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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Clifton Newman, Circuit Court Judge

NATHANIEL NESMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000789

APPENDIX

JOANNA K. DELANY
Appellate Defender

ALAN WILSON
Attorney General

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

D. RUSSELL BARLOW
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3737

ATTORNEY FOR PETITIONER

E. L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit
180 North Irby Street, #1101
Florence, SC 29501
(843) 665-3091

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF FLORENCE) No. 2014 GS 21 691

3

4 STATE OF SOUTH CAROLINA)

5)

6 versus)

TRANSCRIPT OF RECCRD

7)

8 NATHANIEL NESMITH and)
 9 DONALD RAY DOLLARD)

Defendants)

10

Florence, South Carolina

11

October 21, 2014

12

13 B E F O R E :

14 HONORABLE B. C. CULBERTSON, Judge

15

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

17 For the State:

ED CLEMENTS, Esq.
Solicitor

18

19 For Def. Nesmith:

WILL GROVE, Esq.

20

21 For Def. Dollard:

STEVEN DeBERRY, Esq.

22

23 Reporter Present:;

DAPHNE HELMS

24

25

HARRIET P. BENNETT
 Reporter, S. C. Court Administration
 46 Regency Oaks Drive
 Summerville, S. C. 29485

1 (The within matter came before the Court for hear-
2 ing on October 21, 2014)

3 SCLICITOR: If it please the Court, Your Honor?

4 THE COURT: Yes, sir. What have you got?

5 SOLICITOR: Your Honor, this is Indictment 2014-GS-
6 21-691. This is a multiple count Indictment, Your
7 Honor, with Codefendants.

8 Mr. Nathaniel Nesmith has been charged, Your Honor,
9 on a Indictment along with Mr. Dollard, Ray Dollard, and
10 Mr. Gregory Canty.

11 A multi count Indictment. Count one, murder, and
12 count two, armed robbery; count three, conspiracy; count
13 four, kidnapping; count five, possession of a weapon
14 during the commission of a violent crime.

15 It is my understanding that Mr. Nesmith has agreed
16 to count two, armed robbery, and a lesser included of-
17 fense of count one, voluntary manslaughter.

18 Your Honor, present here in the Courtroom are In-
19 vestigator Chad Ccollins and Investigator Thomas McFadden
20 of the Florence County Sheriff's Office, the investiga-
21 tors in this case.

22 Your Honor, this is an event that occurred on the
23 third of December of 2013. Mr. David L. Jenkins was
24 shot and killed .

25 His widow, Ms. Blondella Jenkins, is here, Your

1 Honor. Also his sister, Ms. Victoria Harper, is here
2 in the green coat. They are seated with our Victim Ad-
3 vocate, Ms. Vicki Singletary.

4 Your Honor, let me tell you --- before I get into the
5 facts, let me tell you a little bit about Mr. Nesmith.
6 I believe he is fifty-two years old. Is that correct,
7 Mr. Groves?

8 He's standing here with his attorney, Mr. Will
9 Groves, and his parents.

10 Your Honor heard the bond hearing on February 6,
11 2014. It was denied, and I believe he's been in jail
12 since he was arrested on the 18th of December, 2013.

13 He has been housed in Williamsburg County where my
14 understanding is he has pending bank robbery charges. We
15 asked the Solicitor's Office there if they wished to try
16 to move that case today. We were going to try to move
17 it all together, but they were not ready to do that.

18 I wanted to accommodate Mr. Grove and his other at-
19 torney but they were not prepared to do that, so we are
20 not proceeding on that today.

21 In regards to Mr. Nesmith's criminal history, he
22 has quite a criminal history from the State of New York,
23 Your Honor, where he has illegal use of a firearm; dis-
24 playing a weapon; robbery second degree; a robbery second
25 degree with physical injury and displaying a firearm; a

1 robbery third degree; a robbery first degree; a crim-
2 inal possession of a controlled substance, third, of nar-
3 cotic drugs with intent to sell; criminal possession of
4 controlled substance, fifth degree; intent to take trans-
5 portation without paying; forcible touching; forcibly
6 touching another person's intimate parts which is a
7 misdemeanor crime in New York; acting in a manner to en-
8 danger a child less than seventeen; criminal possession
9 of a controlled substance, seventh degree; endangering
10 the welfare of a child; criminal possession of marijuana,
11 fifth degree, in a public place; criminal possession of
12 a controlled substance, seventh degree.

13 Those are all, I believe, from the State of New
14 York.

15 Other than the pending charges in South Carolina,
16 there is no other criminal record.

17 Your Honor, at the appropriate time when you are ready
18 I will proceed with the facts of the case by Investiga-
19 tor Cllins and McFadden.

20 THE COURT: All right. Attorney-wise, give the
21 Court Reporter your names and who you represent. Mr.
22 Clements on behalf of the State.

23 MR. GROVES: Will Groves. I'm Assistant Public
24 Defender with Florence County, representing Mr. Nesmith.

25 THE COURT: Any other attorneys to participate in

1 the hearing?

2 SOLICITOR: No, Your Honor.

3 THE COURT: Mr. Groves, you represent Nathaniel
4 Nesmith?

5 MR. GROVES: I do, Your Honor.

6 THE COURT: He's pleading to voluntary manslaughter
7 and armed robbery?

8 MR. GROVES: Yes, sir.

9 THE COURT: Have you spoken with your client as to
10 the charges against him, his rights as a Defendant, and
11 the consequences of being convicted of these crimes?

12 MR. GROVES: I have.

13 THE COURT: In your opinion, does your client under-
14 stand the charges against him, his rights as a Defendant,
15 and the consequences of being convicted of these crimes?

16 MR. GROVES: I believe he does.

17 THE COURT: Does he wish to plead guilty or not
18 guilty?

19 MR. GROVES: Guilty.

20 THE COURT: Do you agree with his decision to plead
21 guilty to these charges?

22 MR. GROVES: I do, Your Honor.

23 THE COURT: Based upon the information you have, if
24 this case was to go to trial, do you feel the State
25 could prove your client guilty beyond a reasonable doubt?

1 MR. GROVES: Yes, Your Honor.

2 THE COURT: Has your client received a competency
3 evaluation?

4 MR. GROVES: No, sir.

5 THE COURT: Do you feel he needs a competency eval-
6 uation?

7 MR. GROVES: No, Your Honor. He is very competent.

8 THE COURT: All right. Please place Mr. Nesmith
9 under oath.

10 (Defendant Nesmith sworn by the Clerk)

11 THE COURT: Thank you, sir. Your name is Nathaniel
12 Nesmith?

13 DEFENDANT: Yes, sir.

14 MR. NESMITH: You have been charged and indicted
15 on a number of charges. Two of these charges are mur-
16 der and armed robbery.

17 This indictment covers all lesser included offenses,
18 of which voluntary manslaughter is a lesser included of-
19 fense of murder.

20 According to your attorney, you wish to plead guilty
21 to the lesser charge of murder as well as the indicted
22 charge of armed robbery. Is that correct?

23 DEFENDANT: Yes, sir.

24 THE COURT: Before I can accept your guilty plea,
25 I have to go over some questions with you, and the purpose

1 of my questions is to be sure that you understand the
2 charges against you; that you understand your rights as
3 a Defendant; that you understand the consequences of
4 pleading guilty. I must be sure that you are pleading
5 guilty voluntarily.

6 Have you in the past seventy-two hours taken any
7 medication, consumed any alcohol or drugs, or been under
8 any influence that would affect your ability to know
9 why you're here?

10 DEFENDANT: No, sir.

11 THE COURT: You understand why you are here today?

12 DEFENDANT: Yes, sir.

13 THE COURT: Is there anything about this hearing
14 that you want to ask your lawyer or ask me before we
15 proceed?

16 DEFENDANT: No, sir.

17 THE COURT: All right. Even though you have been
18 indicted by the Grand Jury, under the Constitution of
19 the United States you are presumed innocent of these
20 crimes.

21 You have a right to have your guilt or innocence
22 determined by a jury trial of your peers. The State
23 bears the burden of proving your guilt beyond a reason-
24 about doubt. You do not have to prove your innocence,
25 and you cannot be compelled to testify against yourself.

1 You also have a right to confront and cross-exam-
2 ine anybody who testifies against you. If you choose,
3 you could present a defense to the charges, but when
4 you plead guilty you give up all of those rights. Do
5 you understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: Do you want to give up those rights
8 and plead guilty to these charges?

9 DEFENDANT: Yes, sir.

10 THE COURT: All right. You understand that on the
11 charge of voluntary manslaughter I could send you to
12 prison for thirty years, and on the charge of armed rob-
13 bery I could send you to prison for thirty years?

14 DEFENDANT: Yes, sir.

15 THE COURT: Those are the maximum sentences allowed
16 by law, and if I ordered these sentences to be run conse-
17 cutively I could sentence you to prison for sixty years.
18 Do you understand that?

19 DEFENDANT: Yes, sir.

20 THE COURT: Do you also understand that armed rob-
21 bery carries a mandatory minimum sentence, which means
22 there is a minimum sentence that must be imposed for
23 that crime which is ten years in prison. You understand
24 that?

25 DEFENDANT: Yes, sir.

1 THE COURT: Do you also understand that for both
2 of these crimes, whatever sentence I impose, you will
3 not be eligible for parole? You'll have to serve the
4 sentence I impose. Do you understand that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you also understand that both of
7 these are classified as violent crimes, and what that
8 means is that if you are ever convicted of another vio-
9 lent crime, for that subsequent violent crime conviction
10 you will not be eligible for probation and you would
11 not be eligible for parole?

12 The State could use this conviction against you if
13 you should be convicted of two violent crimes. Do you
14 understand that?

15 DEFENDANT: Yes, sir.

16 THE COURT: Do you also understand that both of
17 these crimes are classified as most serious crimes, and
18 what that means is that if you are ever convicted again
19 of a most serious crime or if you were convicted again
20 of a serious crime, the sentence for those subsequent
21 convictions could be enhanced to life in prison without
22 possibility or eligibility for parole, if the State were
23 to use this guilty plea against you to show two convic-
24 tions for most serious crimes on your record. Do you
25 understand that?

1 DEFENDANT: Yes, sir.

2 THE COURT: Knowing your rights as a Defendant and
3 knowing the maximum sentence you could receive, knowing
4 both these crimes are classified as violent crimes and
5 most serious crimes, and the consequences of any subse-
6 quent convictions for a violent or most serious or a
7 serious crime, do you wish to plead guilty or not guilty
8 to voluntary manslaughter?

9 DEFENDANT: Guilty.

10 THE COURT: Do you wish to plead guilty or not
11 guilty to armed robbery?

12 DEFENDANT: Guilty.

13 THE COURT: Anybody promised you anything or threat-
14 ened you in any way to get you to plead guilty?

15 DEFENDANT: No, sir.

16 THE COURT: Are you pleading guilty voluntarily?

17 DEFENDANT: Yes, sir.

18 THE COURT: Are you satisfied with the services of
19 your lawyer?

20 DEFENDANT: Yes, sir.

21 THE COURT: Are you pleading guilty to these crimes
22 because you committed these crimes?

23 DEFENDANT: Yes, sir.

24 THE COURT: Please listen carefully while the So-
25 licitor gives me the facts or what they are saying

1 happened in this case. Okay?

2 DEFENDANT: Yes, sir.

3 SOLICITOR: Thank you, Your Honor. May it please
4 the Court?

5 Your Honor, Mr. Nesmith was with two Codefendants,
6 Mr. Donald Ray Dollard and Mr. Gregory Canty. They got
7 in, I think, Mr. Dollard's vehicle, if I'm not mistaken,
8 and came to Florence to a store that is run by a man by
9 the name of Brian McElveen.

10 Also present there was an associate of his, Mr.
11 Clay McKnight. Neither of them wish to be here today,
12 Your Honor, which -- I believe a part of the reason for
13 that may be because that store Mr. McElveen runs is a
14 place known for gambling, and that is probably why this
15 store was targeted to be robbed.

16 Your Honor, Mr. Canty did not go into the store but
17 remained in the vehicle, but I think he gave Mr. Dollard
18 and Mr. Nesmith the name of Brian McElveen, which gained
19 them access to get into the store.

20 There was a surveillance video camera there at the
21 store, and Mr. Nesmith and Mr. Dollard went to the store
22 and knocked on the door and was told, according to what
23 Mr. Nesmith tells us -- everything he told we have not
24 been able to corroborate. He was not the first one to
25 talked. Mr. Dollard talked immediately with the law

1 enforcement. Mr. Nesmith, I believe, was truthful with
2 me. He told me that they were told, go away; we are
3 closed; and they said, right, and called out his name.
4 Then he opened the door and let them in.

5 They went in and Mr. Clay McKnight was there and
6 Mr. McElveen was there, and Mr. David Jenkins was there,
7 and Mr. Jenkins was getting ready to go.

8 They told him you've got to stay or go, and he says
9 okay and walks out the door, and they begin to rob Mr.
10 McKnight and Mr. McElveen.

11 On the way to the store they had stopped at another
12 store which was like a Dollar General, and they got some
13 twist ties or zip ties, and like a toy badge and toy
14 handcuffs, and they handcuffed them. Mr. Dollard or Mr.
15 Nesmith one had a badge. Mr. Dollard had the zip ties
16 and he was going to tie the people up with zip ties.

17 Then there was a knock at the door and he told Mr.
18 Nesmith to answer the door. Mr. Nesmith answered the
19 door and Mr. Jenkins was there with a gun, which was a
20 high point, and he tried to fire and the gun misfired,
21 and he didn't even have a magazine in it. He had the mag-
22 azine in his pocket, we found later.

23 But you could tell on the video that he tried to
24 fire and kind of fooled with it, and Mr. Dollard -- Mr.
25 Nesmith returned fire. He thought he was shot, he says.

1 You know, when the gun clicked he just fired. Mr.
2 Jenkins ran around the corner of the building, and he got
3 shot. Mr. Nesmith did hit him, and he went around the
4 corner of the building where he expired.

5 Mr. Nesmith said they planned on robbing the store.
6 They were told they had a lot of money there. I think
7 they knew it might have been a gambling joint.

8 He did express remorse to me and said he didn't
9 intend on hurting anybody. Mr. Jenkins came -- I assume
10 Mr. Jenkins went to his truck and he probably thought
11 something was up and there was a robbery and he was try-
12 ing to stop it.

13 Mr. Nesmith did express remorse to me. I would
14 defer at this time -- I believe there may be some other
15 details I left out. I will defer to the Investigators,
16 but I do need to tell you one other thing. According
17 to Mr. Nesmith, the reason this took place and they were
18 together and they were robbing -- they had charges pend-
19 ing in Williamsburg County for a bank robbery -- is that
20 Mr. Dollard had a young, twenty-five year old girlfriend
21 that was strung out on cocaine and kept trying to get
22 cocaine and money from Mr. Dollard, and he was afraid
23 he was going to lose her and intended on leaving his
24 wife for this young girlfriend who happens to be the
25 niece of a narcotics agent for the Williamsburg Sheriff's

1 Office, and he told me this. I called there and found
2 out who he was. I called him and asked him if he had a
3 twenty-five year old niece that had a relationship with
4 Dollard and was strung out on drugs, and he said he did;
5 that he believed that to be true about his niece.

