

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge
—————

TONY TYRESE WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000513
—————

APPENDIX
—————

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RECEIVED

Sep 03 2024

S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
2018-GS-40-1463
2018-GS-40-1464
2018-GS-40-1465

State of South Carolina,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
Tony T. Williams,)
Defendant.)

October 13, 2020
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

LAMAR J. FYALL, ASSISTANT SOLICITOR
Attorney for the Plaintiff

ROBERT S. FORNEY, ASSISTANT PUBLIC DEFENDER
TRACY E. PINNOCK, ASSISTANT PUBLIC DEFENDER
Attorneys for the Defendant

DEBORAH M. McCURDY, RPR

1 Official Court Reporter

2 OCTOBER 13, 2020

3 (WHEREUPON, the hearing began at 12:35
4 p.m.)

5 MR. FYALL: Tony Williams.

6 THE CLERK: Raise your right hand.

7 (Defendant complies.)

8 THE CLERK: Do you swear to tell the truth,
9 the whole truth, and nothing but the truth, so help
10 you God?

11 THE DEFENDANT: I do.

12 THE COURT: Mr. Bailey, can you hear us?

13 MR. FYALL: Baxley.

14 THE COURT: Mr. Baxley, I'm sorry. Can you
15 hear me, Mr. Baxley?

16 MR. BAXLEY: Yes, Your Honor, I can.

17 THE COURT: Okay. We are going to try to make
18 sure we can get the sound.

19 All right, yes, sir. So you will have to
20 speak up so he can hear you.

21 MR. FYALL: Yes, Your Honor.

22 THE COURT: Yes, sir.

23 MR. FYALL: Thank you, Your Honor. We are
24 here in the matter of State v. Tony Williams. He
25 is here to plead guilty to murder, attempted

1 murder, and carjacking for a negotiated 30 year
2 sentence.

3 This case is on the trial docket for next
4 week. He is represented by Robert Forney, of the
5 Public Defender's Office, and also Tracy Pinnock,
6 of the Public Defender's Office.

7 The victims are here, Your Honor, and would
8 like to address the Court.

9 THE COURT: All right, thank you.

10 Yes, sir, Mr. Forney, have you explained to
11 your client the charges contained in the
12 indictments, the possible punishment, and the
13 consequences of his plea today?

14 MR. FORNEY: Yes, ma'am, I have.

15 THE COURT: And how does he wish to plead?

16 MR. FORNEY: Guilty, Your Honor.

17 THE COURT: And do you agree with his decision
18 to plead guilty?

19 MR. FORNEY: Yes, Your Honor.

20 THE COURT: All right. And you are Tony
21 Tyrese Williams?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And you are pleading guilty to one
24 count of murder, one count of carjacking, and one
25 count of attempted murder, is that correct?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. And, sir, how old are
3 you?

4 THE DEFENDANT: Twenty.

5 THE COURT: And how far did you go in school?

6 THE DEFENDANT: Eleventh grade.

7 THE COURT: And are you currently on probation
8 or parole?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: And within the last 24 hours have
11 you taken any medication, drugs, or alcohol?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: All right. Listen closely to the
14 Solicitor as he states the facts.

15 MR. FYALL: Thank you, Your Honor.

16 This incident occurred on December 16, 2017.
17 Both victims were at the Circle K gas station on
18 Parklane Road. They met the Defendant and his
19 Co-Defendants, Tafarae Pelzer and Javian
20 Lessington, and the victims agreed to give them a
21 ride. They all got into the car, Your Honor, with
22 the Defendant seated in the back on the driver's
23 side nearest the driver's side window. They drove
24 to near the Meadow Lakes subdivision.

25 When they got there, Your Honor, the victim,

1 Mr. Ross, was shot in the neck, and Mr. Baxley was
2 shot in the face. As they were taken out of the
3 car and left there, the Defendants got into the car
4 and drove away.

5 Two days later, Your Honor, the case sort of
6 broke open because the Defendant's mother was
7 stopped by the City of Columbia Police Department
8 driving the car. They got consent from her to
9 search the house and they found a firearm in the
10 house. That firearm later came back to match the
11 bullets that were used in this case, Your Honor.

12 After that, Mr. Williams was initially
13 arrested for possession of a stolen vehicle. After
14 the firearm match occurred, subsequently a family
15 member of his reached out to Richland County
16 Sheriff's Department. He came in to give a
17 statement. And, additionally, the two
18 Co-Defendants gave a statement, Mr. Lessington and
19 Mr. Pelzer. Both Mr. Lessington and Mr. Pelzer
20 identified Mr. Williams as being the shooter in
21 that case, and he was subsequently arrested and
22 charged with murder and attempted murder and
23 carjacking.

24 While this occurred, he was on bond for purse
25 snatching.

1 THE COURT: All right. Mr. Williams, you have
2 heard the Solicitor state the allegations in the
3 case. Do you agree with the facts as stated by the
4 Solicitor?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Is there any part of what he
7 stated that you disagree with?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: And is that what you are pleading
10 guilty to, based on the facts that he has stated
11 that arise, the murder, carjacking, and attempted
12 murder charge, is that correct?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. And, sir, you
15 understand that murder carries from 30 years to
16 life in prison, that carjacking carries up to 30
17 years, and attempted murder carries up to 30 years.
18 I could run these all consecutive and you would be
19 looking at 90 years to life in prison. Do you
20 understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Knowing that, do you still wish to
23 plead guilty?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: You understand when you plead

1 guilty to the attempted murder and murder charges,
2 they are classified as violent most serious
3 offenses, meaning most serious. Under our three --
4 I mean, two-strike laws, if you were to get another
5 most serious offense, the State could move before
6 the Court for life without parole. Do you
7 understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Knowing that, do you still wish to
10 plead guilty?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Also, they are classified as
13 violent offenses. Do you understand that, sir?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: You understand -- and then the
16 carjacking is classified as a violent serious
17 offense, meaning under our three-strike laws, if
18 you were to get another charge -- two additional
19 charges, the State could move before the Court for
20 life without parole also on that charge. Do you
21 understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All of these are classified as
24 violent most serious and serious offenses. Do you
25 understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. You understand, sir,
3 you have the right to a jury trial. At a jury
4 trial, the State would have to prove you guilty
5 beyond a reasonable doubt. You and your attorney
6 would have the opportunity to cross-examine any
7 witnesses that they would present. You would not
8 have to testify. The burden is upon the State to
9 prove you guilty beyond a reasonable doubt.

10 You are scheduled to be on the trial docket
11 for trial next week, sir. During your trial I
12 would instruct the jurors that the burden is upon
13 the State to prove you guilty beyond a reasonable
14 doubt. You would not be required to testify. You
15 would not be required to place any evidence into
16 the record. The burden would be solely upon the
17 State. Sir, if you did not testify, I would
18 instruct the jurors that they could not hold that
19 against you. They could not discuss it. The
20 burden, once again, is upon the State to prove you
21 guilty beyond a reasonable doubt.

22 If you had any defenses that you wished to
23 advance, you and your legal team would have an
24 opportunity to present those defenses. However,
25 sir, the burden would be upon the State. You would

1 not have to if you chose not to present any
2 evidence in the case. But by pleading guilty
3 today, sir, you waive those constitutional rights
4 and you give up the right to a jury trial. Is that
5 what you wish to do?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And you have been represented by
8 Mr. Forney. Are you satisfied with his
9 representation?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you need any more time to speak
12 with him?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: And has he done everything for you
15 that you feel he could have done or should have
16 done?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Are you completely satisfied with
19 his services?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Have you met with him for as long
22 as necessary for him to properly represent you?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: You have met with him, he has
25 answered your questions. Do you need any

1 additional time to speak with him?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: All right. And you are satisfied
4 with his -- completely satisfied with his
5 representation?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. And is anyone forcing
8 you to plead guilty today?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: And are you pleading guilty of
11 your own free will?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And, sir, the negotiations in this
14 case are a negotiated sentence of 30 years. Is
15 that correct, Mr. Forney?

16 MR. FORNEY: That's correct, Your Honor.

17 THE COURT: And, sir, is that your
18 understanding of the negotiation?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right. And are you in
21 agreement with those negotiations?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. And, sir, you are
24 entering this plea freely and voluntarily?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Other than the offer, has anyone
2 offered you anything in exchange for your plea?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Has anyone threatened you or
5 coerced you into pleading guilty today?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: And you are pleading guilty
8 because you are guilty of these three charges, is
9 that correct?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And have you understood all of my
12 questions?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Have you answered them truthfully?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And, sir, your answers that you
17 have given me -- I know your attorney has gone
18 over -- I have your plea affidavit here. Your
19 attorney has gone over everything with you, but the
20 answers that you have given today have been your
21 answers, is that correct?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. You understand you
24 have the right to appeal the guilty plea and
25 sentence of this Court within ten days. If you

1 cannot afford an attorney for that appeal, one will
2 be appointed for you. Do you understand, sir?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. Knowing all of that,
5 sir, you wish for me to accept your plea?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. I find that there is a
8 substantial factual basis for this plea. I also
9 find that the Defendant's decision to plead guilty
10 is freely, voluntarily, knowingly, and
11 intelligently given. That he is represented by
12 counsel to whom he has indicated to me he is
13 completely satisfied with. I will accept your
14 plea.

15 Prior record?

16 MR. FYALL: Nothing, Your Honor. He was on
17 bond for a purse snatching.

18 THE COURT: All right. Yes, sir, Mr. Forney?

19 MR. FORNEY: Thank you, Your Honor.

20 THE COURT: I'm sorry, the victims you said
21 wished to speak. I will be glad to hear from them.
22 If they can stand up and state their name for the
23 record.

24 MR. ROSS: Thank you, Your Honor. I will
25 remove my mask since I am so far away. And you can

1 hear me?

2 THE COURT: Yes, sir, I can hear you. That's
3 fine.

4 MR. ROSS: I would just like to confirm. I've
5 got a couple of minutes to speak. I timed myself.
6 I have eight minutes of comments. Is that okay?

