

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Edgar W. Dickson, Circuit Court Judge

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S.C. Supreme Court

DONTAVIOUS R. MACK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001115

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS
) COURT OF YORK
)
)
)
)
) CASE NO.: 2007-GS-46-681,682,
) 683,684,685,686,687
COUNTY OF YORK)

STATE OF SOUTH CAROLINA)
)
 PLAINTIFF,)
)
 -V-)
)
 DONTAVIOUS RICARDO MACK)
)
 DEFENDANT.)

AUGUST 8, 2007
YORK, SOUTH CAROLINA

B E F O R E:

HONORABLE LEE S. ALFORD, JUDGE

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

MR. KEVIN BRACKETT
SOLICITOR SIXTEENTH CIRCUIT
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FOR THE DEFENDANT

WANDA NELSON
OFFICIAL COURT REPORTER
SIXTEEN JUDICIAL CIRCUIT
AT-LARGE

ORIGINAL

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE YORK
COUNTY CLERK OF COURT'S OFFICE.

1 (ON THE RECORD AT 9:50 A. M..)

2 THE COURT: Thank you. Please be seated.

3 MR. BRACKETT: Dontavious Mack.

4 MADAME CLERK: Sir, please raise your right hand;
5 place your left on the bible.

6 (WHEREUPON: DONTAVIOUS MACK,
7 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

8 MR. BRACKETT: May it please the court.

9 THE COURT: Solicitor.

10 MR. BRACKETT: Your Honor, this is in reference to
11 Docket Numbers 2007-GS-46-0682; all of these indictments
12 charge Dontavious Ricardo Mack, the first Indictment 682 is
13 a True Bill Indictment for murder. 2007-GS-46-683 a True
14 Bill Indictment for armed robbery; 2007-GS-46-684 a True
15 Bill Indictment for possession of a fire arm during the
16 commission of a violent crime; 2007-GS-46-687 an indictment
17 for kidnapping; 2007-GS-46-0681 an indictment for criminal
18 conspiracy; 2007-GS-46-0685 an indictment for possession of
19 a pistol by a person under the age of twenty-one and 2007-
20 GS-46-0686 an indictment for possession of a stolen
21 vehicle.

22 The defendant is represented by Mr. Harry Dest and B.
23 J. Barrowclaugh the Public Defender and Deputy Public
24 Defender of York County. He - and the defendant and the
25 state through his attorneys have entered into discussions

1 regarding these cases and the defendant through his
2 attorneys has indicated his intention to enter guilty pleas
3 to all of these charges. These are guilty pleas without
4 negotiations, your Honor, and he is entering his pleas
5 straight up. And there are a number of victims that are
6 here and at the appropriate time they would like to be
7 heard on this matter.

8 THE COURT: Sir, you are Dontavious Ricardo Mack, is
9 that correct?

10 MR. MACK: Yes, sir.

11 THE COURT: Mr. Mack, how old are you?

12 MR. MACK: Twenty.

13 THE COURT: How far did you go in school?

14 MR. MACK: The eleventh grade.

15 THE COURT: What do you do for a job or occupation?

16 MR. MACK: I was working scaffold work - construction.

17 THE COURT: Are you married, sir?

18 MR. MACK: No, sir.

19 THE COURT: Do you have children?

20 MR. MACK: No, sir.

21 THE COURT: How much time have you served in jail on
22 these charges?

23 MR. BARROWCLAUGH: Your Honor, according to the
24 detention center records two hundred and fifty-nine days.

25 THE COURT: Mr. Mack, you are charged today with the

1 offense of murder. Murder is a felony it carries a minimum
2 sentence of thirty years. It carries a maximum sentence of
3 life without parole. It's classified as a violent offense
4 which could affect the eligibility for parole and
5 participation in certain programs run by the Department of
6 Corrections. It's a no-parole offense which means that
7 whatever sentence you get on this charge you would not be
8 eligible for parole. Do you understand that, sir?

9 MR. MACK: Yes.

10 THE COURT: It is also classified as a most serious
11 offense. There are other charges in here several of them
12 that are also classified as a most serious offense. I want
13 to explain the importance of that classification. Should
14 you receive another most serious offense on your record
15 with these charges on your record or should you receive a
16 combination of three serious and most serious offenses on
17 your record; based on that alone you could get a sentence
18 of life without parole the so called two strikes and three
19 strikes rule. These charges will constitute one strike for
20 that purpose. Do you understand that, sir?