6 So I corroborated that what he told me was true
7 with regards to that. He told me Mr. Dollard was the
8 driving force behind this, trying to get money, and he
9 was going along with him.

10 Mr. Canty was going to go along with it but when
11 they got there he said he wasn't going to go in; he was
12 not getting out of the vehicle.

13 They got Fifteen Hundred Dollars from Mr. Clay
14 McKnight. There was more money there they didn't know
15 about and didn't take that Mr. McElveen had hidden. Mr.
16 McElveen had given Fifteen Hundred Dollars to Mr.
17 McKnight and that's when Mr. McKnight came in the store,
18 so they were able to find and see quickly that and that
19 is how they got that Fifteen Hundred Dollars.

20 Mr. Nesmith said he got Five Hundred and Mr. Dollard
21 told law enforcement he got Five Hundred Dollars, but
22 Mr. Dollard said he gave Mr. Canty Five Hundred Dollars.
23 Mr. Nesmith verified that.

24 So that is what happened. After the shooting they
25 got the money and took off and went back toward Florence,

1 Florence County and the Williamsburg County area, and
2 Johnsonville-Hemingway area, where they were from.

3 If I left anything out, I would ask the investiga-
4 tors to add to the facts or correct me if I've misstated
5 something.

6 THE COURT: Anybody else who wants to say anything,
7 give the Court Reporter your full name.

8 MR. COLLINS: Yes, sir, Chad Collins.

9 THE COURT: Anything additional?

10 MR. CALDWELL: No, sir. The facts of the case are
11 very clear.

12 THE COURT: Mr. McFadden, anything?

13 MR. MCFADDEN: The only thing is we thought it was
14 younger guys who were committing these crimes. You don't
15 picture old men riding around with an idea of going to
16 rob somebody. (Portion inaudible)

17 THE COURT: All right, thank you.

18 SOLICITOR: Your Honor, the State has no concern
19 about sentencing, other than I told Mr. Groves that I
20 would not be in opposition to a concurrent sentence on
21 both charges.

22 I would ask that you listen to the victim's family
23 when they have an opportunity to speak. I don't know
24 if they are going to address the Court regarding how it
25 has affected them.

1 THE COURT: All right, thank you. Mr. Nesmith, is
2 that what happened in this case?

3 DEFENDANT: Yes, sir.

4 THE COURT: Now, do you understand that if you went
5 to trial you could challenge whether or not you were leg-
6 ally questioned by law enforcement, and if it was de-
7 termined you were questioned illegally or if any of your
8 constitutional rights against self-incrimination were
9 violated, any confession or statement you gave that in-
10 criminated you could not be used as evidence against you?
11 Do you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: And you understand that by pleading
14 guilty here today you not only are waiving your right to
15 challenge whether or not you were legally questioned,
16 you are giving up any and all defense you have to these
17 charges? You understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: Is that what you want to do?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right. Mr. Groves, anything in mit-
22 igation?

23 MR. GROVES: Yes, Your Honor. When Mr. Clements read
24 his record, you heard talk of a lot of charges on there.
25 All of them, with the exception of this arrest, come

1 from the State of New York, I believe. It is difficult
2 to tell whether it is an arrest or whether it is a con-
3 viction, but I can tell you from looking at it that in
4 the last ten years they all appear to be misdemeanors,
5 for whatever that is worth.

6 A lot of times you hear charges that come from an-
7 other state that sound bad, and it is hard to know just
8 exactly what it is that the charge is or the allega-
9 tions of them.

10 We're not here on any of that today but I did want
11 to bring that to the Court's attention.

12 I have represented Mr. Nesmith for not quite a
13 year now, and in talking with him and meeting with him
14 and going over this case he has been nothing short of
15 remorseful.

16 In meeting with the Solicitor a couple of weeks
17 ago, it was classified as extreme remorse and regret,
18 and he did -- he gave a full statement to the Solicitor's
19 Office. He was very detailed and very specific about
20 his role and what, when and where.

21 Obviously, the Solicitor has done homework and has
22 checked up on those things, and all of them have turned
23 out to be accurate.

24 Mr. Nesmith did that, I think, largely out of remorse
25 and regret, and he has expressed to me on numerous of

1 these occasions his remorse, and I'm sure he will ex-
2 press it to Your Honor.

3 There was never any intention of hurting anybody.
4 That's an easy thing to say after the fact but I am cer-
5 tain there is a lot of credibility behind that.

6 He has been concerned since day one about it, and
7 obviously his own well-being is something for a person
8 to be concerned about with charges this serious, but
9 more so the well-being of his parents who are standing
10 behind him. They are residents of the Williamsburg Com-
11 munity.

12 He is concerned, Your Honor, for the length of time
13 he will be required to serve and that they are in their
14 waning years; that he may be missing an opportunity to
15 be there for them toward the end of their lives. They
16 are both here with him for support as they have contin-
17 ued to support him throughout this whole process.

18 I don't think either one of them are in great health
19 but they did make the effort to be here today for their
20 son. That speaks volumes, I think, about his family
21 support, the family support that Mr. Nesmith has.

22 This was a fairly unusual case factually. I've
23 gone over all this stuff with him. We were actually
24 looking through some of his files two or three weeks ago
25 when we met with the Solicitor, and we were looking at

1 crime scene photos, and he stopped me at one point when
2 he -- I think he was a little over-whelmed with re-liv-
3 ing the incident. To say he is not proud of it would be
4 an under-statement of the century.

5 He asked me to stop showing him photos at that
6 point because it became too much for him to deal with,
7 and I think again that shows that this was not by any
8 stretch of the imagination the desired outcome in this
9 case.

10 I do think that the resolution that is presented in
11 front of Your Honor is potentially a likely outcome of
12 a trial, based on the facts that have been presented and
13 based on defenses we might have raised.

14 At the end of the trial, it may have resulted in the
15 dismissal of a couple of the charges in the indictment,
16 but these two principal charges might have been a jury
17 outcome. Obviously at that point we would have lost the
18 ability to accept responsibility for our actions and,
19 given that we were presented with this option, we felt
20 we should take the opportunity. He is contrite as he has
21 always been with me and will express that remorse to the
22 Court and to the family of Mr. Jenkins.

23 I could go on for hours talking about Mr. Nesmith.
24 He has been very active in this case with me and he has
25 written me on numerous occasions, one to explore every

1 available option to him, as he certainly should -- I am
2 glad that he did as we find ourselves here in front of
3 Your Honor with this resolution.

4 There is a minimum and a maximum, and he's hoping
5 Your Honor will consider something closer to the manda-
6 tory minimum, even given the serious nature of the
7 charges and the terrible things that went on. He is not
8 a young man, and he will be required to serve almost if
9 not all of the sentence you hand down.

10 I've gone over with him the fact that the charges
11 are most serious and the fact that both of the charges
12 are violent with all that entails.

13 I have discussed with him the fact that Your Honor
14 cannot give him anything less than a ten year sentence
15 and no sentence that could be suspended below that. No
16 opportunity for parole and that is not something that is
17 in Your Honor's discretion.

18 I have explained to him the community supervision
19 program that will be required of him once he satisfies
20 any sentence which Your Honor gives him. I'd ask that
21 you give him an opportunity to speak and that you hear
22 from his parents at the appropriate time as well.

23 I know this is not a happy day for the Nesmith Fam-
24 ily and certainly it's not a happy day for Mr. Nesmith,
25 but aside from that we would ask for all the mercy you

1 can allow in these circumstances.

2 THE COURT: I'll hear from Mr. Nesmith and/or any-
3 body that wants to speak on his behalf.

4 DEFENDANT: I'm very sorry about what happened. It
5 is just something that happened that I regret. I ask
6 for forgiveness, and I can tell you also that I really
7 am sorry that you lost somebody in your family. That
8 was not my intention, never was my intention, and I ask
9 for forgiveness. Thank you.

10 THE COURT: Anyone else? Come to the microphone and
11 give the Court Reporter your full name.

12 MS. NESMITH: My name is Margaret Nesmith. I just
13 want to say to the Jenkins that I am sorry for their
14 loss. I feel like it could have been my son. I just
15 pray for us all and take one day at a time. I'm just
16 sorry for what he did.

17 THE COURT: Anything else?

18 MR. GROVES: Nothing further.

19 THE COURT: Any other victims want to say anything?
20 Come forward to the microphone and give the Court Re-
21 porter your name.

22 MS. JENKINS: My name is Rhondella Jenkins. (State-
23 ment to the Court inaudible)

24 THE COURT: Anything from the State?

25 SOLICITOR: No, sir.

1 (Other persons speaking to the Court in behalf of
2 the victims)

3 SOLICITOR: Your Honor, the Jenkins Family has gone
4 through a lot at the loss of their son in a violent crime,
5 and the loss of a husband. They have shown an amazing
6 amount of grace. Ms. Jenkins is an incredible lady,
7 and please take into consideration what was said.

8 The tragedy of this is Mr. Jenkins was trying to
9 stop something and put himself back in danger, trying to
10 stop something bad from going down. If he had not done
11 that, shots wouldn't have been fired and no one would
12 have been injured although it might have been a robbery,
13 because of the type location that it was but it might
14 not even have come to the knowledge of law enforcement.

15 This is just a terrible thing that happened, and
16 we can never bring Mr. Jenkins back.

17 THE COURT: All right, thank you, sir.

18 All right, Mr. Nesmith, I will accept your guilty
19 plea. I find it is made knowingly, voluntarily, fully advised
20 of your rights as a Defendant with knowledge of the na-
21 ture of the charges against you and the consequences of
22 your guilty plea.

23 I also find that there is a factual basis for these
24 charges against you. For each charge the sentence of the
25 Court is that you be confined to the State Department of

1 Corrections for thirty years. You will be given credit
2 for any time served this far. The sentences will run
3 concurrently.

4 SOLICITOR: Thank you, Your Honor.

5 (Brief break in the process after which the mat-
6 ter was continued.)

7 THE COURT: All right.

8 SOLICITOR: The State would call Indictment 2014
9 GS 21 691 back before the Court, the State of South
10 Carolina versus Mr. Donald Ray Dollard, who is the Co-
11 defendant of Nathaniel Nesmith. You took his plea earl-
12 ier.

13 This is an Indictment to which Mr. Dollard is plead-
14 ing guilty to count two, armed robbery, and accessory
15 before the fact of a felony, voluntary manslaughter, which
16 he is going to waive presentment on. That would be con-
17 nected to the murder charge, which is count one.

18 Mr. Nesmith pled to voluntary manslaughter, and
19 Mr. Dollard is pleading to accessory before the fact of
20 voluntary manslaughter.

21 He is here with his attorney, Mr. Steven DeBerry.

22 THE COURT: All right.

23 (Brief pause)

24 THE COURT: All right. Any attorneys who are in-
25 volved here, please give the Court Reporter your name.

1 SOLICITOR: Ed Clements for the State of South
2 Carolina.

3 MR. DeBERRY: Steven DeBerry for the Defendant.

4 THE COURT: Anyone else participating?

5 SOLICITOR: No, Your Honor.

6 For the record, we had Investigator Chad Collins
7 and Investigator Thomas McFadden of the Florence County
8 Sheriff's Office, who were the investigators in the case,
9 here with us, and also, Your Honor, we have had family
10 members of the deceased, Mr. Jenkins.

11 Ms. Rhondella Jenkins, his wife, is present in the
12 Courtroom and Ms. Victoria Harper, his sister.

13 THE COURT: All right. Thank you.

14 Mr. DeBerry, you represent Donald Dollard on the
15 charge of accessory before the fact of a felony, that
16 felony being . . .

17 SOLICITOR: Voluntary manslaughter, Your Honor.

18 THE COURT: That felony being voluntary manslaughter,
19 as well as armed robbery?

20 MR. DeBERRY: Yes, Your Honor.

21 THE COURT: Have you discussed with your client the
22 charges against him, his rights as a Defendant, and the
23 consequences of being convicted of these crimes?

24 MR. DeBERRY: I have, Your Honor.

25 THE COURT: In your opinion, does your client

1 understand the charges against him, his rights as a Defen=
2 dant and the consequences of being convicted of these
3 crimes?

4 MR. DeBERRY: He does.

5 THE COURT: Does he wish to plead guilty or not
6 guilty?

7 MR. DeBERRY: Guilty.

8 THE COURT: Do you agree with his decision to plead
9 guilty to these charges?

10 MR. DeBERRY: I do, Your Honor.

11 THE COURT: Based upon the information you have,
12 if this case proceeded to trial do you feel the State
13 would prove your client guilty beyond a reasonable doubt?

14 MR. DeBERRY: Yes, sir, Your Honor.

15 THE COURT: Has your client received a competency
16 evaluation?

17 MR. DeBERRY: No, Your Honor.

18 THE COURT: Do you feel he needs a competency eval-
19 uation?

20 MR. DeBERRY: No, I do not.

21 THE COURT: All right. Let's place Mr. Dollard
22 under oath.

23 (Defendant Donald Ray Dollard sworn by the Clerk)

24 THE COURT: Sir, your name is Donald Ray Dollard?

25 DEFENDANT: Yes, sir.

1 THE COURT: Mr. Dollard, you have been charged with
2 accessory before the fact of a felony, that felony being
3 voluntary manslaughter, and you also have been charged
4 with armed robbery.

5 According to your attorney, you wish to plead guilty
6 to these charges, and you have been indicted for armed
7 robbery.

8 According to your attorney, you wish to plead guilty
9 to both of those charges. Is that correct?

10 DEFENDANT: Yes, sir.

11 THE COURT: All right. Before I can accept your
12 guilty plea, I have to go over some questions with you
13 to be sure you understand the charges against you; that
14 you understand your rights as a Defendant; that you un-
15 derstand the consequences of pleading guilty; and I must
16 be sure you are pleading guilty voluntarily.

17 During the past seventy-two hours, have you taken
18 any medication, consumed any alcohol or drugs, or been
19 under any influence of any kind that would affect your
20 ability to know why you are here?

21 DEFENDANT: You said in the last 72 hours?

22 THE COURT: Right.

23 DEFENDANT: I had medication this morning.

24 THE COURT: Okay, does that medication -- what is
25 the medication?

1 DEFENDANT: It's Seroquin.

2 THE COURT: Seroquin?

3 DEFENDANT: Yes, sir.

4 THE COURT: What do you take that for?

5 DEFENDANT: Depression and anxiety.

6 THE COURT: Okay. Does it affect your ability to
7 know what is going on here?

8 DEFENDANT: No, sir.

9 THE COURT: Do you understand why you're here?

10 DEFENDANT: Yes, sir.

11 THE COURT: Have you been able to communicate ef-
12 fectively with your attorney today?

13 DEFENDANT: Yes, sir.

14 THE COURT: Okay, do you understand my questions
15 thus far?

16 DEFENDANT: Yes, sir.

17 THE COURT: Okay. If you don't understand what's
18 going on, or if you feel any effects of that medication,
19 let me know immediately. Okay?