7 THE COURT: Yes, sir.

8 MR. ROSS: Your Honor, thank you.

9 My purpose here today is to try to convey the
10 magnitude of this loss, the real world impact of a
11 senseless murder for a \$1,500 car. Unless someone
12 in this courtroom has lost a child because of the
13 intentional act of another party, you simply cannot
14 imagine the pain, the anger, or the sorrow.

15 In the days immediately following my son's
16 murder, Nataki advised me of the need to write a
17 Dear Judge letter. I have put that off for 1,026
18 days, Your Honor. I'm still not capable of writing
19 it because I can't tell you the magnitude of this
20 loss. It is that great.

21 Austin was born in Richland County. He went
22 to school in Richland County. He played youth
23 sports in Richland County. He was a native South
24 Carolinian born right here in Richland County. He
25 was one of us. He graduated from Ridgeview High

1 School. He served in a charity organization using
2 his athletic skills to teach underprivileged
3 children the game of baseball. He was a veteran.
4 He proudly served our army and our country as a
5 cavalry trooper in the United States First Cavalry
6 Division. He was medically retired in 2015. His
7 VA rating was at 40 percent disability.

8 At the time of his murder, Austin was a school
9 trained welder. Once he was done serving his
10 country, he worked for a defense contractor right
11 here in Columbia making doors and hatches for the
12 Navy.

13 He had dreams and a lifetime of
14 accomplishments in front of him that the Defendant
15 decided wasn't worth the value of a \$1,500 car.

16 What is the impact? What is the cost? How
17 has this affected me and my family? We are still
18 learning every day. The Defendant took our son
19 from us. A lifetime of memories, holidays,
20 conversations. He took my first born. He took my
21 namesake. He took the father of two children, four
22 and one. Think about that. Four and one. He has
23 taken 20 something years of Christmases,
24 Thanksgivings, Halloweens. Everybody in this room
25 remembers their first fishing trip or hunting trip

1 or ballgame with their father. Not my
2 grandchildren. They don't get that opportunity.

3 Let's not evaluate everything he took, let's
4 consider what he gave us. My grandchildren are now
5 blessed to have an 80 percent more likely chance of
6 developing anti-social behavior, their fatherless
7 son. 76 percent more likely to commit a crime and
8 continue this cycle. 69 percent more likely to use
9 illegal drugs. Raising a parent is hard enough. I
10 did not need the Defendant's help in raising these
11 grandchildren in the absence of a father.

12 Lastly, the Defendant has provided me a
13 complete loss of confidence in the judicial system
14 of this United States, this state, and this Fifth
15 Circuit.

16 Your Honor, I do not know you. We have
17 exchanged pleasantries one time on a digital bond
18 hearing two months ago. My comments are not aimed
19 at you or this court, but are aimed at this system.
20 I stood in line for three years to be spit on.
21 Three years. My opinions and that of all the
22 surviving victims have been completely ignored. We
23 have never been asked if we were completely
24 satisfied with the representation we received.
25 Your Honor, we stood in line to be told that our

1 son's murder is worth a mere 30 years. My son was
2 murdered, Reid Baxley was shot in the face, the car
3 was stolen. It is kind of like a Buy One Get Three
4 for Free at the crime store.

5 This was a vicious, vicious murder, Your
6 Honor. Shot from behind at point blank range.
7 That is not enough, let's shoot the other victim in
8 the face at point blank range. Let's throw them on
9 the concrete like a piece of trash and take the car
10 home for mom to have a joy ride.

11 Can you imagine a sense of right or wrong so
12 perverted that you would take your murder weapon
13 home and hide it under your mother's bed?

14 Your Honor, everyone would like us to believe
15 that the Defendant is a mixed up 17-year-old kid at
16 the time of this killing. That is not mixed up,
17 that is hatred. And 30 years in a Detention Center
18 is not going to rehabilitate that.

19 I think it is a little ironic that we are
20 using the judicial tool of a plea bargain. That is
21 why we are here today. Three years ago in bond
22 court the Defendant stood up and announced to the
23 judge and everybody present -- and I'll choose my
24 words very carefully -- that we could all go
25 fornicate ourselves. I'm not making this up, Your

1 Honor. Check the record. He has a contempt of
2 court charge against him on that day.

3 Lastly, a week ago, I met with the Solicitor
4 and his team. Never had dealings with this office.
5 In my opinion, none of the victim's opinion
6 mattered except for Nataki. I wish everybody cared
7 about the victim as much as Nataki does. A week
8 ago I was against this plea bargain completely.
9 Absolutely stated that we were absolutely against
10 this. We wanted justice. We wanted our day in
11 court.

12 The Prosecution is right. Based on their
13 level of confidence and competency, this is the
14 best I'm going to get. They don't have the
15 confidence to go in front of a jury with
16 overwhelming evidence. They stated that.

17 I'll wrap up, Your Honor. If it is within
18 your jurisdiction, Your Honor, I would implore you
19 to do something the system hasn't done yet, and
20 that is hold this gentleman accountable. I would
21 ask that you move this sentence to something
22 consecutive. If not, I would ask that you accept
23 this plea bargain. My experience with this system,
24 Your Honor, has taught me that accountability and
25 justice are fairytales. For me, it is just

1 survival. Justice is a fairytale.

2 My son's name and legacy will last long beyond
3 the 30 years that the Defendant is to serve. And I
4 would ask based on the gravity of the crime, 30
5 becomes something more like 40, 50, or 60, which is
6 what is deserved.

7 That concludes my comments, Your Honor,
8 subject to any clarifying questions you may have of
9 me.

10 THE COURT: All right. Thank you, sir. And
11 thank you to you and your family. I know this is
12 difficult for you all to be here. And I do want
13 you to know that you have the condolences of this
14 Court here today.

15 Thank you.

16 All right. We also have Mr. Baxley on the
17 line. Would he like to say something?

18 So we are going to need to unmute, Mr. Baxley.
19 Can you unmute yourself?

20 MR. BAXLEY: Yes, ma'am. How are you doing
21 this morning?

22 THE COURT: Doing good, sir. Can you state
23 your full name for the record?

24 MR. BAXLEY: I'm sorry, I couldn't hear you.

25 THE COURT: Can you state your full name for

1 the record?

2 MR. BAXLEY: Yes. My name is Francis Reid
3 Baxley.

4 THE COURT: All right, yes, sir, I will be
5 glad to hear from you.

6 MR. BAXLEY: First off, I want to thank you
7 for the time here to speak to you. And, you know,
8 this has been a rough three years on me and my
9 family, but I can't even imagine what it is like on
10 the Ross's end. And to have it come up to a plea
11 agreement, we don't even get our day in court to,
12 you know, really express how much this has changed
13 all of our lives. You know, by a good deed, just
14 trying to take these guys home, and how final it
15 turned out and how quickly it just went south. I
16 very vaguely remember a lot of the details of that
17 night, but I know that it has changed me, and I'll
18 never be the same because I have got to live
19 knowing that there is people out in this world that
20 can just do these cruel things to people and then
21 presumably get a slap on the wrist, like what I
22 feel like today is.

23 And with all due respect, Your Honor, if there
24 is anything you can do, would you give him -- I
25 would just love to ask you to make that decision

1 based off of what you have heard here today because
2 our lives have changed and they will forever be,
3 and I just don't think that, you know, that 30
4 years, a maximum of 85 percent of that served, will
5 really let this man know what he has done not to
6 just one family, but to two.

7 And it is just, you know -- I think about
8 Austin every single day. And he didn't deserve
9 this. I didn't deserve this -- this mental --
10 everything I have to go through. I am getting a
11 little choked up and starting to ramble, so I am
12 going to go ahead and finish on up. And I do
13 appreciate your time.

14 THE COURT: All right. Thank you, Mr. Baxley,
15 for joining us virtually. And I am sorry that you
16 have had to go through this also, sir. But I do
17 want to thank you for your comments here today.

18 Thank you.

19 All right. What are the negotiations other
20 than -- what is the negotiations again?

21 MR. FYALL: 30, 30, and 20, essentially, Your
22 Honor. Thirty on the murder, 30 on the attempted
23 murder, and 20 on the carjacking.

24 THE COURT: So is there a recommendation -- a
25 negotiation for concurrent time?

1 MR. FYALL: Yes, ma'am?

2 THE COURT: For concurrent time?

3 MR. FYALL: Yes, ma'am.

4 THE COURT: All right. Yes, sir, Mr. Forney?

5 MR. FORNEY: Thank you, Your Honor. May it
6 please the Court?

7 I am going to keep my remarks brief today.
8 There is nothing I can say to take away from the
9 tragedy of today for the victim's family and also
10 for Mr. Williams' family.

11 Vernon Smith is here, his father. I don't
12 believe he wants to address Your Honor, but he is
13 here in support. He has continually been in touch
14 with me for the time that I have represented Tony.

15 Tony has been in jail now for 1,031 days. And
16 the only other thing I would like to put on the
17 record at this point, Your Honor, is that he was 17
18 at the time he was charged. We are not having to
19 do any sort of Miller hearing on this because there
20 is no -- because life isn't on the table, but that
21 would potentially be an issue at trial. And for
22 that reason, I would like to on the record reserve
23 his right to be resentenced should the law on
24 mandatory minimum is changed. However, with that
25 said, we are in agreement with his plea and we want

1 you to accept this plea. Mr. Williams very much
2 wants you to accept this plea.

3 And that's all I will say on the matter, Your
4 Honor.

5 THE COURT: All right. Anything else from the
6 State that you want to put on the record regarding
7 the negotiations? I'm assuming y'all -- do you
8 want to put anything else on the record?

9 MR. FYALL: Your Honor, he did have a
10 possession of a weapon during the commission of a
11 violent crime. That one charge is being dismissed.

12 THE COURT: All right. And under U.S. v.
13 Miller and Aiken v. Byars, I'm assuming that was
14 what you were referencing?

