS.

KYRON JAMES LAMAR BAILEYAKA: Kyron James-Lamar Bailey, Kyron BaileyRace: Black Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Abbeville, SC 29620DL# [REDACTED] SID# [REDACTED]INDICTMENT/CASE#: 18GS01-0639A/W: K627081Date of Offense: 05/14/2018S.C. Code §: 16-11-0311CDR Code #: 0079

SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADSTO: Burglary, Second Degree (0-15 years) (Violent)In violation of § 16-11-0312 (B) of the S.C. Code of Laws, bearing CDR Code # 0086☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, 10-20 yr range ☐ Recommendation by the State.ATTEST: [Signature] 101119 [Signature] [Signature] 72534
Micah E. Black, Assistant Solicitor 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 15 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 Service standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 18GS01-640, 643, 644, 103☒ 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. 825 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

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

Proviso (Public Def/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/ca \$ _____

3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees. [Signature]Presiding Judge: [Signature]Judge Code: 2154Sentence Date: 9-23-2020Clerk of Court/Deputy Clerk: [Signature]
Court Reporter: [Signature]

COUNTY OF ABBEVILLE

STATE VS.

KYRON JAMES LAMAR BAILEYAKA: Kyron James-Lamar Bailey, Kyron BaileyRace: Black Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Abbeville, SC 29620DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADSTO: Attempted Murder (0-30 years)In violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, 10-20 yr range ☐ Recommendation by the State.

ATTEST:

M. Black 101119
Micah E. Black, Assistant Solicitor SC Bar #Kyron Bailey
DefendantStacy B. Moon 72534
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 186501 643,639, 611, & 103☒ 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. 825 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

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

Proviso (Public Def/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 \$ _____

3% to County (if paid in installments) \$ \$ 375TOTAL \$ 128.75☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge: [Signature]Judge Code: 2159Sentence Date: 9-23-2020Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]

126
COUNTY OF ABBEVILLE
STATE VS.

KYRON JAMES LAMAR BAILEY
AKA: Kyron James-Lamar Bailey, Kyron Bailey
Race: Black Sex: M Age: 24
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Abbeville, SC 29620
DL# [REDACTED] SID# [REDACTED]

INDICTMENT/CASE#: 18GS01-0643
A/W: ON INFO
Date of Offense: 05/14/2018
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Armed Robbery (10-30 years)

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 ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As indicted, ☐ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,

☒ Negotiated Sentence, 10-20 yr range ☐ Recommendation by the State.

ATTEST:

Micah E. Black 101119
Micah E. Black, Assistant Solicitor SC Bar #

Kyron Bailey
Defendant

Samuel B. Moore 72534
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 20 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 Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 18 GS 01 640, 639, 611, 103

☒ 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. 825 days

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Ordered PTUP _____
days/hours Public Service Employment

Obtain GED ☐

☐ Set by SCDPPPS

TRUE COPY
Vanessa Clark
ABBEVILLE COUNTY CLERK OF COURT

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

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

Proviso (Public Def/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 \$ _____

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

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk: Emily McMahon
Court Reporter: Oliver Scott

Presiding Judge: [Signature]

Judge Code: 2154

Sentence Date: 09-23-2018