20 DEFENDANT: Okay.

21 THE COURT: All right. Other than that, do you un-
22 derstand why you're here today?

23 DEFENDANT: Yes, sir.

24 THE COURT: Is there anything about this proceeding
25 that you want to ask your lawyer or ask me before we

1 proceed?

2 DEFENDANT: No, sir.

3 THE COURT: All right. Now, one of your rights as
4 a Defendant is that you cannot be prosecuted for any crime
5 unless and until you are indicted by a Grand Jury. What
6 that means is that when you are charged with a crime the
7 State has an obligation to present your case to a Grand
8 Jury for review.

9 The Grand Jury looks over your case and determines
10 if there is any evidence to determine you committed the
11 crime. If the Grand Jury finds there is evidence you com-
12 mitted the crime, the Grand Jury will indict you, and
13 the State can go forward and prosecute you on that charge.

14 On the other hand, if the Grand Jury finds there
15 is no evidence against you, or that the evidence against
16 you is insufficient to support the charge, then the
17 Grand Jury would not indict you and the State could not
18 prosecute you.

19 At this point in time you have not been indicted for
20 accessory before the fact of a felony. Therefore, at
21 this point in time the State cannot prosecute you on this
22 charge and I cannot accept a guilty plea from you unless
23 you waive presentment to the Grand Jury.

24 Waiving presentment to the Grand Jury means that
25 you are relieving the State of its obligation to have the

1 Grand Jury review your case and indict you before they
2 prosecute you. Do you understand that?

3 DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to waive presentment to the
5 Grand Jury so that you can plead guilty to accessory be-
6 fore the fact?

7 DEFENDANT: Yes, sir.

8 THE COURT: Now, even though you waived presentment
9 to the Grand Jury on that charge, and even though you
10 have been indicted on the armed robbery charge, under the
11 Constitution of the United States you are presumed inno-
12 cent of both of the charges, and you have a right to
13 have your guilt or innocence determined by a jury trial
14 of your peers.

15 The State bears the burden of proving your guilt
16 beyond a reasonable doubt. You do not have to prove
17 your innocence and you cannot be compelled to testify
18 against yourself.

19 You also have the right to confront and cross-exam-
20 ine any of the witnesses who testify against you. If you
21 choose, you can present a defense to the charges.

22 When you plead guilty you give up all of those
23 rights. Do you understand that?

24 DEFENDANT: Yes, sir.

25 THE COURT: Do you want to give up those rights and

1 plead guilty to these charges?

2 DEFENDANT: Plead guilty.

3 THE COURT: Do you understand that for accessory
4 before the fact of a felony, where the underlying charge
5 is voluntary manslaughter, I can send you to prison for
6 thirty years on that charge?

7 On the armed robbery, I could send you to prison
8 for thirty years.

9 So if I impose a maximum sentence under the law and
10 I order the sentences to run consecutively, I could sen-
11 tence you to sixty years. Do you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that the absolute min-
14 imum sentence that can be imposed for armed robbery is
15 ten years? Ten years is the minimum amount of time you
16 would receive?

17 DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that regardless of
19 what sentence I impose, you will not be eligible for pa-
20 role, and whatever I impose is the sentence that you
21 will serve for that charge? Do you understand that?

22 DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that both of these
24 crimes are classified as violent crimes, and what that
25 means is that if you are ever convicted of another violent

1 crime that with that subsequent violent crime conviction
2 you would not be eligible for probation and you would not
3 be eligible for parole. Do you understand that?

4 DEFENDANT: Yes, sir.

5 THE COURT: Do you also understand that both of
6 these crimes are classified as most serious crimes, and
7 what that means is that if you are ever convicted of ano-
8 ther crime that is classified as a most serious crime,
9 or if you are ever convicted of another crime that is
10 classified as a serious crime, that the sentence for the
11 third conviction can be enhanced to life in prison with-
12 out the possibility of parole, and the State could use
13 the guilty plea against you to show two most serious
14 crime convictions on your record. Do you understand
15 that?

16 DEFENDANT: Yes, sir.

17 THE COURT: Knowing your rights as a Defendant,
18 knowing the maximum sentences you can receive, knowing
19 the mandatory minimum sentence that must be imposed, and
20 knowing that both of these crimes are classified as vio-
21 lent and most serious crimes and the consequences of
22 those classifications, do you wish to plead guilty or not
23 guilty to accessory before the fact of a felony?

24 DEFENDANT: Guilty.

25 THE COURT: Do you wish to plead guilty or not

1 guilty to armed robbery?

2 DEFENDANT: Guilty.

3 THE COURT: Has anybody promised you anything or
4 threatened you in any way to get you to plead guilty?

5 DEFENDANT: No, sir.

6 THE COURT: Are you pleading guilty voluntarily?

7 DEFENDANT: Yes, sir.

8 THE COURT: Are you satisfied with your lawyer?

9 DEFENDANT: Yes, sir.

10 THE COURT: Are you pleading guilty to these crimes
11 because you are guilty of these crimes?

12 DEFENDANT: I'm pleading guilty and I accept respon-
13 sibility for what I've done.

14 THE COURT: Okay, and as I've told you your consti-
15 tutional right mandates that you cannot be compelled to
16 testify against yourself.

17 DEFENDANT: Right.

18 THE COURT: That you can force the State to prove
19 your guilt beyond a reasonable doubt, and that you are
20 entitled to have your guilt or innocence determined by
21 a jury trial of your peers.

22 However, when you plead guilty you waive those
23 rights, and it does require you to give up your right
24 to a jury trial, to relieve the State of its obligation
25 of proving your guilt, and it requires you to stand in

1 front of me and admit guilt to the crime, thus incrim-
2 inating yourself by your own testimony. Do you under-
3 stand that?

4 DEFENDANT: Yes.

5 THE COURT: In other words, you cannot plead guilty
6 in front of me and say you didn't do it. If you want a
7 trial, you can get a trial. If you want to plead guilty,
8 however, it does require that you admit to committing
9 the crime. Do you understand that?

10 DEFENDANT: Yes, sir.

11 THE COURT: And so for these charges, do you want
12 a jury trial, or do you want to plead guilty?

13 DEFENDANT: I will plead guilty.

14 THE COURT All right. Do you admit that you com-
15 mitted these crimes?

16 DEFENDANT: Yes, somewhat. Your Honor, I didn't
17 have any weapon. I was just -- I was just there.

18 THE COURT: All right. Let's do this. I want to
19 have the Solicitor tell me what the allegations are as
20 against you and what they say you did in this case. Okay?

21 All right, sir..

22 SOLICITOR: Thank you, Your Honor.

23 Your Honor, I will give you his record after I
24 give the facts. Okay?

25 Your Honor, Mr. Dollard is fifty-eight years old and

1 on the third of December, 2013, he was with Mr. Nathaniel
2 Nesmith and Mr. Gregory T. Canty, and he went to a loca-
3 tion in Florence County that, Your Honor, is a store run
4 by a Clyde McElveen, and at the store -- the store was
5 also known in the community to be a place where people
6 can go and get involved in gambling and those type activ-
7 ities, and it was also known as a place that probably
8 had sums of cash there.

9 Mr. Dollard and Mr. Canty and Mr. Nesmith arrived
10 there in a vehicle that was driven there -- I think Mr.
11 Dollard was the driver, if I'm not mistaken. Mr. Canty
12 stayed in the vehicle.

13 Mr. Nesmith and Mr. Dollard went to the door. The
14 surveillance camera revealed a few comes and goes there,
15 and they were seen on video which was observed by Mr.
16 McFadden and Mr. Collins in their investigation.

17 I also believe that Mr. Dollard's wife looked at
18 the video and identified him. Is that correct? At a
19 still photo that was obtained from that video, and also
20 told them where some of the clothing was that was seen
21 in that video. The clothing was turned over to the in-
22 vestigators.

23 Mr. Dollard and Mr. Nesmith knocked on the door
24 and were told they were closed; go away; and then they
25 called out for Brian McElveen. When they called out that

1 name they opened the door and went on in. Mr. Dollard
2 had zip ties and was using zip ties to secure the move-
3 ments of Mr. McElveen and I believe Mr. McKnight, and Mr.
4 Jenkins was there when they walked in and they told him,
5 are you going to stay or leave, and he said, I'll leave,
6 and one of them had a toy badge with a piece of black
7 tape on it, and they were indicating they were police
8 officers. That's what a part of the investigation re-
9 vealed.

10 So Mr. Jenkins said, I'm leaving. He leaves and he
11 shuts the door, and Mr. Nesmith has a gun, and Mr. Dollard
12 has zip ties, and then there is a knock back on the door,
13 and they open the door -- Mr. Nesmith opened the door
14 and there was Mr. Jenkins with a high point weapon that
15 he tried to fire.

16 The gun misfired, and Mr. Nesmith started shooting.
17 Mr. Jenkins ran away from the door and around the corner
18 of the building where he fell and that's where he ulti-
19 mately passed away.

20 Mr. Dollard and Mr. Nesmith got Fifteen Hundred Dol-
21 lars from Mr. McKnight, and they took off back to the
22 car and headed back out of Florence, back toward the lower
23 part of Florence County.

24 Mr. Canty, who remained in the car, never went up
25 to the building, but he received Five Hundred Dollars.

1 MR. NESMITH received Five Hundred Dollars and Mr.
2 Dollard kept Five Hundred Dollars. I think he was the
3 one who actually seized the money and divided it up.

4 They did this jointly, with the hand of one being
5 the hand of all, on the armed robbery. I don't believe
6 Mr. Nesmith -- I believe he brandished the weapon, and
7 he is the one who fired the shot.

8 Mr. Dollard never brandished a weapon, so I cannot
9 say if absolutely he had a weapon or not, but he never
10 brandished one.

11 I will defer at this time to Investigator McFadden and
12 Investigator Collins if I've left anything out or if I've
13 mis-stated anything they can correct me. If I left any
14 holes, they can add that information in.

15 MR. COLLINS: Investigator Chad Collins.

16 THE COURT: All right, Mr. Collins.

17 MR. COLLINS: Again, Mr. Clements has clearly given
18 the facts of the case. I would add in that once the
19 suspects were developed in this case we did make arrests.

20 Mr. Dollard was the first person we spoke with, and
21 he was cooperative in discussing his actions that night.

22 In my discussions with him, he did not indicate he
23 had a weapon. He indicated that Mr. Nesmith was the
24 only one who had a weapon.

25 He did admit to his actions that night as far as

1 the plan previous to going into it and how it happened.

2 We would just ask for some kind of sentence that
3 would be appropriate.

4 THE COURT: All right, sir. Do you have anything
5 to add?

6 MR. McFADDEN: Like I said earlier, I think he is fifty-
7 eight years old, and he and Mr. Nesmith were riding around
8 plotting to rob someone. It seems almost senseless. At
9 some point in time, I would think they would think bet-
10 ter of it.

11 He did ride around with us at some point in time
12 to point out certain locations, so he did cooperate with
13 us. He wasn't the one who pulled the trigger, but at
14 some point in time they begin leading up to this.

15 THE COURT: All right.

16 SOLICITOR: Your Honor, it was -- once he was ar-
17 rested on the 18th of December, just fifteen days after
18 the event occurred, law enforcement told me he was very
19 cooperative at that point, once he was caught.

20 Your Honor, once he responds to the facts and at
21 the appropriate time I will give you his criminal history
22 which is quite extensive.

23 THE COURT: All right. All right, Mr. Dollard, do
24 you understand what they're saying you did in this case?

25 DEFENDANT: Yes, sir.

1 THE COURT: Is that what happened in this case?

2 DEFENDANT: Exactly.

3 THE COURT: Now, you understand if you went to
4 trial, first of all, you could challenge any pre-trial
5 identification of you as the perpetrator in this crime
6 or your participation? If it was shown that the identi-
7 fication of you was unduly suggestive, then that identi-
8 fication could not be used as evidence against you. Do
9 you understand that?

10 DEFENDANT: Yes, sir.

11 THE COURT: Do you also understand that if you were
12 questioned illegally or in violation of your constitu-
13 tional rights against self-incrimination that any state-
14 ment or confession you gave could not be used as evidence
15 against you?

16 DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that by pleading
18 guilty here today you are not only waiving your right
19 to challenge any pre-trial identification or any confes-
20 sion made by you, but you are giving up any and all de-
21 fenses you have to this charge? Do you understand?

22 DEFENDANT: Yes, sir.

23 THE COURT: Is that what you want to do?

24 DEFENDANT: Yes, sir.

25 THE COURT: All right. Mr. DeBerry, anything in

1 mitigation?

2 MR. DeBERRY: Thank you, Your Honor.

3 Mr. Dollard is fifty-eight years old. This plea
4 was originally scheduled for later this afternoon, and I
5 know his wife wanted to be here but in the interest of
6 time this is the way this has unfolded. She was unable
7 to get here.

8 I don't see her here as yet, but we did talk to her,
9 and I just ask you to take that into consideration for
10 whatever it might be worth.

11 He's 58 years old from the Hemingway area. He
12 has been back and forth from Hemingway to New York over
13 his adult life. He was born and raised in Hemingway, he
14 and his wife.

15 He and his wife have eight kids together and there
16 are twelve grandchildren, and all but three live there
17 in Hemingway.

18 He tells me he has a close family there, Your
19 Honor.

20 He has been in the construction business and has
21 done some landscaping and he's done some for the Lowcoun-
22 try Forest Products for some time.

23 As the Solicitor and the Investigators say, Mr.
24 Dollard has been cooperative with law enforcement all
25 throughout this situation. He tells me that he regrets

1 the situation and that there is no real excuse for his
2 actions.

3 If there is any way he could change it, he would,
4 and I feel he is sincere in saying that, Your Honor. He
5 said that from the first day I met him.

6 I know -- Investigator Collins and I worked together
7 and I know and I believe they would tell you that the
8 third suspect in custody faced with these charges would
9 not be in custody if it were not for the information Mr.
10 Dollard set forth.

11 You know, this case was on the trial list for this
12 term of Court, and Mr. Dollard doesn't want any trial.
13 He has been cooperative and come forward with his inform-
14 ation. He has told them what he's done from the very
15 beginning.

16 That wasn't true for the other CoDefendants, Your
17 Honor, and we -- he was prepared to testify here this
18 week, and if the third CoDefendant doesn't plead he would
19 be prepared to testify against him at the appropriate
20 time.

21 So I just ask the Court to take all of that into
22 consideration. I believe -- I don't want to speak for
23 the Solicitor, but I believe that the Solicitor and
24 probably the Sheriff's Office as well think that he de-
25 serves some credit for his cooperation and a variance

1 from Mr. Nesmith's sentence.

2 We ask that the Court consider that, Your Honor.
3 We are very appreciative for him being allowed to plead
4 to what Mr. Dollard is able to plead to here today, and,
5 like he said, he is taking responsibility for his ac-
6 tions.