15 MR. FORNEY: That's correct.

16 MR. FYALL: Yes, Your Honor.

17 THE COURT: All right. On Indictment
18 2018-GS-40-1463 and 1464 and 1465, sir, you will be
19 committed to the State Department of Corrections
20 for 30 years. The sentences will run concurrent.
21 You will be given credit for the time that you have
22 served.

23 Sir, I hope you heard the impact that you have
24 had on these two families as a result of your
25 actions. And at some point, hopefully at some

1 point you understand and have processed what was
2 said here today. If not today, hopefully at some
3 point over the next 30 years you will process how
4 your actions affect not only you, but they affect
5 the victims in this case, the victim's family, the
6 victim's children, your family. And I think
7 Mr. Ross said it best, over a car that was worth
8 \$1,500.

9 I wish you all the best, Mr. Ross, you and
10 your family, and also Mr. Baxley. And thank you
11 all for being here today.

12 All right. Thank you.

13 MR. FYALL: Thank you, Your Honor. Your
14 Honor, I believe the carjacking has a maximum of
15 20.

16 THE COURT: Okay. So it is 20 -- 30, 30, and
17 20?

18 MR. FYALL: Yes, ma'am.

19 THE COURT: I thought resulting injury
20 carried -- the CDR code said 30.

21 MR. FYALL: Great bodily injury?

22 THE COURT: Yes.

23 MR. FYALL: Sorry. My mistake.

24 THE COURT: That is the one on the sentencing
25 sheet. We can doublecheck it, but that is what --

1 she put the CDR code in and that is what it said.

2 MR. FYALL: That's fine.

3 THE COURT: All right.

4 (WHEREUPON, the hearing adjourned at

5 1:12 p.m.)

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(END OF TRANSCRIPT)

WITNESSES

(S) Michael V Laurita
- Richland County Sheriff Dept

DOCKET NO. 2018GS4001463

The State of South Carolina

County of

Richland

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

Defendant

Tony Williams

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

COURT OF GENERAL SESSIONS

MAY TERM 2018

42

Rob Forney for Tony Williams
Defendant

ARREST WARRANT NUMBER

2017A4010204669

THE STATE
vs.

Witness: Rob Forney
C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Tony Tyrese Williams

Evon Wises

Foreperson of Grand Jury
Date: MAY 09 2018

VERDICT

Indictment for
CARJACKING / TAKE OR ATTEMPT A
VEHICLE BY FORCE FROM PERSON,
GREAT BODILY INJURY

SC Code: 16-03-1075(B)(2)
CDR Code: 2600

Foreperson of Petit Jury
Date:

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)


INDICTMENT

At a Court of General Sessions, convened on May 8, 2018, the Grand Jurors of Richland County present upon their oath:

CARJACKING WITH INJURY

That Tony Tyrese Williams did in Richland County on or about the December 16, 2017, take and/or attempt to take one 2004 Saturn Ion from Austin Ross by force and violence or by intimidation while said victim was operating and/or in the vehicle, causing great bodily injury to the victim, in violation of Section 16-3-1075(B)(2), S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Janette Williams
C.C.C.P.&Q.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Tony Tyrese Williams

AKA: _____
Race: BLACK Sex: M Age: 20
DOB: SS#: _____
Address: _____
City, State, Zip: _____
DL#: _____ SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Carjacking / Take or attempt a vehicle by force from person, great bodily injury

in violation of § 16-03-1075(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2600
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC §17-25-45
w/minor 1st or Lewd Act)

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

ATTEST: _____ 101910 Rob Forney for Tony Williams Rob Forney 101923
SC Bar# Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

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

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

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

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: Jeanette McBritegas

Court Reporter: McL...

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-40-01463
A/W#: 2017A4010204669
Date of Offense: 12/16/2017
S.C. Code § : 16-03-1075(B)(2)
CDR Code #: 2600

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-1075(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2600
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC §17-25-45
w/minor 1st or Lewd Act)

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

ATTEST: _____ 101910 Rob Forney for Tony Williams Rob Forney 101923
SC Bar# Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 1631 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

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

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

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

TOTAL \$ 128.75

Presiding Judge: [Signature]

Judge Code: 2161

Sentence Date: 10-13-2020

WITNESSES

(S) Michael V Laurita
- Richland County Sheriff Dept

DOCKET NO. 2018GS4001464

The State of South Carolina
County of
Richland

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

Defendant

Tony Williams

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

COURT OF GENERAL SESSIONS

MAY TERM 2018

42

Rob Forney for Tony Williams
Defendant

ARREST WARRANT NUMBER

2017A4010204671

THE STATE
vs.

Witness: *Rob Forney*
C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Tony Tyrese Williams

Evon L. Dase
Foreperson of Grand Jury
Date:

MAY 09 2018

VERDICT

Indictment for
ATTEMPTED MURDER

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

Foreperson of Petit Jury
Date:

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

STATE OF SOUTH CAROLINA)
 COUNTY OF Richland)
 STATE VS.)
Tony Tyrese Williams)
 AKA: _____)
 Race: BLACK Sex: M Age: 20)
 DOB: _____ SS#: _____)
 Address: _____)
 City, State, Zip: _____)
 DL#: _____ SID#: _____)
 *CDL Yes No CMV Yes No Hazmat Yes No)
 In disposition of the said indictment comes now the Defendant who was)
 TO: Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-40-01464
 A/W#: 2017A4010204671
 Date of Offense: 12/16/2017
 S.C. Code § : 16-03-0029
 CDR Code #: 3410

SENTENCE SHEET

CONVICTED OF or PLEADS

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

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

ATTEST: _____ 101910 Rob Forney for Tony Williams Rob Forney 101923
 _____ SC Bar# Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 30 days/months/years or under the Youthful Offender Act no to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 103.1
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. days

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/Community Employment

Payment Terms:
 Set by SCDPPPS _____

Recipient: _____

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

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

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

Clerk of Court/ Deputy Clerk: Jeanette McBride
 Court Reporter: McCurdy

Presiding Judge: _____
 Judge Code: 216
 Sentence Date: 10-13-2020

**CERTIFIED TRUE COPY
 OF ORIGINAL FILED**

 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

WITNESSES

(S) Michael V Laurita
- Richland County Sheriff Dept

ARREST WARRANT NUMBER

2017A4010204793

ACTION OF GRAND JURY
TRUE BILL

Evon Wases

Foreperson of Grand Jury Date: MAY 09 2018

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2018GS4001465

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MAY TERM 2018

42

THE STATE

vs.

Tony Tyrese Williams

Indictment for
MURDER / MURDER

SC Code: 16-03-0010

CDR Code: 0116

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

Defendant

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

Defendant

Witness:

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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

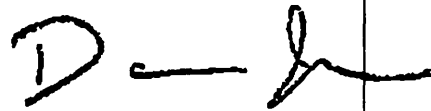
INDICTMENT

At a Court of General Sessions, convened on May 8, 2018, the Grand Jurors of Richland County present upon their oath:

MURDER

That Tony Tyrese Williams did in Richland County, on or about December 16, 2017, kill the victim, Austin Ross, with malice aforethought, either express or implied, by means of gunshot wound, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jessica Williams
C.G.C.P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.

Tony Tyrese Williams

AKA: _____

Race: BLACK Sex: M Age: 20

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-40-01465

A/W#: 2017A4010204793

Date of Offense: 12/16/2017

S.C. Code § : 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

30 Life

CONVICTED OF or PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS. Mandatory GPS(CSC §17-25-45

w/minor 1st or Lewd Act)

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

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

ATTEST: _____ 101910 Rob Forney for Tony Williams Rob Forney 101923

Eyall Lamar
SC Bar#

101910
SC Bar#

Rob Forney
Defendant

101923
SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. *1031 days*

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

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

Payment Terms: _____

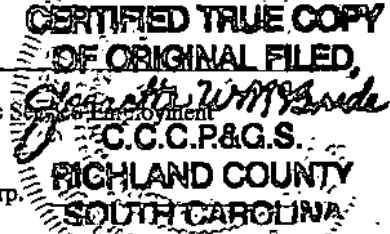
Set by SCDPPPS _____

Recipient: _____

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

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Jeanette McBrute
Court Reporter: Melinda



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

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

Presiding Judge _____
Judge Code: 216
Sentence Date: 10-13-2020

FORM 5

STATE OF SOUTH CAROLINA)

County of RICHLAND)

Tony T. Williams 384153)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2021CP4000985

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2021 MAR -3 AM 10:40
JENNIFER M. HOSBROOK
CLERK OF COURT
RICHLAND COUNTY

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 MIRKLAND ROE CENTER 4344
BROAD RIVER ROAD
- 2. Name and location of Court which imposed sentence RICHLAND
COUNTY JUDICIAL CENTER
- 3. Name(s) of co-defendant(s) (if any) TAFARIE PELZER
JAVION LESSINGTON
- 4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017 A4010204793, 2017 A4016204671,
 - (b) 2017 A4070204669

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) _____
 - (b) _____
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓ _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO _____

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) BECAUSE MY ATTORNEY FAILED TO TELL ME
 - (b) THAT I HAD A CONSTITUTIONAL RIGHT TO APPEAL
THE PLEA 2

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

- (a) COUNSEL failed To INVESTIGATE AND TO OBJECT TO THE SOLICITOR'S
- (b) COUNSEL DEFICIENT PERFORMANCE PREJUDICE PETITIONER
- (c) _____

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

- (a) Each FACT THAT SUPPORT EACH GROUND WILL BE
- (b) SET OUT AT THE EVIDENTIARY HEARING
- (c) MAKING HIM INADEQUATE ASSISTANCE OF COUNSEL

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (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:

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

10-1) ATTORNEY failed to OBJECT TO THE SOLICITOR'S STATEMENT ABOUT PRIOR TIME CONVICTION. BY THE ERRORS OF COUNSEL THE PROCEEDINGS WOULD BE DIFFERENT.

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- 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?