21 MR. MACK: Yes, sir.

22 MADAME COURT REPORTER: Your Honor, could you please
23 ask the defendant to speak?

24 THE COURT: Okay. Please sir, you are speaking
25 softly. The court reporter has to report our entire

1 conversation so if you will speak up just a little bit.
2 You are also charged with the offense today of armed
3 robbery which is also classified as a felony; it carries a
4 minimum sentence of ten years, a maximum sentence of thirty
5 years. It's a no-parole offense, a violent offense and a
6 most serious offense. You are also charged with kidnapping
7 which is also classified as a felony; it carries a maximum
8 punishment of thirty years. It likewise is a no-parole
9 offense, a violent offense and a most serious offense.

10 You are charged with conspiracy to commit armed
11 robbery and kidnapping which is classified as a felony and
12 carries a maximum punishment of five years. You are also
13 charged with possession of a pistol during a violent crime
14 which carries a maximum punishment of five years. You are
15 also charged with possession of a pistol by a person under
16 twenty-one years of age which is also as is the conspiracy
17 classified as a felony and carries a maximum punishment of
18 five years and a two thousand dollar fine. And you are
19 charged with possession of a stolen vehicle valued at over
20 five thousand dollars which is classified as a felony; it
21 carries a maximum punishment of five years. It's also
22 classified as a property offense; the importance of that
23 classification is that should you get three separate
24 property offenses on your record regardless of the amount
25 involved upon receiving the third such property offense it

1 would be treated as a Felony E carrying a maximum
2 punishment of ten years.

3 Now do you understand all of the charges against you
4 today; the maximum sentence and minimum sentences you could
5 receive understanding that also the fact that some of these
6 are violent offenses, most serious offenses, understanding
7 all of that and the property offense how do you plead to
8 these several charges today guilty or not guilty?

9 MR. MACK: Guilty.

10 THE COURT: Do you understand that by pleading guilty
11 you are giving up your right to remain silent?

12 MR. MACK: Yes, sir.

13 THE COURT: Do you understand that by pleading guilty
14 you are giving up your right to a trial by a jury?

15 MR. MACK: Yes, sir.

16 THE COURT: And do you understand if you give up your
17 right to a trial by jury you also give up your right to
18 assert any legal defenses you might have in a jury trial?

19 MR. MACK: Yes, sir.

20 THE COURT: Now I am going to go - I know your
21 attorney has gone over those rights with you and I am going
22 to do that as well. At trial you would have the right to
23 confront and cross examine all the witnesses against you.
24 You would have the right to present any witnesses and or
25 evidence in your own defense. You would have the right to

1 testify in your own defense if you wish to do so but no one
2 can make you testify in your own trial. If you decided to
3 go to trial and not testify the judge would tell the jury
4 they could not hold your failure to testify against you.
5 In fact the jury couldn't even consider your failure to
6 testify in their deliberations on your guilt or innocence.
7 You would be presumed innocent throughout your trial. The
8 state would have to prove you guilty beyond a reasonable
9 doubt to a jury of twelve people. All twelve people would
10 have to unanimously agree that you were guilty in order for
11 you to be convicted and even if you were convicted you
12 would still have the right to appeal that conviction. Do
13 you understand your rights with regard to a trial by jury?

14 MR. MACK: Yes, sir.

15 THE COURT: Understanding your right to a trial by
16 jury do you still want to plead guilty or do you want me to
17 set your cases for trial?

18 MR. MACK: Yes, sir.

19 THE COURT: You still wish to plead guilty?

20 MR. MACK: Yes, sir.

21 THE COURT: If you will speak up just a little bit,
22 sir. Now has anybody promised you anything or held out any
23 hope of reward to you in order to get you to plead guilty
24 to these charges?

25 MR. MACK: No, sir.

1 THE COURT: Has anybody threatened you, coerced you or
2 forced you to plead guilty against your will?

3 MR. MACK: No, sir.

4 THE COURT: Are you satisfied with the manner in which
5 your attorneys have advised and represented you in these
6 cases?

7 MR. MACK: Yes, sir.

8 THE COURT: Have you and your attorneys fully
9 discussed the charges against you?

10 MR. MACK: Yes, sir.

11 THE COURT: Has your attorneys told you the witnesses
12 and the evidence the state has available to present at
13 trial to prove your guilt?

14 MR. MACK: Yes, sir.

15 THE COURT: Have your attorneys discussed with you any
16 possible legal defenses that might be available to you if
17 you were to go to trial?

18 MR. MACK: Yes, sir.

19 THE COURT: Have you told your attorneys the names of
20 any and all witnesses you know of that your attorneys could
21 subpoena and bring to trial to assist in your defense if
22 you were to go to trial?