7 We ask that the Court take all of these things in
8 consideration.

9 THE COURT: All right. Mr. Dollard, anything you
10 want to say?

11 DEFENDANT: Yes, sir, Your Honor. I just want to
12 say that, you know, whatever happened I am sorry, and
13 I ask God to forgive me for whatever happened. I ask
14 the families, both of them, to forgive me and ask him
15 for strength for them and me.

16 THE COURT: Anything further from the State?

17 SOLICITOR: Your Honor, the last thing is I wish to
18 put Mr. Dollard's record in.

19 THE COURT: All right.

20 SOLICITOR: Do you wish to speak, Ms. Jenkins? (Brief
21 pause) No, Your Honor, not at this time.

22 THE COURT: All right. Prior record.

23 SOLICITOR: Yes, sir, Your Honor. As I stated, Mr.
24 Dollard is fifty-eight years old. He's got an exten-
25 sive criminal history in the State of New York.

1 He appeared in front of you on the sixth of February
2 of 2014 when he was up for a bond hearing at that time,
3 but he decided he would waive his bond hearing and re-
4 serve his right for bond later, which he never exercised,
5 because he was cooperating with law enforcement.

6 He continued to cooperate, and the rest of these
7 indictments are going to be nolle prossed because of his
8 entering his plea and it being accepted today.

9 Your Honor, his criminal history -- he has a re-
10 cord for convicted felon in possession of a firearm. He's
11 got robbery where he used a firearm under the Hobbs Act,
12 a robbery of a truck. He pled guilty, Your Honor, and
13 was sentenced to eight years in federal prison, five
14 years probation, under the Hobbs Act. That was on the
15 use of a firearms charge.

16 He has also another carrying a firearm in connec-
17 tion with a crime of violence and conspiracy to obstruct
18 commerce by robbery; robbery of a person in custody of
19 mail. He's got robbery of a post office; burglary third
20 degree; illegal entry with intent; possession of a danger-
21 ous weapon, fourth degree.

22 He's got criminal possession of a controlled sub-
23 stance, fourth degree; criminal possession of a weapon,
24 third degree; sale -- criminal sale of controlled sub-
25 stance, third degree; criminal sale of a controlled

1 substance, tenth degree; criminal possession of a con-
2 trolled substance, third degree; also criminal sale of
3 controlled substance, third degree.

4 He's got another guilty plea to criminal sale of
5 controlled substance, third degree, of narcotic drugs;
6 criminal possession of narcotic substance, fourth degree;
7 criminal possession of a loaded firearm, third degree;
8 possession of gambling records, second; bookmaking.

9 Also has another criminal possession of controlled
10 substance, third degree, or narcotic drugs; criminal
11 possession of controlled substance, seventh degree; a
12 criminal sale of controlled substance, fifth degree; pos-
13 session of marijuana, fifth degree; criminal possession
14 of controlled substance, third degree, narcotic drug;
15 criminal sale of controlled substance, fifth degree;
16 and that's it, Your Honor. It appears all of those are
17 from the State of New York. My understanding also is he
18 has a pending bank robbery case in Williamsburg County
19 at about the same time as this event, and we requested the
20 Williamsburg County Solicitor's Office if they wanted to
21 get their paperwork together and come and take care of
22 all of this at one time, which Mr. Dollard through his
23 attorney said he would like to do that if possible, but
24 it wasn't possible for some reason. They didn't have
25 their ducks in a row. I'm not sure warrants had even been

1 served on Mr. Dollard and that those are pending.

2 We tried to accommodate them but they couldn't do
3 that today so that did not happen.

4 That's his extensive history, Your Honor. What sep-
5 arates Mr. Dollard from Mr. Nesmith is that Mr. Dollard
6 did not shoot a weapon; he did not shoot at anybody.
7 Also that he cooperated very early on, pretty much from
8 the git-go. Mr. Nesmith didn't cooperate until much
9 later when I talked to his lawyer.

10 I know initially he got a lawyer and didn't speak
11 to law enforcement, and nobody asked him until just a
12 couple of weeks ago and he told his defense attorney he
13 would cooperate as well.

14 The difference is the timing. Apparently, Mr.
15 Nesmith was the shooter and Mr. Dollard was not. That
16 is the only distinction in my mind, and I would like law
17 enforcement to have an opportunity to speak to that if
18 they wish to, as to any distinction between Mr. Nesmith
19 and Mr. Dollard.

20 MR. COLLINS: I would concur with that.

21 SOLICITOR: Thank you.

22 (Brief pause)

23 THE COURT: All right, Mr. Dollard. I accept your
24 guilty plea. I find that it is made knowingly, volun-
25 tarily and you have been fully advised of your rights as

1 a Defendant, of the charges against you, and of the
2 consequences of your guilty plea.

3 I also find that there is a factual basis to support
4 these charges.

5 For each charge, the sentence of the Court is that
6 you be confined to the State Department of Corrections
7 for twenty-five years, and the sentences will run concur-
8 rently. You will be given credit for time served thus
9 far.

10 SOLICITOR: Thank you, Your Honor.

11 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared to the best of my ability from the records of Daphne Helms, having been heard in the Court of General Sessions for Florence County on October 21, 2014.

FURTHER, I certify that I am neither of kin or counsel to any party to this matter, nor do I have any interest in the same.

August 12, 2015



STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE) INDICTMENT NO.: 2014-GS-21-00691

The State of South Carolina,)
Plaintiff,)

vs.)

Nathaniel Nesmith,)
Defendant.)

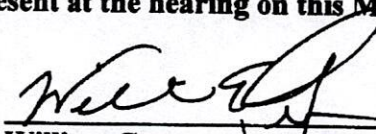
NOTICE OF MOTION
AND MOTION
FOR RECONSIDERATION
OF SENTENCE

2014 OCT 23 AM 11:18
FILED
JONNIE REELES-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, S.C.

TO: TWELFTH CIRCUIT SOLICITOR'S OFFICE: E. L. CLEMENTS, III,
SOLICITOR FOR THE TWELFTH JUDICIAL CIRCUIT:

YOU WILL PLEASE TAKE NOTICE that the above named Defendant, by and through the undersigned, will move before this Honorable Court within ten (10) days from the date of this Motion, or as soon thereafter as practicable, for an Order of this Court reflecting a reconsideration of the sentence imposed on the Defendant by the Honorable Benjamin H. Culbertson, Circuit Court Judge, on Tuesday, October 21, 2014.

This Motion will be based upon such argument, case law, statutory authority or affidavits which the Defendant may present at the hearing on this Motion.



William Grove
Assistant Public Defender
Attorney for Defendant

Florence, South Carolina

October 23, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

GENERAL SESSIONS COURT
TWELVTH JUDICIAL CIRCUIT
INDICTMENT NO. 2014-GS-21-691

State of South Carolina)

vs.)

Nathaniel Nesmith,)

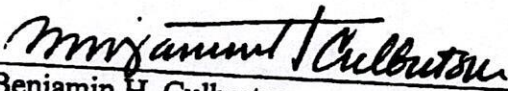
Defendant.)

ORDER DENYING MOTION
TO RECONSIDER SENTENCE

DATE OF HEARING.....April 18, 2016
STATE'S ATTORNEY.....Edgar L. Clements, III
DEFENDANTS' ATTORNEY.....Scott P. Floyd
COURT REPORTER.....Grace Hurley

The defendant's Motion for Reconsideration of Sentence dated and filed
October 23, 2014, seeking reconsideration of the defendant's sentence imposed on
October 21, 2014, is DENIED.

September 12, 2019¹


Benjamin H. Culbertson
Presiding Judge

¹ The presiding judge was unaware that an order had not been issued in this case until September 12, 2019, when he received the attached letter from the defendant dated August 27, 2019.

FORM 5

2016 CP 21 1380

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
)
 Full name and prison number (if any) of Applicant.)
NATHANIEL NESMITH 361804)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
 2016 JUN -9 PM 4:23
 ANNE REED, CLERK
 CCGP
 FLORENCE 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 **LEE COUNTY CORRECTIONAL INST.**
2. Name and location of Court which imposed sentence **GENERAL SESSIONS FLORENCE COUNTY**
3. Name(s) of co-defendant(s) (if any) **DONALD DOLLARD, 361803**
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) **2014-GS-21-00691, MANSLAUGHTER, VOLUNTARY MANSLAUGHTER, 16-03-0050**
 - (b) **2014-GS-21-00691, ROBBERY, ARMED ROBBERY, 16-11-0330 (A)**
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) **10-21-14, 30 YEARS** (CONCURRENT)
 - (b) **10-21-14, 30 YEARS**

Scanned 6/20/16 - N. Nesmith, scanned - Anne Reed

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (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) **PLEA COUNSEL DID NOT ADVISED ME TO DO SO, NOR DID HE FILE APPEAL**

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: **INEFFECTIVE ASSISTANCE OF COUNSEL**

- (a) _____
- (b) _____
- (c) _____

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

- (a) PLEA ENTERED BASED UPON COUNSELS UNINFORMED DECISION
- (b) _____
- (c) _____

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
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. William Eugene Grove, Esquire
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. GUILTY PLEA
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
REVERSE CONVICTION OF SENTENCE, REMAND FOR NEW TRIAL
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)
)
County of FLORENCE)

VERIFICATION

I, _____, 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.

Nathaniel Nesmith
NATHANIEL NESMITH, 361804

SWORN to and subscribed before me this 3
day of June, 2016.

Dena Eastwood (L.S.)
Notary Public

My Commission Expires: 3/3/2026

FILED
2016 JUN -9 PM 4:23
JIMIE REEL SHAW
CCCP & GS
FLORENCE COUNTY, SC

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

I, _____, 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.

Nathaniel Nesmith
Applicant

SWORN or affirmed to and subscribed before me this
3 day of June, 2014.

Debra Eastwood
Notary Public

My Commission Expires: 3/3/2016

FILED
 2016 JUN -9 PM 4:23
 CLERK OF SUPERIOR COURT
 CCCP & GS
 FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
)
 Nathaniel Nesmith, #361804)
)
)
 Applicant)
)
 v.)
)
 State of South Carolina,)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TWELFTH JUDICIAL CIRCUIT

2016-CP-21-1380

**RETURN
 (COUNSEL APPOINTED)**

2021 FEB 25 AM 11:28
 CLERK OF COURT
 FLORENCE COUNTY

FILED

In response to Nathaniel Nesmith’s (Applicant) action for post-conviction relief (PCR) commenced June 9, 2016, the State makes this return.

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2014 term of the Florence County Grand Jury for murder, armed robbery, conspiracy, kidnapping, and possession of a weapon during the commission of a violent crime (2014-GS-21-00691). The charges arose from an incident occurring on December 3, 2013, where Applicant and Donald Dollard entered a store known for gambling, killed David Jenkins, and robbed another man. William Eugene Grove, Esquire, represented Applicant. On October 21, 2014, Applicant pled guilty to voluntary manslaughter and armed robbery.¹ The Honorable Benjamin H. Culbertson sentenced Applicant to imprisonment for concurrent terms of 30 years for each crime.

Applicant filed a motion to reconsider the sentence on October 23, 2014. Prior to the resolution of that motion, Applicant filed a notice of appeal on November 3, 2014. The South

¹ The indictments for conspiracy, kidnapping, and the weapons charge were dismissed.

Carolina Court of Appeals subsequently dismissed Applicant's appeal without prejudice by order filed November 25, 2014, due to the pending motion. The remittitur was issued December 12, 2014. On April 18, 2016, Applicant's motion was heard before Judge Culbertson. An order denying Applicant's motion was signed and filed on September 12, 2019.

II. Current Application

Applicant timely, albeit prematurely, commenced this PCR action on June 9, 2016. Applicant asserts he is being held in custody unlawfully, alleging:

1. "Ineffective assistance of counsel"
 - a. "Plea entered based upon counsels uninformed decision"
 - b. "Plea counsel did not advise me [to appeal], nor did he file [an] appeal."

Attached to this return and incorporated herein are the Florence County Clerk of Court records, Applicant's SCDC records, Applicants appellate records, and the records of this PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. Response to Allegation of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of plea counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337

S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel’s alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the

case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

IV. Failure to Inform of Right to Appeal²

Applicant claims Counsel was ineffective for failing to tell him of his right to appeal. "[A]bsent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). "The bare assertion that a defendant was not advised of appellate rights is

² *White v. State*, 263 S.C. 110, 113, 208 S.E.2d 35, 36 (1974).

insufficient to grant relief.” *Id.* “One extraordinary circumstance[] . . . would arise when the defendant inquires about an appeal.” *Id.*

Here, Applicant entered a valid plea. Thus, absent extraordinary circumstances, Applicant is not entitled to relief on this ground. Applicant did not indicate extraordinary circumstances existed in this case. However, this allegation probably raises questions of fact the record does not conclusively refute. Accordingly, the State respectfully requests an evidentiary hearing to resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

V. Any Future Amendments and Invocation of Discovery

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

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless

granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VI. Any and All Other Allegations

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

{Conclusion and signature on the following page}

VII. Conclusion

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General

By: s/Michael D. Davidson
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

February 23, 2021

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
 Nathaniel Nesmith, #361804)
)
 Applicant,)
)
 v.)
)
 State of South Carolina)
)
 Respondent,)
)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2016-CP-21-1380

Certificate of Service by Mail

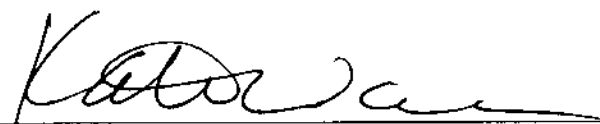
2021 FEB 25 AM 11:38
 DEPT. OF COURT
 CLERK
 600 N. G ST.
 FLORENCE, SC 29501-1130

FILED

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

Joshua A. Bailey, Esquire
Snow & Bailey Law Firm, P.A.
PO Box 555
Florence, SC 29503

DATED this 23rd day of February, 2021.


 Katie Wade, Legal Assistant
 For Respondent

(c) **The date of each result:**

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

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

(a) Plea counsel did not explain the right to appeal.

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

(a) Petitioner's guilty plea was not knowingly, voluntarily, or intelligently entered due to counsel's ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution, when counsel induced Applicant to plead guilty based on the representation that the Applicant would be sentenced to ten (10) years.

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

(a) Petitioner avers that prior to the entry of his guilty plea, he met with his counsel and the assistant solicitor to discuss the case. Petitioner avers that this meeting took place at the courthouse. Petitioner avers that following this meeting, and having been advised by counsel, he believed that he would be sentenced to ten (10) years in exchange for his guilty plea. Petitioner further avers that counsel contacted his mother by telephone and informed her of the date/time of the plea and that Applicant would be sentenced to ten (10) years in prison.