N/A

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

(a) which grounds have been presented:

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

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

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

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

- (a) THESE ISSUES CAN ONLY BE RAISED ON
- (b) P.C.R. THIS IS PETITIONERS
- (c) INITIAL REVIEW

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

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

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

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

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

PETITIONER WISH TO BE EXONERATED OF ALL
CHARGES AGAINST HIM

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

NO

STATE OF SOUTH CAROLINA)
County of Richland)

VERIFICATION

I, Tony T. Williams, 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.

Tony Williams

SWORN to and subscribed before me this 8
day of January, 2021.

Melissa D... (L.S.)
Notary Public

My Commission Expires: 12-1-2023

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

I, Tony T. Williams, 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.

Tony Williams
Applicant

SWORN or affirmed to and subscribed before me this
8 day of January, 2021.

Melissa Ortiz
Notary Public

My Commission Expires: 12-1-2025

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tony T. Williams, #384153;
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2021-CP-40-0985

RETURN, MOTION FOR MORE
DEFINITE STATEMENT, & PARTIAL
MOTION TO DISMISS
(Counsel Appointed)

2021 JUN -1 PM 3:50
FILED
CLERK OF COURT
RICHLAND COUNTY

In response to Applicant Tony T. Williams's action for post-conviction relief (PCR) commenced March 3, 2021, Respondent, the State of South Carolina, makes this return:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections (SCDC). During the May 2018 term, the Richland County Grand Jury indicted Applicant for murder (2018-GS-40-1465), attempted murder (2018-GS-40-1464), and carjacking/take or attempt a vehicle by force from person, great bodily injury (2018-GS-40-1463). Richland County Assistant Public Defenders Robert S. Forney and Tracy E. Pinnock represented Applicant. Assistant Solicitor Lamar J. Fyall of the Fifth Circuit Solicitor's Office prosecuted the case.

On October 13, 2020, Applicant pled guilty pursuant to a negotiated plea agreement¹ with the State before the Honorable DeAndrea G. Benjamin. Judge Benjamin sentenced Applicant as negotiated to concurrent terms of thirty years each for murder, attempted murder, and carjacking. Applicant did not appeal.

¹As part of the negotiations, the State dismissed one charge of possession of a weapon during the commission of a violent crime.

II. FACTS GIVING RISE TO THE CONVICTION

The incident giving rise the charges occurred on December 16, 2017 (Plea Tr. 4). At the guilty plea proceeding Assistant Solicitor Fyall gave the following factual recitation in support of the pleas:

Both victims were at the Circle K gas station on Parklane Road. They met the Defendant and his Co-Defendants, Tafarae Pelzer and Javian Lessington, and the victims agreed to give them a ride. They all got into the car, Your Honor, with the Defendant seated in the back on the driver's side nearest the driver's side window. They drove to near the Meadow Lakes subdivision.

When they got there, Your Honor, the victim, Mr. Ross, was shot in the neck, and Mr. Baxley was shot in the face. As they were taken out of the car and left there, the defendants got into the car and drove away.

Two days later, Your Honor, the case sort of broke open because the Defendant's mother was stopped by the City of Columbia Police Department driving the car. They got consent from her to search the house and they found a firearm in the house. That firearm later came back to match the bullets that were used in this case, Your Honor.

After that, Mr. Williams was initially arrested for possession of a stolen vehicle. After the firearm match occurred, subsequently a family member of his reached out to Richland County Sheriff's Department. He came in to give a statement. And, additionally, the two Co-Defendants gave a statement, Mr. Lessington and Mr. Pelzer. Both Mr. Lessington and Mr. Pelzer identified Mr. Williams as being the shooter in that case, and he was subsequently arrested and charged with murder and attempted murder and carjacking.

Plea Tr. 4-5.

III. CURRENT APPLICATION

Applicant timely commenced this PCR action on March 3, 2021. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. "Counsel failed to investigate and to object to the solicitor counsel deficient performance prejudice petitioner"

- i. "Attorney failed to object to the solicitor statement about prior time conviction. By the errors of counsel the proceeding would be different"

As requested relief, Applicant is seeking to have all his charges exonerated.

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

IV. MOTION FOR A MORE DEFINITE STATEMENT

Through his PCR application, Applicant alleges ineffective assistance of counsel, however, Applicant fails to set forth with specificity the facts and circumstances upon which this allegation is based. The Uniform Post-Conviction Procedure Act requires that the Applicant must ". . . specifically set forth the grounds upon which the application is based." Section 17-27-50 of the *Code of Laws of South Carolina* (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief." Rule 71.1(d), SCRPC, provides appointed PCR counsel "shall insure that all available grounds for relief are included in the

application and shall amend the application if necessary.”

Here, Applicant has failed to state with any specificity the facts giving rise to his allegations, as required by section 17-27-50. Additionally, these allegations are not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRPC, and Rule 71.1(d), SCRPC, to require Applicant, through PCR counsel, to provide a more definite statement of his allegations of ineffective assistance of counsel. Moreover, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V. RESPONSE TO ALLEGATIONS

Applicant has alleged plea counsel, Robert Forney, was constitutionally ineffective in his representation for failing to investigate and object to the solicitor’s statement about Applicant’s prior time conviction. However, Applicant fails to provide the required specificity regarding these claims or any facts to support these vague claims. Accordingly, it is impossible for Respondent to address these claims with specificity and requests Applicant, through counsel, amend his application to provide the required specificity. However, Respondent submits the record establishes these claims lack merit.

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained

prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687-88; *v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989).

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. *Id.*; *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. With

respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985).

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. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668.

Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, *Strickland* requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." *Id.* at 690.

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

and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”).

Applicant alleges plea counsel was ineffective for failing to investigate. However, Applicant wholly failed to provide any facts or circumstances to support this allegation, such as what additional investigation counsel should have undertaken, the results such an investigation would have yielded, or how it affected his case or decision to plead guilty. Based on this, it is impossible for Respondent to discern how exactly Applicant believes counsel was ineffective. Regardless, Respondent submits this allegation is without merit.

“Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary.” *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014) (citing *Strickland*, 466 U.S. at 691). “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008).

Moreover, counsel’s decision not to undertake a particular investigation should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment. *Bagwell*, 410 S.C. at 265, 763 S.E.2d at 633 (citing *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006)). “[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). “Counsel’s conversations with the defendant may be critical to a proper assessment of counsel’s investigation decisions.” *Bagwell*, 410 S.C. at 265, 763 S.E.2d at 634. (internal citations omitted). “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of

counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Strickland*, 466 U.S. at 690.

An Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. *See Palacio v. State*, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); *Moorehead*, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); *Davis v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); *Skeen v. State*, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Without more information for the supporting facts, it is impossible for Applicant to respond to this allegation. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of counsel; therefore, Respondent requests an evidentiary hearing to fully resolve the issues once Applicant, through his counsel, amends the application to provide the required specificity for the allegations. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

VI. PARTIAL MOTION TO DISMISS

Applicant additionally claims plea counsel was allegedly deficient for failing to object to the solicitor's statements, and specifically referenced a statement "about prior time conviction." It is unclear from the application and corresponding record what statement Applicant believes plea counsel should have objected to, and how his alleged failure to do so made counsel deficient and prejudiced Applicant. Therefore, Respondent requests this Court summarily dismiss this allegation as lacking merit.

A review of the plea transcript demonstrates that Solicitor Fyall referenced Applicant's only prior conviction during the factual recitation by stating the charged crime occurred when Applicant was on bond for a purse snatching offense. (Plea Tr. 5). Notably, the Court asked Applicant directly after this statement if he agreed with the facts as stated by the solicitor, which he responded "Yes, ma'am" and whether there were any facts stated that Applicant disagreed with, to which he responded "No, ma'am." (Plea Tr. 6). Applicant's charge for purse snatching was briefly brought up later during the colloquy when the Court asked about Applicant's prior record (Plea. Tr. 12). Based on the record, the statements by the solicitor provided a factually accurate recitation of Applicant's criminal history to the Court. Applicant was expressly asked about these facts and given the opportunity to object, which he declined to do. As such, it is unclear how Applicant believes plea counsel should have objected to this information, and how his failure to do so made him deficient and prejudiced Applicant. Accordingly, Respondent asserts this claim presents no genuine issue of material fact that would necessitate an evidentiary hearing, and this allegation should be dismissed as a matter of law.

VII. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

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

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

VIII. ALL OTHER CLAIMS

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

IX. CONCLUSION

WHEREFORE, Respondent requests an evidentiary hearing be held on the claim of ineffective assistance of counsel after Applicant, through his counsel, amends the application to provide the required specificity for the allegations.

Respectfully submitted,

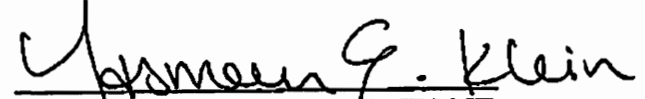
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Attorney General

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Chief Deputy Attorney General

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Assistant Attorney General

By:


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

May 28 2021

From: [Timothy L. Griffith](#)
To: [Russ Barlow](#)
Cc: ["Lora Singleton"](#)
Subject: RE: Upcoming 5th Circuit PCR Roster - Bouvia Sales
Date: Friday, September 1, 2023 11:40:40 AM

Mr. Barlow,

You had asked for more definitive for **Tony Williams**.

Ineffective –

Counsel has told him he would get a deal for 20 years according to Mr. Williams, plea to manslaughter rather than murder. For this reason, he refused to sign his plea sheets.

On the failure to object – he understands the SOL just said he was out on bond – he thought it meant he had been convicted (which he hadn't been)

He was on Medication for mental illness and his attorney knowing that told him to just say yes to whatever the Judge asked.

I have explained the process and the possible results if he should be granted PCR, and he wants to proceed.