23 MR. MACK: Yes, sir.

24 THE COURT: Are you today under the influence of any
25 mind altering substance such as alcohol, drugs or

1 prescription medications which interfere with your judgment
2 or ability to understand what you are doing in court today?

3 MR. MACK: No, sir.

4 THE COURT: Do you have any mental, emotional or
5 nervous condition that interferes with your judgment or
6 ability to understand what you are doing in court today?

7 MR. MACK: No, sir.

8 THE COURT: Are you pleading guilty today of your own
9 free will?

10 MR. MACK: Yes, sir.

11 THE COURT: Are you in fact guilty of each of these
12 charges?

13 MR. MACK: Yes, sir.

14 THE COURT: Please give me the facts, Solicitor.

15 MR. BRACKETT: May it please the court your Honor.

16 There will be a fairly lengthy factual presentation and
17 after that and after the conclusion of the plea
18 qualification and the acceptance we can then perhaps go on
19 to the victim - - -

20 THE COURT: Yes, sir.

21 MR. BRACKETT: - - - presentation. This incident
22 occurred on October 10th of 2006 in the early morning hours
23 at the BP station which is located in Rock Hill in York
24 County at the corner of Celanese and India Hook. The store
25 was staffed by Mr. James Ned Marshall who was - had opened

1 the store at approximately 3:00 a. m.. At approximately
2 4:30 a. m. a lady named Shelia Smith who delivered papers
3 for the Charlotte Observer entered the store to see Mr.
4 Marshall and to purchase some items. When she walked in
5 the store she saw something which caused her to flee from
6 the store in terror. She returned to her car drove some
7 distance away and called 9 1 1 and we have that tape here
8 which we would like to play for the court at this time.
9 It's a portion of the tape; we won't go through the whole
10 thing.

11 (NOTE: 9 1 1 TAPE PLAYED FOR THE COURT.)

12 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE AND TWO MARKED
13 AND ENTERED INTO EVIDENCE.)

14 MR. BRACKETT: Your Honor, the tape continues on for
15 some time and eventually they were able to establish that
16 it was the BP station and not the Hess station, they have
17 similar coloring. There is no Hess station located there
18 but they were able to ascertain it was the BP at the corner
19 of Celanese and India Hook. The police responded and they
20 found inside the store the body of Mr. Ned Marshall. He
21 was laying face down in a pool of his blood with a twenty-
22 two caliber revolver in his left hand. They sealed the
23 scene off and immediately began processing it. The store
24 was equipped with security cameras. There were four
25 different angles on the security cameras. They were able

1 to get the store owners and other folks who were familiar
2 with the cameras and were able to recover some footage from
3 the video system there to determine what had happened. I
4 have a series of photographs that I would like to show to
5 the court now. I have shared these photographs with the
6 defense. These are all still shots; they've been captured
7 from the video security camera in the BP and these are all
8 accurate representations. I don't believe there's any
9 dispute but these are from the - from the camera and if I
10 can just stand here so that I can sort of narrate and
11 explain what each one shows.

12 This - the time was off by approximately a half an
13 hour on the video. It was shortly before 4:30 a.m. that
14 Mr. Marshall who was staffing the store he had walked
15 towards the back of the store where there was an office.
16 At approximately 4:25 or thereabouts a masked man dressed
17 in dark entered the store carrying a gun in his right hand.
18 He looked around the store; was ultimately able to
19 determine that Mr. Marshall was back in the back area of
20 the store. He saw Mr. Marshall, pointed the gun at him;
21 approached Mr. Marshall rapidly; pointed the gun at Mr.
22 Marshall and then physically grabbed Mr. Marshall and led
23 him to the front of the store where you see right here
24 along the right this is the counter where customers come to
25 pay for the merchandise.. Here he is being walked up to the

1 front of the store. You get behind the counter there is a
2 little cut through here and there is a swinging door that
3 leads into the back. He positioned Mr. Marshall right
4 there at the swinging door and through this door another
5 masked individual came in with a bandana covering his face.
6 Mr. Terrell Addison has been charged as that second
7 individual. We submit that this individual was Dontavious
8 Mack. Mr. Mack then went behind to where the cash register
9 was and was rifling the area behind the counter. During
10 that time period you can't really see too well. This is
11 the best photograph we have but approximately right here is
12 where Mr. Marshall was standing. This is where the cash
13 register is and Mr. Mack was hunched down behind the cash
14 register there. This individual - the dark clad individual
15 here is Mr. Addison.