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

(a) **Any petition in State Court under South Carolina Law:** NO

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

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

- (a) The specific nature thereof:
 - i. N/A
- (b) The name and location of the Court in which each was filed:
 - i. N/A
- (c) The disposition thereof:
 - i. N/A
- (d) The date of each such disposition:
 - i. N/A
- (e) If known, the citations of any written opinions or ordered entered pursuant to each such disposition:
 - i. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

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

- (a) Which grounds have been presented:
 - i. N/A
- (b) The proceedings in which each ground was raised:
 - i. N/A

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) Petitioner's Application for Post-Conviction Relief is the first proceeding in which he may allege ineffective assistance of counsel.

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? N/A
- (c) Your Sentencing? YES
- (d) Your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. William E. Grove, Esquire, Twelfth Circuit Public Defender's Office
- (b) The proceedings at which each such attorney represented you:
- i. Plea and sentencing.

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

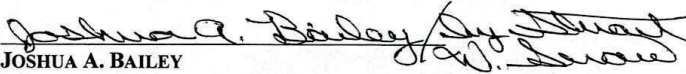
- (a) Vacate conviction and sentence and for a new trial to be ordered.

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

- (a) Petitioner is not under any other sentence.

Dated this 8th day of October, 2022 at Florence, South Carolina.

Respectfully submitted,


JOSHUA A. BAILEY
SC Bar No.: 76965
Attorney for the Petitioner

SNOW AND BAILEY LAW FIRM, P.A.
900 West Evans Street (29501)
Post Office Box 555 (29503)
Florence, South Carolina
(P): 843-669-6481
(F): 843-669-4920
(E): jbailey@peedeelawyers.com

State of South Carolina)	In the Court of Common Pleas
)	Twelfth Judicial Circuit
County of Florence)	Case No. 2016-CP-21-01380
)	
Nathaniel Nesmith,)	
)	
Applicant,)	
)	
-vs-)	Transcript of Record
)	
State of South Carolina,)	
)	
Respondent.)	
)	

October 20, 2023
Florence, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge

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

Joshua A. Bailey, Esquire
Attorney for the Applicant

D. Russell Barlow, Esquire
Danielle Dixon, Esquire
Attorneys for the Respondent/State

Krystal J. Smith
Official Circuit Court Reporter III

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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Nathaniel Nesmith	
Direct by Mr. Bailey.....	8
Cross by Mr. Barlow.....	17
Redirect by Mr. Bailey.....	24
Applicant Rests.....	24
William E. Grove	
Direct by Mr. Barlow.....	25
Cross by Mr. Bailey.....	31
State Rests.....	35
Under Advisement.....	35
Court Reporter Certification.....	37

APPLICANT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Affidavit of Applicant's Mother		8

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 OCTOBER 20, 2022

2 (WHEREUPON, the proceedings began at 9:36 a.m.)

3 THE COURT: Yes, sir.

4 MR. BARLOW: May it please the Court. Russ Barlow on
5 behalf of the State of South Carolina. This is the post-
6 conviction relief matter of Mr. Nathaniel Nesmith versus the
7 State, Case Number 2016-CP-21-1380 out of Florence County.

8 Applicant was indicted at the June 2014 term of the
9 Florence County Grand Jury for murder, armed robbery,
10 conspiracy, kidnapping, and possession of a weapon during the
11 commission of a violent crime, 2014-GS-21-00691. The charges
12 arose from an incident occurring on December 3rd, 2013, where
13 applicant and Donald Dollard entered a store known for
14 gambling, killed David Jenkins, and robbed another man.
15 Excuse me.

16 William E. Grove, Esquire, represented applicant, and on
17 October 21st, 2014, the applicant pled guilty to voluntary
18 manslaughter and armed robbery. The indictments for
19 conspiracy, kidnapping, and the weapons charge were dismissed,
20 and the Honorable Benjamin H. Culbertson sentenced applicant
21 to imprisonment for concurrent terms of 30 years for each
22 crime.

23 Applicant filed a motion to reconsider the sentence on
24 October 23rd, 2014. Prior to the resolution of that motion,
25 applicant filed a notice of appeal on November 3rd, 2014. The

1 South Carolina Court of Appeals subsequently dismissed the
2 applicant's appeal with prejudice -- without prejudice, by
3 order filed November 25th, 2014, due to the pending motion to
4 reconsider. The remittitur was issued December 12th, 2014.

5 On April 18th, 2016, applicant's motion was heard before
6 Judge Culbertson, and an order denying applicant's motion was
7 signed and filed on September 12th, 2019. Applicant timely
8 commenced this PCR action on June 9th, 2016, and he asserted
9 multiple allegations of ineffective assistance of plea
10 counsel.

11 The State made its return filed on February 2nd, 2021,
12 and on October 21st, 2022, applicant, through counsel, amended
13 his application, asserting that the applicant was induced to
14 plead guilty based on the representation that applicant would
15 be sentenced to 10 years and not the 30. And the petitioner
16 averred that he had a meeting with his counsel and with the
17 solicitor, and he believed that he would get 10 years in
18 exchange for a guilty plea and not 30. He also avers that
19 counsel contacted his mother by telephone and informed her of
20 the date and time of the plea and that applicant would be
21 sentenced to 10 years in prison.

22 At this time, we would just request that counsel state
23 the allegations he intends to move forward on.

24 THE COURT: Yes, sir.

25 MR. BAILEY: Thank you, Your Honor. May it please the

1 Court. Joshua Bailey for the petitioner, Nathaniel Nesmith.

2 Your Honor, the only allegation that we'll be moving
3 forward on is that my client alleges he was induced to plead
4 guilty to the charges that he was sentenced for, with the
5 understanding that he was going to receive a sentence of 10
6 years rather than the 30 that he had received from Judge
7 Culbertson.

8 THE COURT: Okay.

9 MR. BAILEY: And that that -- that allegation, Your
10 Honor, is contained in the amended application that was
11 provided to the Attorney General's Office.

12 THE COURT: Yeah. And have you explained to Mr. Nesmith
13 the consequences of -- of his being successful at a PCR,
14 filing a PCR?

15 MR. BAILEY: I have, Your Honor.

16 THE COURT: That the original charges of armed robbery,
17 murder, conspiracy, kidnapping, and possession of a weapon
18 during a violent crime will be on the table, and that's what
19 he would be facing, possible life imprisonment for murder?

20 MR. BAILEY: Yes, Your Honor.

21 THE COURT: All right. And let's swear Mr. Nesmith in.

22 THE CLERK: Mr. Nesmith, please stand and raise your
23 right hand as much as you can. Do you swear to tell the
24 truth, the whole truth, and nothing but the truth, so help you
25 God?

1 THE APPLICANT: Yes, ma'am.

2 THE CLERK: Thank you.

3 THE COURT: All right. Now, Mr. Nesmith, do you
4 understand the consequences of -- of a successful PCR? You
5 can put your hand down. Do you understand that if you were
6 successful, you would be coming back to court facing murder
7 charges?

8 THE APPLICANT: Yes, sir.

9 THE COURT: And you want to go forward?

10 THE APPLICANT: Yes, sir.

11 THE COURT: All right. You may call your first witness.

12 MR. BAILEY: We are, Your Honor.

13 Mr. Nesmith, do you see the chair by the court reporter,
14 that chair there?

15 THE APPLICANT: Yes.

16 MR. BAILEY: That's where you're going.

17 Your Honor, while my client is walking up to the stand,
18 we have an affidavit that we would like to have marked and
19 entered into evidence as Petitioner's Exhibit 1. It is an
20 affidavit. A copy has been provided to Mr. -- to Mr. Barlow,
21 and it's my --

22 THE COURT REPORTER: I can't -- I can't hear you.

23 MR. BAILEY: Judge, we have an affidavit of my client's
24 mother that we would like to have marked and introduced into
25 evidence as the Petitioner's Exhibit 1. A copy has been

NATHANIEL NESMITH - DIRECT BY MR. BAILEY

1 provided to the State. It's my understanding it will be
2 without objection.

3 MR. BARLOW: Your Honor, yes. Due to the age of his
4 mother and the fact that it is notarized, no objection.

5 THE COURT: All right. It's admitted without objection.

6 (WHEREUPON, Applicant's Exhibit Number 1, affidavit, was
7 admitted into evidence.)

8 MR. BAILEY: Here you are, Judge.

9 NATHANIEL NESMITH, being first
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BAILEY:

13 Q: Mr. Nesmith?

14 A: Yes, sir.

15 Q: You are currently incarcerated; correct?

16 A: Yes, sir.

17 Q: As the State had recited to the Court, you are serving a
18 30-year sentence; is that correct?

19 A: Yes, sir.

20 Q: What charges did you plead guilty to, Mr. Nesmith?

21 A: I plead guilty to ten years manslaughter.

22 Q: I'm sorry.

23 A: I plead guilty to ten years manslaughter. At least
24 that's what I thought I would receive.

25 Q: I understand, but you pled guilty to voluntary

NATHANIEL NESMITH - DIRECT BY MR. BAILEY

1 manslaughter; is that correct?

2 A: Yes, sir.

3 Q: Did you also plead guilty to armed robbery?

4 A: Yes, sir.

5 Q: Now, the State correctly identified your prior attorney
6 as being Mr. Grove; is that correct?

7 A: Yes, sir.

8 Q: Do you recall who Mr. Grove was employed by at the time
9 of his representation of you?

10 A: Florence County Public Defender.

11 Q: And he was appointed to you and was the only attorney
12 that represented you in your case?

13 A: Yes, sir.

14 Q: Now, prior to the entry of your guilty plea, Mr. Nesmith,
15 did you make bond?

16 A: No, sir.

17 Q: Where were you housed for all of your pretrial
18 confinement?

19 A: In Florence County Detention.

20 Q: And that's in Effingham; correct?

21 A: Yes, sir.

22 Q: Do you recall the number of times that you met with Mr.
23 Grove prior to entering your guilty plea?

24 A: Three times.

25 Q: How many of those meetings with Mr. Grove took place in

1 Effingham?

2 A: One.

3 Q: Did you have the opportunity to review your case file
4 with Mr. Grove while you were at Effingham?

5 A: No, sir.

6 Q: At that point, did you review any discovery with Mr.
7 Grove?

8 A: Yes, sir.

9 Q: Okay. And did he provide a physical copy of the
10 discovery as provided by the State of South Carolina to you?

11 A: Yes, sir.

12 Q: Following that meeting, when is the next time that you
13 spoke to Mr. Grove about your case?

14 A: I had wrote Mr. Grove and told Mr. Grove. He already --
15 he already had me aware that if I go to trial and I lose, I
16 have -- I'll -- I'll be taking 30 years. I'll be getting 30
17 years. So I had wrote him and told him I would cop out to ten
18 years manslaughter. So I seen him two days after I had spoken
19 to him.

20 Q: And where did that meeting take place?

21 A: In the courtroom.

22 Q: Okay. And was that the meeting or was it the one before
23 where you sat down with Mr. Grove and the solicitor?

24 A: After the second meeting.

25 Q: I'm sorry.

NATHANIEL NESMITH - DIRECT BY MR. BAILEY

1 A: It was the second meeting.

2 Q: Okay. And where did that meeting take place, Mr.
3 Nesmith?

4 A: In the room in the courtroom. It happened in the
5 courtroom in the -- in the side room.

6 Q: Okay. And who was present? You? Mr. Grove?

7 A: And the solicitor.

8 Q: And what was the conversation about between the three of
9 you?

10 A: About all the evidence that they didn't have against me.

11 Q: And do you recall what some of that evidence was that
12 they -- the State did not have against you?

13 A: Yes, sir.

14 Q: Can you tell us that? Tell us what you recall the
15 evidence being.

16 A: I was told they had no -- no gun, no shell casing, no
17 photo ID, no -- it been a while. You've got to forgive me.
18 It been a while.

19 Q: Well, but let me ask you this way. Did -- did the State
20 have any type of DNA evidence that linked you to the crime or
21 the crime scene?

22 A: No, sir.

23 Q: Were any weapons recovered?

24 A: No, sir.

25 Q: Any type of shell casings that were forensically

1 examined?

2 A: No, sir.

3 Q: You had already testified that there was no photographs
4 of you at the crime scene?

5 A: Yes, sir.

6 Q: Did you confess to any of the crimes?

7 A: Yes, sir.

8 Q: Which crimes did you confess to?

9 A: I -- I confessed to shooting the defendant.

10 Q: Okay. And was that made a part of the negotiations
11 between your attorney and the Solicitor's Office?

12 A: Yes, sir.

13 THE COURT: Did you say you confessed to shooting the
14 defendant?

15 THE APPLICANT: The victim of it.

16 THE COURT: You confessed to shooting the victim?

17 THE APPLICANT: Yes, sir.

18 THE COURT: Okay.

19 BY MR. BAILEY:

20 Q: And that was made aware during your meeting with your
21 attorney and the solicitor?

22 A: Yes, sir.

23 Q: And that took place on two days prior to your guilty
24 plea?

25 A: Yes, sir.

NATHANIEL NESMITH - DIRECT BY MR. BAILEY

1 Q: Now, what was your understanding after that meeting with
2 you, your attorney, and the solicitor?

3 A: Say that again?

4 Q: What was your understanding as to what was going to
5 happen with your case following your meeting with your
6 attorney and the solicitor?

7 A: That I would be copping out to a lesser charge. I'll be
8 copping out to ten years manslaughter.

9 Q: Okay. So just to make sure the record is clear, Mr.
10 Nesmith, was it your understanding that you were going to
11 plead guilty to voluntary manslaughter?

12 A: Yes, sir.

13 Q: And the armed robbery charge?

14 A: Yes, sir.

15 Q: And you would receive a sentence of ten years?

16 A: Yes, sir.

17 Q: Now, your guilty plea did not take place that day;
18 correct?

19 A: No, sir.

20 Q: How many days later were you brought to court?

21 A: Three.

22 Q: And when you were brought back to court for your guilty
23 plea, did anyone inform you that you were not going to get the
24 ten years that you had originally?

25 A: No, sir.

NATHANIEL NESMITH - DIRECT BY MR. BAILEY

1 Q: Now, when you went in front of the judge, the judge would
2 have asked you a series of questions?

3 A: Yes, sir.

4 Q: And pursuant to your guilty plea?

5 A: Yes, sir.

6 Q: Now, we don't have a copy of that guilty plea transcript.
7 Okay?

8 A: Right.

9 Q: So did the judge ask you if you were entering your plea
10 freely and voluntarily?

11 A: Yes, he did.

12 Q: And what was your response to that?

13 A: Under the -- under the -- under my lawyer, he told me to
14 to say, no, that nothing was offered, nothing that was
15 promised to me.

16 Q: No, no. My question is did the judge ask you if you were
17 entering your plea freely and voluntarily?

18 A: Yes, he did.

19 Q: Okay. And your response to that question?

20 A: My response to that question?

21 Q: Do you remember your response to that question?

22 A: No, I don't.

23 Q: That you entered it freely and voluntarily?

24 A: Yes.

25 Q: No one forced you into entering your plea?

NATHANIEL NESMITH - DIRECT BY MR. BAILEY

1 A: Yes.

2 Q: Did the judge ask you if you were under the influence of
3 any drugs or alcohol or stress or medications at the time of
4 your plea?