Timothy L. Griffith, Esquire
Attorney at Law



State of South Carolina)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2021-CP-40-0985

Tony T. Williams,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

Transcript of Record

September 11, 2023
Columbia, South Carolina

B E F O R E:

The Honorable Daniel Coble, Judge

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

Timothy L. Griffith, Esquire
Attorney for the Applicant

D. Russell Barlow, III, Assistant Attorney General
Attorney for the Respondent

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

I N D E X

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<u>Witness/Description</u>	<u>Page No.</u>
Tony T. Williams	
Direct Examination by Mr. Griffith	4
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Robert Forney	
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Examination by the Court	21
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
	No Exhibits Introduced.	

1 THE COURT: Yes, sir, Mr. Barlow.

2 MR. BARLOW: May it please the court? Ross Barlow on
3 behalf of the State of South Carolina. This is the post-
4 conviction relief matter of *Tony T. Williams v. The State*,
5 case number 2021-CP-40-0985, out of Richland County.
6 During the May 2018 term, the Richland County Grand Jury
7 indicted applicant for murder, 2018-GS-40-1465; attempted
8 murder, 2018-GS-40-1464; and carjacking by force of a
9 person with great bodily injury, 2018-GS-40-1463. Richland
10 County assistant public defenders Robert S. Forney and
11 Tracy E. Pinnock represented applicant. Assistant
12 solicitor Lamar J. Fyall of the Fifth Circuit Solicitor's
13 Office prosecuted the case.

14 On October 13, 2020, applicant pled guilty pursuant to
15 a negotiated plea agreement with the state before the
16 Honorable DeAndrea D. Benjamin. Judge Benjamin sentenced
17 applicant as negotiated to concurrent terms of thirty years
18 each for murder, attempted murder, and carjacking.
19 Applicant did not appeal.

20 Applicant timely commenced this PCR action on March 3,
21 2021, asserting various allegations of ineffective
22 assistance of counsel. On June -- as requested relief in
23 that application, applicant is seeking to have all of his
24 charges exonerated.

25 On June 1, 2021, respondent filed its return motion

1 for more definite statement and partial motion to dismiss.
2 On September 1, 2023, PCR counsel amended applicant's
3 claims to include two allegations of ineffective assistance
4 of counsel, and I will turn it over to Mr. Griffith.

5 THE COURT: Yes, sir.

6 MR. GRIFFITH: Please the court, Your Honor? We would
7 call Mr. Williams to the stand.

8 THE COURT: All right, Mr. Williams, if you'll come up
9 and be sworn.

10 TONY T. WILLIAMS, BEING DULY
11 SWORN, TESTIFIES AS FOLLOWS:

12 THE COURT: All right, if you'll grab a seat. State
13 your name for the record, and speak up into the microphone
14 so the court reporter can hear you, please, okay?

15 WITNESS: Tony Williams.

16 MR. GRIFFITH: Please the court, Your Honor?

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION BY MR. GRIFFITH:

19 Q. Please give your entire name, Mr. Williams.

20 A. Tony Tyrese Williams.

21 Q. Okay. Mr. Williams, how long have you been
22 incarcerated?

23 A. Six years.

24 Q. Six years already?

25 A. Yes, sir.

1 Q. Okay, and how long was your sentence?

2 A. Thirty.

3 Q. Okay.

4 MR. GRIFFITH: Now, may I approach the witness, Your
5 Honor?

6 THE COURT: You may.

7 Q. Mr. Williams, do you recognize this document? That
8 is, do you know what this document is?

9 A. Sentence sheet.

10 Q. Yes, sir. Is this your sentence sheet? Do you recall
11 or...

12 A. Yeah. That ain't my signature, though.

13 Q. That's right. Do you remember being asked to sign
14 this sentence sheet?

15 A. No.

16 Q. Okay, but, I mean, you didn't sign it, right?

17 A. No. I ain't sign it. That ain't my signature.

18 Q. And why didn't you sign it?

19 A. Ineffective counsel. I had just got a new attorney.
20 I had applied two weeks. We was under quarantine because
21 corona virus had just hit, but he was just assigned to me.
22 So, I'm thinking I'm coming to court to get twenty years,
23 but he signed my sentence sheet, and I can't -- I got
24 thirty. But he said that he signed my sentence sheet for
25 me, though. I ain't know nothing about thirty years.

T. WILLIAMS - DIRECT EXAMINATION BY MR. GRIFFITH

6

1 Thought I was getting twenty.

2 Q. So, you did not agree to thirty years. Isn't that
3 correct?

4 A. No, sir.

5 Q. You did not agree?

6 A. I didn't.

7 Q. Okay, and so you expected that you were going to get
8 twenty years, correct?

9 A. Yeah.

10 Q. And that is why you did not sign your sentencing
11 sheet. Is that correct?

12 A. Yeah.

13 MR. GRIFFITH: And, Your Honor, I don't know if you
14 have one of the sentencing sheets in your packet.

15 THE COURT: I do.

16 MR. GRIFFITH: Just to make note that that is not
17 signed by Mr. Williams. It's signed by his attorney for
18 Mr. Williams on the sentencing sheet.

19 Q. Mr. Williams, if you had -- if they the twenty -- it'd
20 been twenty years, maybe you would have signed it, maybe
21 you wouldn't, but at this point, you would like the court
22 to grant your PCR so that you put -- are put back in the
23 position you were in before this plea. You understand that
24 in that case, you would be charged with murder and
25 attempted murder and carjacking and armed robbery?

1 A. Yes, sir.

2 Q. Okay, which could result in a sentence of thirty years
3 to life and another thirty years and another twenty years
4 all consecutive if the judge were to decide something like
5 that. You understand that could happen?

6 A. Yes, sir.

7 Q. Okay. Just to be sure. Now, you also talked -- you
8 and I talked about ineffective assistance of counsel, and
9 part of your ineffective assistance of counsel was that he
10 told you you were getting a twenty-year plea. Is that
11 correct?

12 A. Yeah.

13 Q. And it ended up being a thirty-year plea, right?

14 A. That's correct.

15 Q. And also you told me that he did not investigate on
16 your case. He failed to investigate it. Do you remember
17 that?

18 A. Yes, sir.

19 Q. Can you tell us a little bit about that?

20 A. He was only assigned to me for two weeks, and I was in
21 court, and we had, like, no face-to-face visits, no
22 telephone visits. I think he came down there one time. He
23 was just letting me know he'd been assigned to my case, and
24 Tracy Pinnock was helping him, but after that, we never had
25 no meetings. Next thing I know, I'm in court.

T. WILLIAMS - DIRECT EXAMINATION / CROSS-EXAMINATION

8

1 Q. Okay. So, basically you only had -- he -- he'd only
2 had the case two weeks and brought you up to plea. Is that
3 what you're saying?

4 A. He was letting me know that the court date coming up
5 soon, and that I was looking at twenty. So, when I came
6 here, I thought I had twenty, but it turned out he signed
7 my sentence sheet for me on thirty.

8 Q. Okay. So, now we've talked about you not signing your
9 sentencing sheet because you, you were told it was going to
10 be twenty. Turned out to be thirty. You've talked about
11 you only -- didn't really have time to talk to him because
12 he only had the case for two weeks and failed ---

13 A. That's where the ---

14 Q. --- to investigate the case.

15 A. --- ineffective assistance of counsel come in at.

16 Q. Yeah. Okay, and so is there anything else you want
17 to add to tell the court as to why you should get a new
18 trial?

19 A. No, not really. Nothing extra. I mean, the argument
20 I already said, that's what I'm going with.

21 Q. Okay.

22 MR. GRIFFITH: Thank you. Please answer any questions
23 that the attorney general might ask.

24 CROSS-EXAMINATION BY MR. BARLOW:

25 Q. All right, good afternoon, Mr. Williams.

1 A. Good afternoon.

2 Q. I know that Mr. Griffith has just explained to you in
3 detail about what you face with a PCR, but I just want to
4 go over it real carefully with you. Just make sure that
5 you understand what this court can grant you in terms of
6 relief. You ask for relief in your PCR application, for
7 them to exonerate you. That is not something that this
8 court can do. Do you understand that?

9 A. Yes, sir.

10 Q. Okay. This court puts you back to day one where all
11 of your indictments come back on, and you face a trial on
12 all of the indictments. Do you understand that?

13 A. Yes, sir.

14 Q. And do you know what you're facing?

15 A. Yeah.

16 Q. Maximum?

17 A. Yes, sir.

18 Q. And what is that?

19 A. I know.

20 Q. What is it?

21 A. I know what my charge carry.

22 Q. And what is the maximum?

23 A. I know.

24 THE COURT: All right. Hold on. You've got to answer
25 the question. If there's an objection from your attorney,

T. WILLIAMS - CROSS-EXAMINATION BY MR. BARLOW

10

1 that's one thing but ---

2 WITNESS: Murder carry thirty years.

3 THE COURT: You've got to answer his question, okay?

4 A. Murder carry thirty years. I know all my charges
5 carry.

6 Q. The maximum exposure of murder is life.

7 A. Okay.

8 Q. The maximum exposure of attempted murder is thirty
9 years.

10 A. Okay.

11 Q. The maximum exposure for carjacking with great bodily
12 injury is thirty years.

13 A. Okay.

14 Q. And life without parole was on the table for you. You
15 remember that?

16 A. No.

17 Q. Okay. Well, you are facing a maximum exposure of life
18 without parole plus sixty years. Do you understand that?

19 A. Uh-huh.

20 Q. Do you still wish to proceed?

21 A. Yeah.

22 Q. Okay. Perfect

23 So, your contention is your counsel was ineffective
24 because he told you you were getting twenty years, correct?

25 Okay. Do you recall telling -- the court explaining

1 to you that the negotiations in this case is for a
2 negotiated sentence of thirty years?

3 A. That's what he signed the sentence sheet for, but I
4 didn't sign it.

5 Q. Do you recall the plea court informing you -- that
6 would be page 10 of the plea transcript -- that this was a
7 negotiated sentence for thirty years, and you agreed with
8 this fact?