16 Mr. Marshall was armed with a .22. He carried it for
17 self defense; it was a lawfully registered weapon; he was
18 entitled to carry it and he pulled the weapon in self
19 defense during the course of the robbery. Mr. Mack who was
20 armed with a .380 semi-automatic pistol shot Mr. Marshall
21 while he was behind the counter. Bullet casings were found
22 behind the counter here and also there was a gun shot hole
23 from where Mr. Mack fired towards Mr. Marshall and it
24 struck the wall leaving the hole and the distance up from
25 the floor indicates that Mr. Mack was crouched at that

1 time. One of the bullets struck Mr. Marshall. We can't be
2 sure whether or not it struck his finger first then his
3 legs or whether two bullets struck him at that point in
4 time. But his finger on his right hand was injured and in
5 addition the bullet went through both of his legs and as a
6 result Mr. Marshall who was here in this photograph fell
7 down sideways into the aisle leaning in front of where the
8 counter is. He lay there as Mr. Mack came out from behind
9 the counter still pointing his weapon at him. This is Mr.
10 Mack fleeing; he's got the weapon pointed this way behind
11 him as he leaves the store shooting at Mr. Marshall who is
12 laying on the ground. Mr. Marshall still has his weapon in
13 his left hand; he's able to fire one shot, only one shot
14 was fired from Mr. Marshall's gun and it struck Mr. Mack in
15 the back. It was a .22 caliber revolver. And this last
16 photograph shows Mr. Marsh - Mr. Mack and Mr. Addison as
17 they left the store. As they left the store they were
18 carrying - Mr. Mack was carrying in his left hand a display
19 of coins that had been rolled. He was able to locate that
20 behind the counter and he left the store with that. As a
21 matter of fact in this photograph you can actually see
22 rolled coins falling from the container that was holding
23 the change. They were falling; coins were found on the
24 floor; rolled coins were found there and in fact rolled
25 coins were found outside the store as well. They did

1 manage to make it outside the store with that and that was
2 the item that was stolen pursuant to the armed robbery.

3 If you are familiar with the area where the BP is
4 there is a field next to it and some offices and then
5 further down Celanese toward 77 there is an apartment
6 complex; the Northwood's Apartment Complex. At the
7 Northwood's Apartment Complex was a vehicle; a stolen
8 vehicle which the subject of the possession of a stolen
9 vehicle charge. That vehicle was positioned there and Mr.
10 Mack's brother Davoris Mack who has pled guilty and agreed
11 to cooperate in this case along with another individual
12 named Ben Stewart were waiting for Mr. Mack and Mr. Addison
13 to return from the BP from their armed robbery. The two
14 defendants from the store fled to that vehicle and everyone
15 got back in the car. They were from Hartsville originally
16 that's where they came from and they drove back to
17 Hartsville. Cell phone records establish that cell phones
18 from within the car were pinging towers through Lancaster
19 as they headed back east heading towards Hartsville. At
20 about 5:45 in the morning in Hartsville Mr. Mack reported
21 to the hospital in Hartsville with a gun shot wound to his
22 back. Of course the police were notified in all cases
23 where there is a gun shot wound. The police were notified
24 they came out to investigate and Mr. Mack and Mr. Davoris
25 Mack his brother, Dontavious Mack and Davoris Mack both

1 indicated that Mr. Mack had been shot during the course of
2 a drive by shooting at the Farmington Apartments in
3 Hartsville; that he had been there and was an innocent
4 bystander that there had been a drive by and he had been
5 shot in the back during the course of that. The police
6 investigated that and to find no evidence corroborating
7 that there had been any drive-by shooting including the
8 fact that a Darlington police officer who lived at that
9 apartment complex was awake at approximately the time that
10 Mr. Mack said the drive by occurred; was sitting at his
11 window with the window open and heard no noise whatsoever.
12 That coupled with additional inconsistencies lead them to
13 suspect that they weren't getting the truth of the matter
14 from the brothers. Sometime that day the word went out
15 over the NCIC the National Crime Information Computer that
16 police use to alert other local agencies to a serious crime
17 such as this one that there had been a murder armed robbery
18 at the BP and that an individual had possibly been shot.
19 The Rock Hill Police Department was notified of the
20 injuries to Mr. Mack by the Hartsville authorities, by the
21 authorities in Hartsville. In addition to that the
22 Hartville authorities received information from an
23 informant in Hartsville that they had heard Mr. Mack and
24 some other individuals discussing an armed robbery that
25 they had committed in Rock Hill and that during the course