5 A: Yes, he did.

6 Q: And how did you respond to that?

7 A: No.

8 Q: Did the judge ask you if you were satisfied with the
9 services of Mr. Grove, as he represented you up until that
10 point?

11 A: Yes, sir.

12 Q: And how did you respond to that question?

13 A: I said yes.

14 Q: Okay. Did the judge ask you if there had been any
15 promises made to you --

16 A: Yes.

17 Q: -- as it relates to what sentence you would receive in
18 exchange for your guilty plea?

19 A: Yes, he did.

20 Q: And what was your response to that question?

21 A: Nothing -- nothing was promised.

22 Q: Okay. And why did you tell the judge nothing was
23 promised if it was your understanding you were getting ten
24 years?

25 A: Because Mr. Grove told me to say that.

NATHANIEL NESMITH - DIRECT BY MR. BAILEY

1 THE COURT REPORTER: They asked me to move the mic back.

2 Thank you.

3 BY MR. BAILEY:

4 Q: I'm sorry. Mr. Nesmith, will you please restate your
5 answer to that question?

6 A: Because Mr. Grove told me to say this, to say no.

7 Q: Okay. And when did that conversation with Mr. Grove take
8 place?

9 A: The same day as my sentence.

10 Q: Okay. So before your guilty plea?

11 A: Yes.

12 Q: He reviewed those questions with you that I just asked
13 you?

14 A: Yes, he did.

15 Q: And did he provide instruction on how to answer those
16 questions?

17 A: No, he didn't.

18 Q: Okay. But your testimony is he told you to say that
19 nothing had been promised?

20 A: Yes, he did.

21 Q: Okay. Now, we submitted on your behalf an affidavit that
22 your mother had written some years ago?

23 A: Right.

24 Q: Are you familiar with that document?

25 A: Yes, sir.

NATHANIEL NESMITH - DIRECT BY MR. BAILEY

1 Q: Okay. Is it your understanding that your mother had
2 received a call from Mr. Grove?

3 A: Yes, sir.

4 Q: And is it also your understanding that Mr. Grove informed
5 her that you'd be receiving a ten-year sentence?

6 A: Yes, sir.

7 Q: Okay.

8 MR. BAILEY: Please answer any questions that the
9 Attorney General's Office has for you. Okay?

10 THE APPLICANT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. BARLOW:

13 Q: Good morning, Mr. Nesmith. How are you?

14 A: Fine. You?

15 Q: Doing well. Thank you.

16 THE COURT: Just a moment now. Ms. Dixon, can you hear?

17 MS. DIXON: I can hear you. I -- I can only hear you.

18 THE COURT: Okay. And so this mic that he's speaking in,
19 is it connected with WebEx?

20 THE CLERK: Judge, I didn't realize that we were doing
21 WebEx this month. Is Ms. Dixon appearing in this hearing? We
22 can all log on.

23 MR. BARLOW: Yeah. I mean, I can log on real quick.

24 THE COURT: Okay. We're going to log on for you, Ms.
25 Dixon.

NATHANIEL NESMITH - CROSS BY MR. BARLOW

1 MS. DIXON: Okay. I'm sorry.

2 THE COURT: Okay. No problem.

3 (WHEREUPON, there was a pause in the proceedings, after
4 which the proceedings resumed as follows.)

5 THE COURT: And while we're waiting, what -- what is the
6 issue with the original transcript of the proceedings?

7 MR. BARLOW: So, Your Honor, what happened was, is the
8 motion to reconsider was filed, and our office did not receive
9 his PCR until 2020. It was beyond the five-year date that the
10 court reporters have to keep their trans -- or keep their
11 files, so it wasn't available.

12 THE COURT: Is that right, Mr. Bailey?

13 MR. BAILEY: Judge, that is my understanding, because I
14 was copied on emails with the -- either the particular court
15 reporter or it was the --

16 MR. BARLOW: She was retired. I think it was the retired
17 court reporters, and it's the rule. I'm not -- I don't know
18 the number right off hand, but they only have to keep their
19 records for five years and then they can destroy them.

20 MR. BAILEY: And when she did respond, Your Honor, to the
21 request for the transcript, she cited the rule attached to the
22 email.

23 MR. BARLOW: Right.

24 MR. BAILEY: It might be 607.

25 MR. BARLOW: Yeah.

NATHANIEL NESMITH - CROSS BY MR. BARLOW

1 THE COURT: And Mr. Grove is here?

2 MR. BARLOW: Yes, sir.

3 THE COURT: All right.

4 MR. BARLOW: Your Honor, do you want me to stay seated
5 here?

6 THE COURT: Your colleague, Ms. Dixon, is here, so I
7 think she -- she's been monitoring the proceedings.

8 MR. BARLOW: Okay. I will stay here, and I'll ask from
9 here so that she can see me. And can she hear me?

10 THE COURT: Can you hear him now, Ms. Dixon?

11 MR. BARLOW: Can you hear me now?

12 THE COURT: Of course, we can't hear you, Ms. Dixon.

13 MS. DIXON: Sorry. I had it muted.

14 THE COURT: Okay.

15 MS. DIXON: Yes, I can hear.

16 THE COURT: Okay. Very good. You may proceed.

17 MR. BARLOW: Thank you, Your Honor.

18 BY MR. BARLOW:

19 Q: All right. So, Mr. Nesmith, you're here today alleging
20 ineffective assistance of your plea counsel; correct?

21 A: Yes, sir.

22 Q: And I know that the judge has been thorough with you on
23 this, but again, you -- you realize that you -- if you're
24 granted PCR today, you go back on all of your charges that you
25 were originally indicted on and you're facing life plus, if

NATHANIEL NESMITH - CROSS BY MR. BARLOW

1 you go to trial?

2 A: Yes, sir.

3 Q: And you still wish to proceed?

4 A: Yes, sir.

5 Q: Okay. How many times did you meet with plea counsel?

6 A: Three times.

7 Q: Okay. And in those meetings, did you go over discovery
8 and your evidence or the evidence the State had against you?

9 A: Yes, sir.

10 Q: Okay. In all three meetings?

11 A: Yes, sir.

12 Q: Okay. You also -- on direct, you testified that he told
13 you that you would get 30 years if you went to trial; correct?

14 A: Yes, sir.

15 Q: But in fact, you would -- you were facing life plus on
16 all those charges; correct?

17 A: For my understanding, it was that he told me if I go to
18 trial, I'll be receiving 30 years.

19 Q: Okay. And you also testified on direct that they did not
20 have DNA; correct?

21 A: Yes, sir.

22 Q: Okay. Where would the DNA have -- have come from?

23 A: Under the victim's finger -- fingernails, he had DNA. It
24 did not match my DNA.

25 Q: Okay. Did the victim make contact with you?

NATHANIEL NESMITH - CROSS BY MR. BARLOW

1 A: No, he didn't.

2 Q: Okay. So the victim wouldn't have had your DNA on him;
3 correct?

4 A: Correct.

5 Q: Okay. And there was video of this; correct?

6 A: Yes, sir.

7 Q: Okay. That showed you as the person that shot the
8 victim?

9 A: Yes, sir.

10 Q: Okay. And how was the victim shot?

11 A: He was shot in the shoulder.

12 Q: Okay. Running away?

13 A: No. He was standing there pointing a gun at me.

14 Q: Okay.

15 A: That's on video too.

16 Q: And it's your understanding that you were pleading to
17 just 10 years?

18 A: Yes, sir.

19 Q: Okay. Was that for which charge?

20 A: For everything.

21 Q: Okay. Did the judge inform you that for voluntary
22 manslaughter, you could receive 2 to 30 years?

23 A: Yes, he did.

24 Q: Okay. So the judge informed you that you could receive a
25 minimum of 2 years and a maximum of 30, and you still pled?

NATHANIEL NESMITH - CROSS BY MR. BARLOW

1 A: I pled under the assumption, again under the assumption
2 that I would be copping out to 10 years.

3 Q: But it was your testimony that you -- that the judge
4 informed you that the minimum was 2 and the maximum was 30;
5 correct?

6 A: If I go to trial.

7 Q: That was at -- no, this was at the plea hearing; correct?

8 A: My understanding is -- it been a while. So for my
9 understanding is when I -- when the judge spoke to me, he told
10 me if I can take it to trial, I'll receive 30. If I lost
11 trial, I would be receiving 30 years. That's my
12 understanding.

13 Q: So it was the plea judge who told you that, not your
14 attorney?

15 A: Yes.

16 Q: Okay. And did the judge inform you that the minimum for
17 armed robbery was 10 years and the maximum was 30?

18 A: Yes.

19 Q: Okay. So he informed you on the armed robbery charge as
20 well that the minimum was 10 and the maximum was 30, and you
21 still pled?

22 A: Yes.

23 Q: Okay. Do you recall if the judge considered your
24 criminal history in sentencing?

25 A: I don't remember.

NATHANIEL NESMITH - CROSS BY MR. BARLOW

1 Q: You don't recall if the judge had a copy of your -- of
2 your criminal history or was provided one?

3 A: Yes, he did.

4 Q: Okay. And you have a very extensive criminal history;
5 correct?

6 A: Yes.

7 Q: Okay. To include armed robbery, burglaries, multiple
8 counts; right?

9 A: I don't have no burglaries on my record.

10 Q: None from New York?

11 A: No. Not burglary.

12 Q: Okay. Tell me what -- what charges have you received in
13 New York then?

14 A: Armed robbery, drugs, attempted murder.

15 Q: Do you -- do you recall the -- the hearing on the motion
16 to reconsider?

17 A: Yes, sir.

18 Q: And do you recall Judge Culbertson indicating that he had
19 considered your criminal history, your extensive criminal
20 history, and he found that the 30-year sentence was justified?
21 Correct?

22 A: Yes.

23 Q: Okay.

24 MR. BARLOW: No further questions, Your Honor.

25 THE COURT: Any redirect?

NATHANIEL NESMITH - REDIRECT BY MR. BAILEY

1 MR. BAILEY: Just briefly, Your Honor.

2 THE COURT: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MR. BAILEY:

5 Q: Mr. Nesmith, if you knew you were going to get anywhere
6 north of 10 years, would you have pled guilty --

7 A: No.

8 Q: -- to the voluntary manslaughter?

9 A: No, I wouldn't.

10 Q: And what is the reason you pled guilty?

11 A: I was under the assumption again that I came to court to
12 cop out to 10 years manslaughter.

13 MR. BAILEY: Thank you, Mr. Nesmith.

14 MR. BARLOW: Nothing, Your Honor.

15 THE COURT: All right. You may step down.

16 Any additional witnesses by the applicant?

17 MR. BAILEY: No, Your Honor.

18 THE COURT: By the State?

19 MR. BARLOW: Yes, Your Honor. We'd call William Grove,
20 please.

21 THE COURT: All right. Mr. Grove.

22 THE CLERK: Mr. Grove, if you will, stop and raise your
23 right hand. Do you swear or affirm that the testimony you
24 give will be the truth, the whole truth, and nothing but the
25 truth, so help you God?

WILLIAM GROVE - DIRECT BY MR. BARLOW

1 THE WITNESS: I do.

2 THE CLERK: Thank you.

3 WILLIAM GROVE, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BARLOW:

7 Q: Good morning, Mr. Grove. How are you doing today?

8 A: I'm well.

9 Q: Good, good. Thank you for being here. How long have you
10 been practicing law?

11 A: I passed the Bar and was sworn in in 2009.

12 Q: And how much of your practice has been in criminal law?

13 A: I started as a public defender in 2010. I continued that
14 work until about a year and a half ago. I opened up private
15 -- a private practice where I still practice some criminal
16 law. So 12-ish years.

17 Q: Okay. And how much of your practice now is criminal law?

18 A: The majority of it. I don't keep metrics on things like
19 that, but 75 percent or more.

20 Q: And were you appointed or retained in this case?

21 A: I was appointed. At the time, I was employed by the
22 Florence County Public Defender's Office and assigned to Mr.
23 Nesmith's case.

24 Q: Do you recall how long before his plea date you were
25 appointed?

WILLIAM GROVE - DIRECT BY MR. BARLOW

1 A: I can tell you if -- if you'll give me a moment. My best
2 guess would have been within days of his arrest. His
3 application by Judge Timmons was approved on December the 18th
4 of 2013, and he was initially interviewed by our office in --
5 on January the 9th of 2014.

6 Q: Okay. And he pled guilty in October of 2014; correct?

7 A: That's correct.

8 Q: So you represented him approximately ten months?

9 A: Give or take, yes, sir.

10 Q: Okay. And how many times in the -- in that ten-ish
11 months did you meet with applicant?

12 A: I heard him earlier testify to three times in person.
13 That is probably accurate in terms of substantive sitting down
14 and discussing his case. We also had a preliminary hearing.
15 We had preparation and attendance at a bond hearing. He and I
16 exchanged letters 2 or 3 times. So there -- there were -- if
17 you count things like that, there were more meetings than
18 that, but -- but I'll take him at his word that we probably
19 met substantively three times in the ten months.

20 Q: Okay. During those meetings, did you discuss the
21 elements of his charges and what the State had to prove?

22 A: Yes.

23 Q: Okay. Do you recall this case?

24 A: I do.

25 Q: Okay. Could you briefly characterize the State's

WILLIAM GROVE - DIRECT BY MR. BARLOW

1 evidence in this case?

2 A: The State presumably at trial would have presented
3 evidence that two men presenting themselves as law enforcement
4 agents approached what would otherwise be called a
5 bootlegger's establishment running an illegal gambling house
6 and that sort of thing. Knocked on the door, entered under
7 the guise of being law enforcement agents, drew weapons, and
8 attempted an armed robbery.

9 Excused at least one of the customers who was inside.
10 That customer went out, did not truly leave. Went out to
11 their truck, got a firearm, came back to the door. And as Mr.
12 Nesmith exited the building, that person who would later --
13 Mr. Jenkins, I believe was his name, would later be the
14 victim, was pointing a handgun at Mr. Nesmith, attempted to
15 fire it, it jammed, and then Mr. Nesmith returned fire,
16 ultimately killing that individual.

17 Q: Do you recall if the victim was facing Mr. -- was facing
18 Mr. Nesmith or was he running away?

19 A: I don't recall. He ended up -- he ended up running away.
20 And as I sit here today, I cannot remember if that was a front
21 side entrance wound or side entrance wound or rear side
22 entrance room -- wound, but he was shot by Mr. Nesmith and
23 then made it several steps around the corner of the building
24 and was -- fell over and died shortly thereafter.

25 Q: And did the -- did the applicant or Mr. Nesmith discuss

WILLIAM GROVE - DIRECT BY MR. BARLOW

1 his version of the facts with you?

2 A: Yes. I mean, we talked about that in our substantive
3 meetings.

4 Q: Were those facts different from the State's?

5 A: No, not -- not -- not significantly, I suppose.

6 Q: And did you discuss the punishments associated with the
7 offenses?

8 A: Yes.

9 Q: And did you inform him of his right to a jury trial?

10 A: Yes.

11 Q: And did he wish to have a jury trial? Did he ever
12 express that?

13 A: He did. We had -- at one of our substantive meetings, he
14 had raised the possibility of a stand your ground defense, as
15 the deceased in his case had originally presented a handgun at
16 him, and he -- we had -- he had entertained the possibility of
17 engaging in some form of a self-defense or stand your ground
18 case.