9 A. I ain't -- he tell me the agreement when we came in.
10 I was on medication at the time in the county; I got
11 records of my medication documented. So, he just tell me
12 come in, just agree so everything will go smoothly. I
13 ain't know no better at the time.

14 Q. So, you just agreed with the thirty years?

15 A. I just say yeah. She ain't tell me my time until
16 really the end. She was saying what she could give me and
17 that I was up here for a negotiated sentence. She never
18 said to me do you know I'm fixing to give you thirty years.

19 Q. The court, when they accepted your plea, do you recall
20 them explaining to you this was a negotiated sentence of
21 thirty years?

22 A. No.

23 Q. Okay. Do you recall telling the court you were
24 completely satisfied with your -- with representation?

25 A. Yeah, yeah, yeah, I remember saying that.

T. WILLIAMS - CROSS-EXAMINATION BY MR. BARLOW

12

1 Q. Okay. Do you recall telling the plea court that you
2 were -- needed no more time to speak with Mr. Forney?

3 A. I did say I needed more time, though.

4 Q. The plea transcript will reflect what it does.

5 Do you recall telling the court that Mr. Forney had
6 done everything for you that you feel he could have done or
7 should have done?

8 A. Yeah, I was agreeing with them.

9 Q. Do you recall telling him that you -- telling the
10 court that you had met with him for as long as necessarily
11 to properly represent you?

12 A. Well, I don't remember those questions.

13 Q. Do you recall telling the plea court that he had
14 answered all of your questions, and you did not need
15 additional time with plea counsel?

16 A. I tell them I needed more time; I remember me saying
17 that.

18 Q. And do you recall telling the plea court that no one
19 was forcing you to plead guilty?

20 A. I don't remember saying that.

21 Q. Do you recall telling the plea court that you were
22 pleading guilty of your own free will?

23 A. I don't remember saying that.

24 Q. Do you recall telling the plea court that you were in
25 agreement with the negotiations of the thirty years?

1 A. I know I ain't say that.

2 Q. And do you recall telling the plea court it was freely
3 and voluntarily given?

4 MR. BARLOW: Nothing further, Your Honor.

5 MR. GRIFFITH: No redirect.

6 THE COURT: All right. Thank you, sir. You may step
7 down.

8 (THE WITNESS EXITS THE STAND.)

9 MR. GRIFFITH: No further witnesses, Your Honor.

10 THE COURT: All right, anything from the state?

11 MR. BARLOW: Yes, Your Honor. We would call Mr.
12 Robert Forney.

13 THE COURT: All right, Mr. Forney, come on down and be
14 sworn.

15 ROBERT FORNEY, BEING DULY SWORN,

16 TESTIFIES AS FOLLOWS:

17 THE COURT: All right, if you will grab a seat, state
18 your name for the record.

19 WITNESS: My name is Rob Forney, F-o-r-n-e-y.

20 DIRECT EXAMINATION BY MR. BARLOW:

21 Q. Mr. Forney, thank you for being here today.

22 How long have you been practicing law?

23 A. Oh, man, nine years.

24 Q. And how much of that has been in criminal law?

25 A. All of it.

R. FORNEY - DIRECT EXAMINATION BY MR. BARLOW

14

1 Q. And were you appointed or retained?

2 A. Appointed.

3 Q. And roughly how long were you, before the plea, were
4 you appointed?

5 A. So, it was three years ago or -- yeah, roughly. So,
6 about six years.

7 Q. And during that time, did you receive discovery?

8 A. Yes.

9 Q. And did you review discovery with the applicant? Well
10 -- with the applicant, yes.

11 A. I don't think our -- I don't think our meetings were
12 ever to go into the specifics of the discovery. What -- by
13 the time I got involved, Ms. Eigenbrot, my predecessor, had
14 gone over that stuff with him already. I was mainly
15 meeting with him to prepare for trial.

16 Q. Is that in your notes?

17 A. Yes.

18 Q. Okay, and y'all were preparing for trial?

19 A. Yes.

20 Q. Okay, and based off -- well, give us a brief overview
21 of your understanding of the state's evidence.

22 A. There was a -- basically two young men, Francis Baxley
23 and Austin Ross, were at a gas station one night. They
24 encountered three young men. They -- through -- the young
25 men either asked them for a ride or was offered to give

1 them a ride. I forget which and it varies depending on who
2 you ask. But the three young men got in Austin Ross and
3 Francis Baxley's car and during the course -- when they
4 reached their destination, two shots were fired, one into
5 Ross and one into Baxley, and one died and one was shot, I
6 believe, in the jaw.

7 Q. And based on the evidence, were you able to craft a
8 defense strategy?

9 A. Yes.

10 Q. And did you discuss a defense strategy with the
11 applicant?

12 A. Yes.

13 Q. And did you ever tell applicant that he would only get
14 twenty years?

15 A. No. He, he spoke to me, and I represented him for
16 much longer than two weeks also. I first was assigned to
17 him in late February of 2020. Of course, COVID quarantine
18 happened not long after that, but he -- my first meeting
19 with him was, according to my notes, on February 24, 2020.
20 He made it clear in that meeting he wanted twenty years,
21 and I told him that was not what the prosecutor was
22 offering.

23 Q. And do your notes reflect approximately how many times
24 you met with him?

25 A. Yes. I believe it's between seven and eight times.

1 The really only in-person meeting was in late February
2 because we went on lockdown pretty soon after that. We
3 changed our visitation policy. The jail had changed their
4 visitation policy, and we mostly did video and phone visits
5 up until I saw him in court for the plea.

6 Q. When did...

7 MR. BARLOW: Beg the court's indulgence.

8 Q. When did he -- when did the applicant decide that he
9 wanted to plead and not go to trial?

10 A. So in August of 2020, as we -- as Ms. Pinnock and I
11 were preparing for trial, he told me he wanted a new
12 attorney and that he wanted me to file a motion to be
13 relieved as counsel. At this point, we were about a month
14 from the trial date, or a little over six weeks from the
15 trial date, and I warned him that might not work, but he
16 still wanted me to do so.

17 So, I filed that motion. And then it was scheduled
18 for September 16th of 2020 before Judge McCaslin over
19 WebEx. And for the first time -- that was where I heard
20 for the first time that he now wanted to plead guilty to
21 thirty years.

22 Q. Okay, and did you explain to him the, the consequences
23 of plea?

24 A. I was not able because that plea was -- or because
25 that procedure was done over WebEx, I was not able to speak

1 to him in a private setting. So, I went to the jail and
2 met with him the next day, at, at which point we did
3 discuss fully that he was going to plead guilty for thirty
4 years.

5 Q. And did you -- did you agree with his inclination to
6 plead?

7 A. Yes.

8 Q. Do you stand by your representation?

9 A. I do.

10 Q. And lastly -- but there's been some testimony about
11 the sentencing sheet that, Mr. Williams did not sign it,
12 that you signed it in his place because he refuse -- he
13 wanted the twenty, not the thirty. Is that your
14 recollection?

15 A. No, it's not. My notes would, I think, definitely
16 indicate if he had at any point refused the plea. It
17 certainly was one that I was recommending for him, but I
18 would never make someone plead to something they didn't
19 want to plead to.

20 I said the reason that he didn't -- his signature was
21 not on it was because the procedure at that time was the
22 judges were -- because of the limited physical access to
23 our clients, we were being permitted to sign plea documents
24 for them. But we had to submit additional documentation
25 just waiving their right to an in-person hearing, and

R. FORNEY - DIRECT EXAMINATION / CROSS-EXAMINATION 18

1 because the -- because the trial date was looming, it was
2 -- I did use that procedure.

3 Q. And one last question actually. The -- was he served
4 with an LWOP notice?

5 A. Not during my representation.

6 Q. Okay.

7 A. That I recall.

8 MR. BARLOW: Nothing further, Your Honor.

9 THE COURT: All right. Cross?

10 MR. GRIFFITH: Thank you, Your Honor. Please the
11 court?

12 CROSS-EXAMINATION BY MR. GRIFFITH:

13 Q. Mr. Forney, good afternoon.

14 A. Good afternoon.

15 MR. GRIFFITH: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 Q. Mr. Forney, do you recognize this?

18 A. I do.

19 Q. And can you tell us what it is?

20 A. This is the sentence sheet for Mr. Williams's plea to
21 attempted murder.

22 Q. And can you tell us if your signature is on that?

23 A. Yes. This is not a handwritten signature. This is
24 done through a PDF form fill. That's how we were doing
25 things at the time so that we could give -- sign documents

1 to the court staff without any unnecessary physical
2 contact.

3 Q. And who has signed here for the defendant?

4 A. Me, Rob Forney.

5 Q. Okay. So, the defendant did not sign this sheet?

6 A. That's correct.

7 Q. Was it the policy for the defendants to not sign their
8 own time sheets?

9 A. It was less of a policy, more of a practice born of
10 necessity during that time. Yes, defendants were not
11 allowed to sign their documents because we did not have the
12 means to physically give it to them.

13 Q. So, you're saying that you guys didn't send sentencing
14 sheets over to the jail to have them signed?

15 A. During COVID -- during the COVID lockdown procedures,
16 that was not done by me. It may have been done by others,
17 but my -- this plea was done right on the tail end of when
18 we were going back in court. And that process was still in
19 -- that, that practice was still in use.

20 Q. Okay. So, the long and short of it is Mr. Williams
21 did not sign his sentencing sheet?

22 A. That's correct.

23 Q. Did he ever see his sentencing sheet?

24 A. I don't recall.

25 Q. Okay. Well, if he didn't sign it, might we assume

1 that he didn't -- also didn't see it?

2 A. No. He -- it could have been shown during the
3 multiple conversations we had leading up to the plea, but
4 he may not have the physical ability to sign it with his
5 own handwriting..

6 Q. Okay.

7 A. I don't recall one way or the other.

8 Q. So, do you recall at one point telling Mr. Williams
9 that you had worked out a twenty-year plea?

10 A. I never told him that.

11 Q. You had an opportunity to investigate. The reason I
12 ask this is he says that you only had his case for two
13 weeks.