19 And he and I had a discussion about the requirements of
20 stand your ground and how bringing the harm upon yourself is
21 an absolute exclusion to your ability to raise that as an
22 affirmative defense. And so we sort of abandoned that as a
23 strategy, and it wasn't long after that that we started
24 discussing the possibility of a plea.

25 Q: Okay. And did -- did Mr. Nesmith ever indicate to you

WILLIAM GROVE - DIRECT BY MR. BARLOW

1 that he didn't understand what was going on?

2 A: No, sir.

3 Q: Okay. So in your opinion, do you -- do you believe that
4 Mr. Nesmith understood what he was pleading to?

5 A: Yes, sir.

6 Q: And you informed Mr. Nesmith of the consequences of his
7 plea?

8 A: Yes, sir.

9 Q: Prior to his plea, did you -- did you feel that you were
10 adequately prepared to -- to proceed to trial if you -- if he
11 had wanted to?

12 A: Sure.

13 Q: Okay. In this meeting that Mr. Nesmith said you and he
14 and the solicitor had, do you recall telling him that he would
15 get 10 years for pleading?

16 A: No, sir. The -- the negotiations, as I remember them,
17 were that there would be no recommendation by the State. It
18 may be irrelevant, but I remember -- I think I remember
19 Investigator McFadden also being present at that meeting, but
20 he wouldn't have contributed substantively to it. But we
21 discussed no recommendation, and he and I discussed the
22 possibility of and the request for the minimum sentence, which
23 would have been 10 years, absolutely. That was part of our
24 conversation, but we were never offered a guarantee for 10
25 years, and I never assured him of a particular outcome.

WILLIAM GROVE - DIRECT BY MR. BARLOW

1 Q: Do you recall calling Mr. Nesmith's mother and telling
2 her that he was pleading to 10 years?

3 A: No. I recall calling her. That -- that would have -- I
4 think I called her prior to the bond hearing. I have a note
5 about that, and it would have been absolutely ordinary for me
6 to contact family leading up to the resolution of a case. I
7 don't have a specific recollection of that phone call, but I
8 imagine, like many phone calls I've had of that kind, it would
9 have been a discussion of the possibilities, the possibilities
10 being 10 to 30 and what we would be requesting. But I would
11 have never told her that a particular outcome was going to
12 occur, because I wouldn't have known what a particular outcome
13 would have been.

14 Q: Do you stand by the counsel you provided?

15 A: I do.

16 Q: And do you feel it was best in Mr. Nesmith's best
17 interest to have pled?

18 A: Sure, I do. I wish things would have turned out
19 differently. I wish he would have received a more favorable
20 sentence, but I still support his decision to enter his plea.

21 Q: And that sentence was -- was up to the judge though? It
22 was at his discretion; correct?

23 A: That's correct. It was not negotiated. It was not
24 recommended. It was -- even if it had been recommended, it
25 still would have been within the discretion of the judge.

WILLIAM GROVE - CROSS BY MR. BAILEY

1 MR. BARLOW: Thank you, Mr. Grove. No further questions.
2 Please answer any questions Mr. Bailey has.

3 MR. BAILEY: Thank you, Your Honor. May it please the
4 Court.

5 THE COURT: Yes, sir.

6 MR. BAILEY: Judge, do I need to sit in front of the
7 computer for Ms. Dixon to benefit?

8 THE COURT: I think --

9 MR. BAILEY: My cross is very brief.

10 TH COURT: Okay. I think so.

11 CROSS-EXAMINATION

12 BY MR. BAILEY:

13 Q: Mr. Grove, after your meeting with Mr. Nesmith at the
14 courthouse that involved the solicitor, do you recall
15 receiving a letter from Mr. Nesmith stating that he would
16 accept 10 years in exchange for his guilty plea?

17 A: I don't recall that, and I can look through the file. I
18 have the scanned version of this file. It wouldn't surprise
19 me if there were a letter to that effect. It's common to
20 receive proposed resolutions from clients.

21 Q: Did you ever correspond to him in writing that 10 years
22 was not on the table? It was an open plea offer?

23 A: I don't know that I ever established that in writing.
24 The meeting when we were given that offer was on the doorstep
25 of the actual resolution of the case. If -- I think I heard

WILLIAM GROVE - CROSS BY MR. BAILEY

1 him testify three days. I don't remember specifically how
2 many days, but that sounds right. It would have been within
3 days of the resolution, and I don't know that there would have
4 ever been an opportunity for me to write a letter discussing
5 that conversation.

6 Q: Were y'all up on the trial roster before this was pled
7 out?

8 A: I don't remember specifically. That would have been very
9 quick. The case would have only been 10 or 11 months old at
10 the time. As I remember it, I believe there had been
11 discussions of an upcoming trial term, and these negotiations
12 avoided the need for that. We may have been on a trial
13 roster. I don't remember specifically.

14 Q: But you would agree that ten months into a case in
15 Florence County is very early for a case to be tried?

16 A: Fastest I've ever heard.

17 Q: Now, after Mr. Nesmith writes you to say he's going to --
18 he would accept 10 years in prison, why was he brought back to
19 court for a plea if nothing had been solidified with you and
20 the solicitor at that time?

21 A: Can you repeat the question?

22 Q: Yeah. After Mr. Nesmith writes you a letter that says
23 he'll agree to a 10-year sentence, if nothing had been
24 solidified with the Solicitor's Office, why was he brought
25 back to court following the meeting with you and the

WILLIAM GROVE - CROSS BY MR. BAILEY

1 solicitor?

2 A: I don't -- I don't -- I don't know that things happened
3 in that order. My -- my recollection, assuming there to be a
4 letter that he sent me and I can't say for certain whether
5 there was or wasn't, but it wouldn't surprise me that he was
6 entertaining a plea, that would have been the impetus for a
7 meeting with the solicitor where we discussed possible
8 resolutions, agreed to resolutions, and then entered a plea.

9 Q: But would you agree that the plea did not take place on
10 the day that you and the solicitor and Mr. Nesmith met?

11 A: That's correct.

12 Q: So he would have had to have been brought back to court
13 at least one additional time after that meeting?

14 A: Oh, yes. Absolutely. It was -- there were several days,
15 at least two or three, in between the meeting and the
16 resolution.

17 Q: Why would he be -- why would he have been transported
18 back to the courthouse if there were no negotiations
19 solidified in reference to a plea or sentencing?

20 A: I think that there were. I don't remember if they were
21 agreed to in the moment of the meeting or afterwards, but the
22 agreement was a plea to voluntary manslaughter and armed
23 robbery with no recommendation. There wasn't an agreement for
24 a 10-year sentence or any specific recommendation or
25 negotiation. The negotiations as presented were a straight-up

WILLIAM GROVE - CROSS BY MR. BAILEY

1 plea to voluntary and armed robbery, where the minimum would
2 be 10 and the maximum would be 30.

3 Q: But you don't recall any correspondence or conversations
4 you had with Mr. Nesmith after the meeting with the solicitor,
5 but before the entry of his guilty plea.

6 A: If you'll give me a moment, I do have a number of letters
7 from him that I'll be happy to look through, but I do not
8 recall that specifically right this minute.

9 (WHEREUPON, there was a pause in the proceedings, after
10 which the proceedings resumed as follows.)

11 A: I am on, I think, the seventh letter I received from him.
12 I have a letter from him where he discusses a willingness to
13 enter a plea, and I'm quoting here. "I will take 5 to 7 years
14 right now on this case, but I need to talk to you first."

15 It doesn't reference a meeting, so I think that that
16 would have been well before our meeting with the solicitor.
17 That may have been the impetus for a meeting with the
18 solicitor to discuss proposed resolutions.

19 I think that's the eighth letter that I have skimmed in
20 these brief moments. I don't see any discussion about
21 accepting a 10-year recommendation or anything of that nature.

22 Q: And likewise, nothing about him confirming that he would
23 plead guilty to a range up to 30 years?

24 A: That's -- that's correct. Of course.

25 MR. BAILEY: Court's indulgence one moment.

1 THE COURT: Yes, sir.

2 MR. BAILEY: Judge, we have no further questions for Mr.
3 Grove.

4 THE COURT: Any redirect?

5 MR. BARLOW: Nothing else, Your Honor.

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

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: The letters that were referenced, would you
9 all like to make them a part of the record or no?

10 MR. BAILEY: Not from the petitioner, Your Honor.

11 MR. BARLOW: No, sir.

12 THE COURT: All right. Have you got any further
13 witnesses by the State?

14 MR. BARLOW: Your Honor, no further witnesses and no
15 closing. I think it's an issue here of credibility and -- and
16 the testimony.

17 THE COURT: All right. Yes, sir, Mr. Bailey?

18 MR. BAILEY: Your Honor, we would just rest on the
19 testimony from today's hearing.

20 THE COURT: Any further comment or argument?

21 MR. BARLOW: None from the State, Your Honor.

22 MR. BAILEY: Nothing from the petitioner.

23 THE COURT: And I'll take the matter under advisement and
24 issue a written order.

25 MR. BARLOW: Thank you, Your Honor.

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MR. BAILEY: Thank you.
THE COURT: All right. Thank you, all.
(WHEREUPON, the proceedings ended at 10:17 a.m.)

--- END REQUESTED TRANSCRIPT ---

A F F I D A V I T

On 10-20-14 I Marguree Nesmith and husband James Williams received a phone call from my son Nathaniel Nesmith lawyer William Eugene Grove and was told to come to court at 10:00am that my son will be sentence on 10-21-14 to 10 years. Me and Mr. Groves talk for a few minute I told him that me and his father would be there at 10:00am. I also talk to my son later that day on the 20th and he also told me that his lawyer told him that he was getting ten years to. I could not believe that this lawyer lied to me and my husband and had us come to court to see my son get 30 years. Mr. Grove tricked my son into believing that he will be coping out to 10 years and lied to me and his father. My son would never have cop out if he was not believing that he was getting more than ten years. At my son age that is a life sentence. I am 70 years old and his father is 76. We are up in age, and need our son home to look after us and take care of things around the house and land we have.

My address and phone number is:

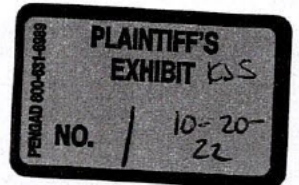
Marguree Nesmith
[Redacted]
Hemmingway, South Carolina 29554
Ph. [Redacted].

Marguree Nesmith

SWORN to and SUBSCRIBED before me
this 11th day of NOVEMBER, 2016.

Julia Rogers
Notary Public for South Carolina

My Commission expires: 2/22/22



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT

Nathaniel Nesmith, #361804,) CASE NO. 2016-CP-21-1380

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**ORDER OF DISMISSAL
WITH PREJUDICE**

2024 APR 12 PM 2:37
DORIS POULOS O'HARA
CCCP & CS
FLORENCE COUNTY, SC

FILED

Presiding Judge: Hon. Clifton Newman
Applicant's Attorney: Joshua A. Bailey, Esq.
Respondent's Attorney: D. Russell Barlow, II, Esq.
Plea Counsel: William E. Grove, Esq.
Date of Hearing: October 20, 2022
Court Reporter: Krystal J. Smith

This matter comes before the Court by way of Nathaniel Nesmith's (Applicant) application for post-conviction relief (PCR) filed on June 9, 2016. Respondent, the State of South Carolina, filed its Return on February 25, 2021.¹ On October 11, 2022, Applicant, through counsel, filed its amended PCR application.

On October 20, 2022, an evidentiary hearing was held at the Florence County Courthouse before the Honorable Clifton Newman. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant was present and represented by Joshua A. Bailey, Esquire (PCR Counsel). At the hearing, Applicant proceeded on the claim in his amended application. In

¹ The delay in Respondent's return to the application was because Applicant had a pending motion to reconsider sentence in general sessions.

support of these claims, Applicant testified on his behalf, and Respondent presented testimony from William E. Grove, Esquire (Plea Counsel).²

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 incarcerated according to an order of commitment of the Florence County Clerk of Court. During its June of 2014 term, the Florence County Grand Jury indicted Applicant for Murder, Armed Robbery, Conspiracy, Kidnapping, and Possession of a Weapon During the Commission of a Violent Crime (2014-GS-21-00691).

On October 21, 2014, Applicant pled guilty before the Honorable Benjamin H. Culbertson to the lesser included offense of voluntary manslaughter and as indicted to armed robbery.³ Judge Culbertson sentenced Applicant to imprisonment for concurrent terms of thirty (30) years for each crime. Applicant filed a motion to reconsider the sentence on October 23, 2014. Prior to the resolution of that motion, Applicant filed a notice of appeal on November 3, 2014. The South Carolina Court of Appeals subsequently dismissed Applicant's appeal without prejudice by order filed on November 25, 2014, due to the pending motion. The Remittitur was returned on December

² Plea Counsel was an Assistant Public Defender with the Twelfth Circuit Public Defender's Office when he represented Applicant. (PCR Tr. p. 25).

³ Applicant's Conspiracy, Kidnapping, and weapons charges were dismissed as part of the plea deal.

12, 2014. On April 18, 2016, Applicant's motion was heard before Judge Culbertson. An order denying Applicant's motion was signed and filed on September 12, 2019.

Applicant did not file a subsequent appeal of his convictions or 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:

Your Honor, Mr. Nesmith was with two Codefendants, Mr. Donald Ray Dollard and Mr. Gregory Canty. They got in, I think, Mr. Dollard's vehicle, if I'm not mistaken, and came to Florence to a store that is run by a man by the name of Brian McElveen.

Also present there was an associate of his, Mr. Clay McKnight. Neither of them wish to be here today, Your Honor, which -- I believe a part of the reason for that may be because that store Mr. McElveen runs is a place known for gambling, and that is probably why this store was targeted to be robbed.

Your Honor, Mr. Canty did not go into the store but remained in the vehicle, but I think he gave Mr. Dollard and Mr. Nesmith the name of Brian McElveen, which gained them access to get into the store.

There was a surveillance video camera there at the store, and Mr. Nesmith and Mr. Dollard went to the store and knocked on the door and was told, according to what Mr. Nesmith tells us -- everything he told we have not been able to corroborate. He was not the first one to talk. Mr. Dollard talked immediately with the law enforcement. Mr. Nesmith, I believe, was truthful with me. He told me that they were told, go away; we are closed; and they said, right, and called out his name. Then he opened the door and let them in.

They went in and Mr. Clay McKnight was there and Mr. McElveen was there, and Mr. David Jenkins was there, and Mr. Jenkins was getting ready to go. They told him you've got to stay or go, and he says okay and walks out the door, and they begin to rob Mr. McKnight and Mr. McElveen.