14 A. And that's incorrect.

15 Q. How long did you have it?

16 A. About seven months.

17 Q. So during that time, how many times did you have an
18 opportunity to speak with Mr. Williams?

19 A. Between seven and eight times, I would guess.

20 Q. I'm sorry?

21 A. Between seven and eight times.

22 Q. About once a month?

23 A. Sometimes multiple times a week in the days leading up
24 to court proceedings.

25 MR. GRIFFITH: I have no further questions.

1 WITNESS: Thank you.

2 MR. GRIFFITH: Thank you.

3 THE COURT: Any redirect?

4 MR. BARLOW: None, Your Honor.

5 EXAMINATION BY THE COURT:

6 Q. All right, Mr. Forney, let me ask you this. Was this
7 plea done in person, or was it on WebEx?

8 A. It was one of the first in person after -- yes, it was
9 done in person, but some of the victims were on WebEx, but
10 I and Mr. Williams were here in person.

11 Q. Physically in person?

12 A. Yes.

13 Q. And on this ---

14 A. But ---

15 Q. On this sentencing sheet where you signed it for him,
16 obviously it's all complete now, but when you signed it for
17 him, were the numbers, particularly the number thirty,
18 already written in or ---

19 A. No.

20 Q. --- was this prior?

21 A. No. Whenever I have clients sign a sentence sheet, it
22 has not -- the sentence part has not been filled in.

23 Q. Okay. So when y'all signed it, it was just a standard
24 that listed the offense, if it was violent or nonviolent,
25 if it was serious, most serious, and if he waived his

1 right, and if it was a negotiated sentence?

2 A. Correct, which it was.

3 Q. Okay.

4 THE COURT: Any other follow up to that?

5 MR. BARLOW: None, Your Honor.

6 MR. GRIFFITH: None, Your Honor.

7 THE COURT: All right. Thank you, Mr. Forney. You
8 may step down.

9 (THE WITNESS EXITS THE STAND.)

10 MR. BARLOW: That concludes the state's case.

11 THE COURT: Anything else, Mr. Griffith?

12 MR. GRIFFITH: No more witnesses, Your Honor.

13 THE COURT: All right, brief summation.

14 MR. GRIFFITH: Your Honor, Mr. Williams, he didn't
15 sign his sentencing sheet, and he would not have had an
16 opportunity to see it. Of course, as had normally been
17 practiced in general sessions court, the judge fills out
18 the sentencing sheet as to the number of years. So, he --
19 because he didn't sign his own sentencing sheet and
20 contends that he didn't see the sentencing sheet to have
21 signed it, he believes he has a -- an offer for twenty
22 years.

23 If this was a negotiated plea as was contended by the
24 state, then I would -- of course he would have to have
25 agreed to it beforehand, and I contend that because he

1 didn't have an opportunity to see the sentencing sheet, he
2 thought he was getting twenty years and he ended up with
3 thirty. Your Honor, that in itself is not a good thing.

4 Although he did say that he didn't get enough time to
5 speak to his attorney, he may or may not recall how many
6 times he spoke with his attorney, but his attorney didn't
7 bring in any records saying how long he talked to him or
8 when he talked to him. But, Your Honor, we would ask that
9 the court grant his PCR and allow him to continue with this
10 case.

11 THE COURT: Thank you, sir.

12 MR. BARLOW: Your Honor, if -- even if Mr. Forney was
13 deficient in not explaining to him that it was thirty
14 years, the plea colloquy cures any deficiency. So, you
15 can't reach the prejudice prong of *Strickland* in this
16 because he was informed by the court not once but twice
17 that it was thirty years negotiated, and he agreed on both
18 counts that it was. And that is exactly what he was aware
19 that it was. So, saying that he thought it was twenty but
20 he's agreeing in the plea colloquy that it's thirty -- not
21 once but twice it's told to him. Your Honor, I would argue
22 he had a full understanding and that the plea court cured
23 any supposed deficiency on plea counsel's case on that
24 matter.

25 And as far as meeting with him, while he did not give

1 specific dates and times, he said that he did meet with him
2 six to seven time at least.

3 THE COURT: All right. Well, I'm going to take this
4 under advisement. I'll consider everything I've heard
5 today. I'm going to need to review the record and the
6 filing as well and have a decision to you shortly.

7 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 11TH DAY OF SEPTEMBER, 2023.

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

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

COLUMBIA, SOUTH CAROLINA

NOVEMBER 28TH, 2023

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Tony T. Williams, #384153,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

) IN THE COURT OF COMMON PLEAS)
) FOR THE FIFTH JUDICIAL CIRCUIT)
) CASE NO. 2021-CP-40-0985)

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge: Hon. Daniel Coble
Applicant's Attorney: Timothy L. Griffith, Esq.
Respondent's Attorney: D. Russell Barlow, II, Esq.
Plea Counsel: Robert S. Forney, Esq.
Date of Hearing: September 11, 2023
Court Reporter: Elizabeth B. Harris

This matter comes before the Court by way of Tony T. William's (Applicant) application for post-conviction relief (PCR) filed on March 3, 2021. Respondent, the State of South Carolina, filed its Return, Motion for a More Definite Statement, and Partial Motion to Dismiss on June 1, 2021. On September 2, 2023, Respondent received Applicant's amended allegations by email from Timothy L. Griffith, Esquire (PCR Counsel).

On September 11, 2023, an evidentiary hearing was held at the Richland County Courthouse before the Honorable Daniel Coble. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant was present and represented by PCR Counsel. At the hearing, Applicant proceeded on the claims in his original and amended application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Assistant Public Defender Robert S. Forney (Plea Counsel).

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

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the May 2018 term, the Richland County Grand Jury indicted Applicant for Murder (2018-GS-40-1465), Attempted Murder (2018-GS-40-1464), and Carjacking/Take or Attempt a Vehicle by Force from Person, Great Bodily Injury (2018-GS-40-1463). Richland County Assistant Public Defenders Robert S. Forney and Tracy E. Pinnock represented Applicant. Assistant Solicitor Lamar J. Fyall of the Fifth Circuit Solicitor's Office prosecuted the case.

On October 13, 2020, Applicant pled guilty pursuant to a negotiated plea agreement¹ before the Honorable DeAndrea G. Benjamin. Judge Benjamin sentenced Applicant, as negotiated, to concurrent terms of thirty years each for Murder, Attempted Murder, and Carjacking.

Applicant did not appeal his convictions and sentences.

FACTS GIVING RISE TO THE CONVICTION

The facts giving rise to the convictions were articulated by the Solicitor at Applicant's plea hearing as follows:

This incident occurred on December 16, 2017. Both victims were at the Circle K gas station on Parklane Road. They met the Defendant and his Co-Defendants, Tafarae Pelzer and Javian Lessington, and the victims agreed to give them a ride. They all got into the car, Your Honor, with the Defendant seated in the back on

¹ As part of the negotiations, the State dismissed the Possession of a Weapon During the Commission of a Violent Crime.

the driver's side nearest the driver's side window. They drove to near the Meadow Lakes subdivision.

When they got there, Your Honor, the victim, Mr. Ross, was shot in the neck, and Mr. Baxley was shot in the face. As they were taken out of the car and left there, the defendants got into the car and drove away.

Two days later, Your Honor, the case sort of broke open because the Defendant's mother was stopped by the City of Columbia Police Department driving the car. They got consent from her to search the house and they found a firearm in the house. That firearm later came back to match the bullets that were used in this case, Your Honor.

After that, Mr. Williams was initially arrested for possession of a stolen vehicle. After the firearm match occurred, subsequently a family member of his reached out to Richland County Sheriff's Department. He came in to give a statement. And, additionally, the two Co-Defendants gave a statement, Mr. Lessington and Mr. Pelzer. Both Mr. Lessington and Mr. Pelzer identified Mr. Williams as being the shooter in that case, and he was subsequently arrested and charged with murder and attempted murder and carjacking. While this occurred, he was on bond for purse snatching.

(Plea Tr. pp. 4-5)

CURRENT ACTION BEFORE THIS COURT

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

1. Ineffective Assistance of Plea Counsel
 - a. Plea Counsel failed to investigate.
 - b. Plea Counsel failed to object to the solicitor's statement about prior time conviction, but for the error of counsel, the outcome would be different.

On September 2, 2023, PCR Counsel emailed Respondent amendments to Applicant's PCR application alleging the additional claims for relief:

2. Ineffective Assistance of Plea Counsel
 - a. "Counsel told him he would get a deal for 20 years, according to Mr. Williams, a plea to manslaughter rather than murder. For this reason, he refused to sign his plea sheets."

- b. "On the failure to object – he understands the Solicitor just said he was out on bond – he thought it meant he had been convicted (which he hadn't been)."
- c. "He was on medication for mental illness, and his attorney, knowing that, told him to just say yes to whatever the Judge asked."

Before this Court is the Richland County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the South Carolina Department of Corrections, Applicant's guilty plea transcript, and the records of the current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C.

² S.C. Code Ann. §§ 17-27-10 to -160.

Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117—18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's

performance under the first prong of Strickland remains unchanged, the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these

claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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

INITIAL FINDINGS

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing **credible** and **persuasive**, where he presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court finds Applicant's testimony at the evidentiary hearing generally **not credible or persuasive**. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be

made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 6-7); 2. Applicant understood the details and circumstances of a straight-up plea (Plea Tr. pp. 7-8); 3. Applicant clearly indicated he was satisfied with his attorneys (Plea Tr. pp. 9-10); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 8-9); 5. Applicant indicated he had enough time with his attorneys (Plea Tr. p. 9); 6. Applicant indicated his attorneys answered all of his questions, and he had no more questions for them (Plea Tr. pp. 9-10); 7. Applicant indicated no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. pp. 9-10); 8. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 4); 9. Applicant understood the sentencing range (Plea Tr. pp. 6-7); 10. Applicant was clearly advised of his right to appeal (Plea Tr. pp. 11-12); 11. Applicant did not disagree with the facts surrounding the State's case against him (Plea Tr. p. 6); 12. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p.12).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: Plea Counsel Failed to Investigate

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

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support

the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

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. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the evidentiary hearing on direct examination, Applicant testified that Plea Counsel represented him about two weeks before his plea hearing. (PCR Tr. p. 7). Applicant testified that Plea Counsel never met with him face-to-face, no telephone calls, but did admit Plea Counsel

visited him one time. (PCR Tr. p. 7). Applicant testified he thought he was pleading for twenty years, but Plea Counsel signed the sentencing sheet for him, and it was for thirty years. (PCR Tr. p. 8).