On the way to the store they had stopped at another store which was like a Dollar General, and they got some twist ties or zip ties, and like a toy badge and toy handcuffs, and they handcuffed them. Mr. Dollard or Mr. Nesmith one had a badge. Mr. Dollard had the zip ties and he was going to tie the people up with zip ties.

Then there was a knock at the door and he told Mr. Nesmith to answer the door. Mr. Nesmith answered the door and Mr. Jenkins was there with a gun, which was a high point, and he tried to fire and the gun misfired, and he didn't even have a magazine in it. He had the magazine in his pocket, we found later.

But you could tell on the video that he tried to fire and kind of fooled with it, and Mr. Dollard -- Mr. Nesmith returned fire. He thought he was shot, he says. You know, when the gun clicked he just fired. Mr. Jenkins ran around the corner of the building, and he got shot. Mr. Nesmith did hit him, and he went around the corner of the building where he expired.

Mr. Nesmith said they planned on robbing the store. They were told they had a lot of money there. I think they knew it might have been a gambling joint.

He did express remorse to me and said he didn't intend on hurting anybody. Mr. Jenkins came -- I assume Mr. Jenkins went to his truck and he probably thought something was up and there was a robbery and he was trying to stop it.

Mr. Nesmith did express remorse to me. I would defer at this time -- I believe there may be some other details I left out. I will defer to the Investigators, but I do need to tell you one other thing. According to Mr. Nesmith, the reason this took place and they were together and they were robbing -- they had charges pending in Williamsburg County for a bank robbery -- is that Mr. Dollard had a young, twenty-five year old girlfriend that was strung out on cocaine and kept trying to get cocaine and money from Mr. Dollard, and he was afraid he was going to lose her and intended on leaving his wife for this young girlfriend who happens to be the niece of a narcotics agent for the Williamsburg Sheriff's Office, and he told me this. I called there and found out who he was. I called him and asked him if he had a twenty-five year old niece that had a relationship with Dollard and was strung out on drugs, and he said he did; that he believed that to be true about his niece.

So I corroborated that what he told me was true with regards to that. He told me Mr. Dollard was the driving force behind this, trying to get money, and he was going along with him. Mr. Canty was going to go along with it but when they got there he said he wasn't going to go in; he was not getting out of the vehicle.

They got Fifteen Hundred Dollars from Mr. Clay McKnight. There was more money there they didn't know about and didn't take that Mr. McElveen had hidden. Mr. McElveen had given Fifteen Hundred Dollars to Mr. McKnight and that's when Mr. McKnight

came in the store, so they were able to find and see quickly that and that is how they got that Fifteen Hundred Dollars.

Mr. Nesmith said he got Five Hundred and Mr. Dollard told law enforcement he got Five Hundred Dollars, but Mr. Dollard said he gave Mr. Canty Five Hundred Dollars. Mr. Nesmith verified that.

So that is what happened. After the shooting they got the money and took off and went back toward Florence, Florence County and the Williamsburg County area, and Johnsonville-Hemingway area, where they were from.

(Plea Tr. pp. 11-15)

CURRENT ACTION BEFORE THIS COURT

Applicant timely, albeit prematurely, commenced this PCR action on November 17, 2021.

Applicant asserts he is being held in custody unlawfully, alleging:

1. "Ineffective assistance of counsel"
 - a. "Plea entered based upon counsels uninformed decision"
 - b. "Plea counsel did not advise me [to appeal], nor did he file [an] appeal."

On October 11, 2022, Applicant, through PCR Counsel, amended his PCR application to include the following allegations:

1. Involuntary Guilty Plea
 - a. Petitioner avers that prior to the entry of his guilty plea, he met with his counsel (a) and the assistant solicitor to discuss the case. Petitioner avers that this meeting took place at the courthouse. Petitioner avers that following this meeting, and having been advised by counsel, he believed that he would be sentenced to ten (10) years in exchange for his guilty plea. Petitioner further avers that counsel contacted his mother by telephone and informed her of the date/time of the plea and that Applicant would be sentenced to ten (10) years in prison.

Before this Court are the Florence County Clerk of Court records regarding the subject's convictions and sentences, the Applicant's records from the South Carolina Department of Corrections, the Applicant's guilty plea transcript⁴, and the records of the current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁵ (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. 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

⁴ Notably, at the PCR hearing, Respondent and Applicant agreed that the court reporter indicated the guilty plea transcript was not available in this case. However, after the PCR hearing, Respondent found the guilty plea transcript in Applicant's co-defendant's PCR and PCR Appeal file. That record is now before this Court.

⁵ S.C. Code Ann. §§ 17-27-10 to -160.

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 decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 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 Plea 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, 104 S.Ct. 2052; 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. 8-9); 2. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 7); 3. Applicant understood the sentencing range (Plea Tr. pp. 8-9); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 7-8); 5. Applicant clearly indicated he was satisfied with Plea Counsel (Plea Tr. p. 10); 6. Applicant indicated no one was forcing him to plead guilty, and his decision to plead guilty was voluntary (Plea Tr. p. 10); 9. Applicant agreed with the facts surrounding the State's case as what happened in the case (Plea Tr. pp. 11-16); 10. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 22).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation: Involuntary Guilty Plea
Allegation: Plea Counsel Told Applicant He Would Only Receive Ten Years If He Plead

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant alleges Plea Counsel told him he would only get ten (10) years. 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 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 minimum and maximum sentencing ranges on all charges that he pleaded guilty to. 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 that he thought he was pleading to ten (10) years for voluntary manslaughter. (PCR Tr. p. 8). Applicant testified that there was no gun, shell casings, DNA, or no photo ID evidence against him in this case. (PCR Tr. p. 11). Applicant testified that Plea Counsel told him to tell the plea court that no one had promised him anything. (PCR Tr. p. 16). Applicant was asked if Plea Counsel instructed him on how to answer the plea court's questions, and he replied, "No, he didn't." (PCR Tr. p. 16). Applicant testified that his Plea Counsel called his mother and told her he would get ten (10) years. (PCR Tr. p. 17).⁶

On cross-examination, Applicant testified that Plea Counsel told him that he would get thirty (30) years if he went to trial. (PCR Tr. p. 20). Applicant testified that his DNA was not present on Victim, and Victim did not make contact with Applicant, so it would not have been there anyway. (PCR Tr. pp. 20-21). Applicant testified that there was video evidence that showed him as the shooter of the Victim. (PCR Tr. p. 21). Applicant testified that the plea court explained the minimum and maximum sentence, and he thought he was "copping out" to ten (10) years. (PCR Tr. pp. 21-22).

On redirect examination, Applicant testified that he would not have pled guilty if he had known he would get thirty (30) years imprisonment and not ten (10) years. (PCR Tr. p. 24).

On direct examination, Plea Counsel testified that the State's version of events was not different from Applicant's version of events. (PCR Tr. p. 28). Plea Counsel testified that Applicant

⁶ Applicant submitted an affidavit from Applicant's mother without objection wherein the affiant stated Plea Counsel told her Applicant would only receive ten (10) years. (PCR Tr. pp. 16-17).

did at one point wish to go to trial, and they discussed the defense of stand your ground; however, after explaining that bringing the harm upon yourself precludes that affirmative defense, Applicant and he started to discuss plea deals. (PCR Tr. p. 28). Plea Counsel testified that Applicant understood what he was pleading to. (PCR Tr. p. 29). Plea Counsel testified that he nor the solicitor ever told him he would only get ten (10) years if he pled guilty. (PCR Tr. p. 29). Plea Counsel testified that as part of their discussions, he would ask for the lower end of ten (10) years, but there was no recommendation and no guaranteed offer made to Applicant. (PCR Tr. p. 29). Plea Counsel testified that he did not specifically recall the phone call to Applicant's mother, but it would have been his practice to tell her the range of ten (10) to (30) years but that he would never have told her of a definitive outcome. (PCR Tr. pp. 29-30).

On cross-examination, Plea Counsel testified that he did not recall any letter where Applicant agreed to plead to ten (10) years. (PCR Tr. pp. 32-33). After reviewing eight letters from Applicant in Plea Counsel's file, Plea Counsel testified that in the seventh letter, Applicant agreed to five (5) to seven (7) years but he did not have a letter agreeing to ten (10) years. (PCR Tr. p. 34).

This Court finds Applicant's testimony **not credible** and Plea Counsel's testimony **credible**. Furthermore, 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).

Notably, Applicant did not allege any facts tending to prove he was prevented from informing the plea court that Plea Counsel told him that he would only receive ten (10) years. In fact, the record refutes Applicant's allegations. Thus, based on the evidence presented at the plea proceeding and 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**.

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

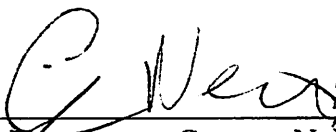
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED with PREJUDICE.**

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 1st day of April, 2024.


 THE HONORABLE CLIFTON NEWMAT
 Presiding Judge
 Twelfth Judicial Circuit

DORIS POLK, CLERK
 CCOP & CS
 FLORENCE COUNTY, SC

2024 APR 12 PM 2:37

FILED

Columbus, South Carolina

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

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2101380

Nathaniel Nesmith
2024 APR 12 PM 2:49
South Carolina State Of
DORIS POULOS O'HARA

PLAINTIFF(S)
DEFENDANT(S)
Submitted by: Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

CERTIFIED: A TRUE COPY
Clerk of Court C.P. & G.S.
FLORENCE COUNTY, S.C.

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

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

4/12/2024

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on April 12, 2024, and a copy mailed first class or placed in the appropriate attorney's box on April 15, 2024, to attorneys of record or to parties (when appearing pro se) as follows:

Joshua A. Bailey PO Box 555 Florence, SC 29503

D Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

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

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

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

12
WITNESSES

Chad Collins Florence County Sheriff

E. L. Clements, III

ARREST WARRANT NUMBER

2014GS2100691A	2013A2110201652
2014GS2100691B	2013A2110201644
2014GS2100691C	2013A2110201645
2013A2110201649	2013A2110201647
2013A2110201650	2013A2110201648
2013A2110201651	2013A2110201653

ACTION OF GRAND JURY

TRUE BILL

Wendy Sanders
Foreperson of Grand Jury
Date: *6/5/2014*

VERDICT

124

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-21-00691

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2014

THE STATE

vs.

GREGORY TYWONE CANTY

DONALD RAY DOLLARD

NATHANIEL NESMITH

Indictment for

**MURDER,
ARMED ROBBERY,
CONSPIRACY,
KIDNAPPING, AND
POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME**

2014 JUN -5 AM 11:08
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY
[Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR

MURDER, ARMED ROBBERY, CONSPIRACY,
 KIDNAPPING, AND POSSESSION OF WEAPON
 DURING COMMISSION OF VIOLENT CRIME

At a Court of General Sessions, convened on JUNE 05, 2014 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

CDR: 0116 16-03-0010, 0020, 16-01-0060

That GREGORY TYWONE CANTY, DONALD RAY DOLLARD, and NATHANIEL NESMITH did in Florence County on or about December 03, 2013, that while committing an Armed Robbery, feloniously, wilfully and with malice aforethought kill one David L. Jenkins, by means of shooting him with a handgun, and that the said David L. Jenkins did die as a proximate result thereof; in violation of Sections 16-03-0010, 0020, and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT TWO- ARMED ROBBERY

CDR: 0139 16-11-0330(A), 16-01-0060

That GREGORY TYWONE CANTY, DONALD RAY DOLLARD, and NATHANIEL NESMITH did in Florence County on or about December 03, 2013, while armed with a deadly weapon, or while alleging, either by actions or words, that they were armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, did feloniously rob Clayton McKnight, by means of force or intimidation, goods or monies of the said Clayton McKnight; in violation of Sections 16-11-0330(A) and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT THREE - CONSPIRACY

CDR: 0049 16-17-0410

That GREGORY TYWONE CANTY, DONALD RAY DOLLARD, and NATHANIEL NESMITH did on or about December 03, 2013, unlawfully, willfully, knowingly, wickedly and feloniously unite, combine, conspire, confederate, agree between and among themselves, and have tacit understanding with each other and with divers other persons whose names are unknown to the Grand Jurors for the purpose of committing the crime of Murder, Armed Robbery and/or Kidnapping; in violation of Section 16-17-0410, S.C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER, ARMED ROBBERY, KIDNAPPING, CONSPIRACY, AND POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME, WITH THE AFORESAID NAME(S) OF GREGORY TYWONE CANTY, DONALD RAY DOLLARD, AND NATHANIEL NESMITH SHOWN THEREON:

CERTIFIED
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.
 [Signature]
 TRIP COPY

COUNT FOUR- KIDNAPPING

CDR: 0095 16-03-0910, 16-01-0060

That DONALD RAY DOLLARD and NATHANIEL NESMITH did in Florence County on or about December 03, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Clayton McKnight, by any means whatsoever, without authority of law and by use of force, by holding him against his will at gunpoint and restraining him with plastic zip-ties; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

**COUNT FIVE- POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME**

CDR: 0549 16-23-0490

That NATHANIEL NESMITH did in Florence County on or about December 03, 2013, was in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: a handgun, during the commission of a violent crime, to wit: Murder, Armed Robbery and/or Kidnapping; in violation of Section 16-23-0490, S.C Code of Laws, 1976, as amended.

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

E.L. Clements III

E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

127

COUNTY OF Florence
STATE VS.

Nathaniel Nesmith

AKA:

Race: Black Sex: M Age: 52

DOB:

SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Manslaughter / Voluntary manslaughter 30 yrs.

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

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

ATTEST: Clements, III, E. L. N. Nesmith Will E. F. 77931

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 X years

and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment

of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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: 10/21/2014

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

by the State Department of Corrections.

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%) \$

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

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

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

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

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

Proviso 90.9 (SCCA Surcharge) \$5 \$ 5.00

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

TOTAL \$ 105.00

A TRUE COPY

CLERK OF COURT

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2014-GS-21-00691

A/W#: 2013A2110201645

Date of Offense: 12/3/2013

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

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

ATTEST: Clements, III, E. L. N. Nesmith Will E. F. 77931

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 X years

and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment

of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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: 10/21/2014

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

by the State Department of Corrections.

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%) \$

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

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

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

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

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

Proviso 90.9 (SCCA Surcharge) \$5 \$ 5.00

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

TOTAL \$ 105.00

A TRUE COPY

CLERK OF COURT

Court Reporter:

SCCA/217 (03/2011)

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge

Judge Code: 2148

Sentence Date: Oct. 21, 2014

COUNTY OF Florence
STATE VS. Nathaniel Nesmith

INDICTMENT/CASE#: 2014-GS-21-00691
A/W#: 2013A2110201644
Date of Offense: 12/3/2013
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

AKA:
Race: Black Sex: M Age: 52
DOB:
SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon 10-30 yrs.

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST: Clements, III, E. L. SC Bar# 15295 Defendant N. Nesmith Attorney for Defendant 77931 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 X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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: 10/21/2014
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

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

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments), TOTAL \$ 105.00

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2148
Sentence Date: OCT. 21, 2014