On cross-examination, Applicant testified he recalled telling the court he was satisfied with Plea Counsel and his representation. (PCR Tr. p. 11).

On direct examination, Plea Counsel testified he was appointed in late February 2020, and by the time Applicant pleaded, he had been involved in the case for roughly three years. (PCR Tr. p. 14). Plea Counsel testified he represented Applicant "much longer than two weeks," and "COVID quarantine" happened not long after. (PCR Tr. p. 15). Plea Counsel testified that he reviewed discovery with Applicant and that he mainly "[met] with [Applicant] to prepare for trial." (PCR Tr. p. 14). Plea Counsel testified that he had a defense strategy and discussed that strategy with Applicant. (PCR Tr. p. 15). At their first meeting on February 24, 2020, Plea Counsel testified that Applicant wanted twenty years; however, he informed Applicant the Solicitor was not offering him twenty years. (PCR Tr. p. 15).

Plea Counsel testified that prior to the trial, Applicant wanted a new attorney, so he filed a motion to be relieved as counsel, and that hearing was held on September 16th before the Honorable Debra R. McCaslin. (PCR TR. p. 16). Plea Counsel testified it was then "for the first time, [he] heard [Applicant] wanted to plead guilty to thirty years." (PCR Tr. p. 16).

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catce, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). This Court will not credit Applicant's present claim that he would have gone to trial absent Plea Counsel's alleged failure to investigate, as Applicant has failed to present evidence of

any discoverable matters or defenses Plea Counsel would have discovered had he been more prepared. This Court further finds Applicant has offered little more than mere speculation, and speculation does not meet Applicant's burden. Therefore, the Court finds Applicant failed to adequately show that he would have opted to go to trial but for Plea Counsel's lack of investigation.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's investigation, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea.

Accordingly, this Court finds Plea Counsel's representation of Applicant was not deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation: Involuntary Guilty Plea

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant alleges Plea Counsel told him he would get twenty years and would be pleading to manslaughter and not murder, that Plea Counsel told him to just answer yes to the plea judge's questions, and that he was on medication when he pled guilty.³ This Court finds these allegations are without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against

³ Applicant also alleged Plea Counsel was deficient for not objecting to the Solicitor when the Solicitor informed the plea court that Applicant was on bond. No evidence, testimony, or legal authority was presented at the evidentiary hearing regarding this allegation. Therefore, the Court deems it abandoned. "When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue." *Palmer v. State*, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)).

him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

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

As an initial matter, this Court finds the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. This Court further finds Applicant was fully aware of the negotiated sentence of thirty years and not twenty years. Because a guilty plea is a solemn judicial admission of the truth of the charges against an individual, the PCR applicant's right to

contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

At the evidentiary hearing on direct examination, Applicant testified he had been incarcerated for six years, and his sentence was for thirty years. (PCR Tr. p. 5). Applicant testified, "I ain't sign it. That ain't my signature." (PCR Tr. p. 5). Applicant further testified that the coronavirus had just "hit," and he thought he was going to court "to get twenty years" and "ain't know nothing about thirty years." (PCR Tr. p. 5).⁴

At the evidentiary hearing on cross examination, Applicant testified that he did not recall telling the Plea Court that no one forced him to plead guilty, nor that he was pleading guilty at his own free will. (PCR Tr. p. 12).⁵ Applicant testified Plea Counsel told him to "agree so everything will go smoothly." (PCR Tr. p. 11). Applicant testified he did not know that he was pleading to a negotiated sentence, nor does he recall the Plea Court explaining that the plea was a thirty-year negotiated sentence. (PCR Tr. p. 11).⁶

⁴ Contrary to Applicant's testimony, at the plea hearing, the record provides Applicant was apprised that murder carried 30 years to life in prison, carjacking up to 30 years, and attempted murder carried up to 30 years too. Also, the record provides Applicant was apprised that the Plea Court could run those charges all consecutively and faced a maximum sentence of 90 years to life in prison. (Plea Tr. p. 6). Further, the record provides Applicant was apprised of the negotiations and Applicant answered in the affirmative that he understood and agreed with the negotiated sentence of 30 years imprisonment. (Plea Tr. p. 10).

⁵ Contrary to Applicant's testimony, at the plea hearing, the record provides Applicant testified that no one was forcing him to plead guilty and he was pleading guilty of his own free will. (Plea Tr. p. 10).

⁶The record provides Applicant admitted guilt when he answered "Yes, Ma'am" to plead guilty because he was guilty of those three charges. (Plea Tr. p. 11). This Court notes Applicant's assertions are wholly refuted by the plea transcript.

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

- Q. When did he -- when did the Applicant decide that he wanted to plead and not go to trial?
- A. So, in August of 2020, as we -- as Ms. Pinnock and I were preparing for trial, he told me he wanted a new attorney and that he wanted me to file a motion to be relieved as counsel. At this point, we were about a month from the trial date, or a little over six weeks from the trial date, and I warned him that might not work, but he still wanted me to do so. So, I filed that motion. And then it was scheduled for September 16th of 2020 before Judge McCaslin over WebEx. And for the first time -- that was where I heard for the first time that he now wanted to plead guilty to thirty years.
- Q. Okay, and did you explain to him the, the consequences of plea?
- A. I was not able because that plea was -- or because that procedure was done over WebEx, I was not able to speak to him in a private setting. So, I went to the jail and met with him the next day, at, at which point we did discuss fully that he was going to plead guilty for thirty years.
- Q. And did you -- did you agree with his inclination to plead?
- A. Yes
- Q. Do you stand by your representation?
- A. I do.

(PCR Tr. pp. 16-17).

On cross-examination, Plea Counsel testified that he signed on behalf of Applicant via a PDF form fill as this was the procedure during COVID—"without any unnecessary physical contact." (PCR Tr. p. 18). Plea Counsel further stated, "It was less of a policy, more of a practice born of necessity during that time." (PCR Tr. p. 19). Plea Counsel also testified he never conveyed to Applicant that he had worked out a twenty-year plea deal. (Plea Tr. p. 20).

Also, Applicant alleges Plea Counsel was constitutionally ineffective in coercing him into pleading guilty because he was on medication. Applicant testified at the evidentiary hearing that he was on medication while in the county jail and that he had documentation he was on medication.

However, Applicant provided no further proof to this Court that he was on any medication that affected his ability to enter his plea freely, voluntarily, and intelligently. What is before this Court is the guilty plea transcript, which provides that Applicant was asked if he was on or had taken any medications within the last twenty-four hours, to which he responded, "No, ma'am."

This Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993).

Furthermore, this Court finds the combination of the record and Plea Counsel's credible testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin v. Alabama, 395 U.S. 238 (1969) and Roddy v. State, 339 S.C. 29 (2000). Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Applicant did not allege any facts tending to prove he was prevented from informing the plea court that Plea Counsel told him he would only get twenty years, that he was on medication,

and that Plea Counsel told him to just answer yes to all the judge's questions. In fact, the record refutes Applicant's allegations. Thus, based on the records before this Court, Plea Counsel's **credible** testimony, and the evidence presented at the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

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

ALLEGATIONS RAISED AT THE EVIDENTIARY HEARING AND NOT IN THE ORIGINAL APPLICATION

Allegation: Failure To Meet a Sufficient Number Of Times.

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

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). Mere speculation and conjecture are not insufficient to substantiate an allegation that counsel's deficient performance was prejudicial. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

At the evidentiary hearing on direct examination, Applicant testified that there were no "face-to-face visits, no telephone visits," however, Applicant testified Plea Counsel went to see him "one time." (PCR Tr. p. 7).

At the evidentiary hearing on cross-examination, Applicant testified that he "needed more time" to speak with Plea Counsel. (PCR Tr. p. 12). Applicant testified he was "agreeing with them" when asked about Plea Counsel's representation. (PCR Tr. p. 12). Applicant did not recall being asked about whether he met with Plea Counsel as necessary to properly represent him. (PCR Tr. p. 12).

On direct examination, Plea Counsel testified that he met with Applicant between seven and eight times. (PCR Tr. p. 15). Plea Counsel further explained the only in-person meeting was in late February because the lockdown occurred shortly after. (PCR Tr. p. 16). Plea Counsel emphasized the jail changed their visitation policy and communicated with Applicant mostly through "video and phone visits" up until the plea hearing. (PCR Tr. p. 16). Overall, Plea Counsel testified he stood by his representation. (PCR Tr. p. 17).

This Court finds Applicant failed to overcome the "strong presumption that counsel

rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Plea Counsel's **credible** testimony indicates he met with Applicant several times. Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Moreover, to whatever extent Applicant was not entirely satisfied with the amount of time spent in consultation with Plea Counsel, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea. This Court further finds Applicant has failed to meet his burden of showing Plea Counsel was constitutionally ineffective for failing to meet with Applicant a sufficient number of times. See Campbell, Olson, and Easter, *supra*.

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

CONCLUSION

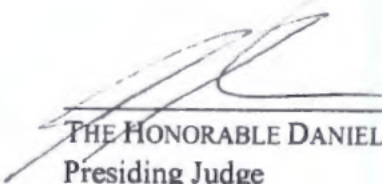
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 4 day of March, 2024.



 THE HONORABLE DANIEL COBLE
 Presiding Judge
 Fifth Judicial Circuit

Richard, South Carolina