1 of that they had shot the proprietor of the store. That
2 informant notified the Hartsville authorities who then in
3 turn notified the Rock Hill Police Department. The Rock
4 Hill Police Department immediately sent detectives to
5 Hartsville to interview this informant and during the
6 course of that interview the informant related information
7 to the detectives from Rock Hill that had not released
8 publically. Specifically one of those was that Mr.
9 Marshall had been shot in the hand. There was no way that
10 she could have known that but for hearing it from someone
11 who actually participated in the crime. Based on that
12 information arrest warrants were sought for the Mack
13 brothers. They were charged and brought back to Rock Hill
14 and they were interviewed. Mr. Davoris Mack gave a
15 complete statement and Mr. Dontavious Mack after being
16 advised of his rights by Detective Hare and Detective John
17 Pickens with the Rock Hill Police Department gave a
18 statement and I would at this time publish that statement

19 - - -

20 THE COURT: Yes, sir.

21 MR. BRACKETT: - - - to the court. The first time I
22 saw this car we were in - it's a tan Buick - was when my
23 brother was driving. I'm talking about Davorius. Terrell
24 Addison was already in the car. They picked me up at
25 , my grandma's place. It was Monday night; it

1 was already dark, they just say get in. Then we went to
2 Swift Creek Apartments the apartments to hang out that's
3 when we seen Ben. I don't know his last name. Ben got in
4 the car; we went to my girlfriend's house Jessica. When we
5 left there all of us were still in the car. It wasn't a
6 stolen car; we had the key. Terrell asked Davoris to take
7 him home so he could get some money. He said his house was
8 in Rock Hill and that he would get some money there to pay
9 for the ride. I told Davoris I would drive because he
10 don't have a license. We didn't stop anywhere on the way
11 to Rock Hill. Ben had a gun - and then we were ultimately
12 - we've concluded pursuant to the investigation was Ben
13 Stewart and Ben Stewart fled South Carolina and was
14 apprehended in Philadelphia arrested on car jacking charges
15 and have extradition proceedings pending against Mr.
16 Stewart.

17 Ben had a gun, it is a 380; it is black and gray.
18 Terrell had a .38 revolver but I didn't know they had guns
19 until we got to Rock Hill and they showed me. Ben wanted
20 to rob Domino's; I told him no. So we rode up Cherry Road.
21 We saw an orange and black Caprice and they was talking
22 about jumping on those guys. Terrell was talking about
23 shooting out their windows and tires. I told them no you
24 better not do that. Terrell told us to park in some
25 projects. We had picked up some gas where we seen the

1 dudes with the car. I paid ten dollars for the gas. I
2 went into the store and paid for the gas. My brother
3 pumped the gas. When we got back in that's when Ben and
4 Terrell talking about jacking them dudes in the Caprice.

5 How you know what they got in their car? Terrell say
6 go to some apartments. I was still driving. Terrell knows
7 his way around Rock Hill. Terrell got out and said he
8 would be right back. He was only gone about five minutes.
9 He came back and got Ben. Terrell be wearing a black
10 jacket, black pants, black shoes. He came back and got Ben
11 so he and Ben talking about robbing the store. I heard
12 'em. Me and my brother was talking in the car. Ben and
13 Terrell saying to each other come on let's do it. I knew
14 they was talking about the store because that's what they
15 were looking at. They wanted me and my brother to rob the
16 store on the way back home so now it was me and Terrell.

17 Terrell say come on with me. I was mad because
18 Terrell had got us all the way down there and lied to us
19 about getting the money for the ride. Ben had his 380; he
20 had got it out of the trunk and he handed it to me.
21 Terrell had his .38 on him. He took the .38 to the store.
22 Me and Terrell walked down to the store. Ben and Davoris
23 stayed back at the car. Terrell say come on. I like we'll
24 be back. I went in one door of the store and Terrell went
25 in the other side. We was just supposed to get the money.

1 I wasn't in my right mind I don't know why I even went
2 along. I went in the store and saw the man who worked
3 there and I told him to go get the money.

4 He say alright. I took him to the counter; I think
5 maybe Terrell and I may have swapped guns but when we got
6 to the store I had the 380 and he had the .38. The way it
7 happened was I told Terrell to grab the man so nothing
8 would happen. Terrell was like he just standing there
9 watching me. The man who worked there asked to get the
10 money for me.

11 I told him no I'll get the money. I was behind the
12 counter and there was just change down there. There was no
13 bills down there. Then I heard a pop when I was going out
14 the door. I don't know why I started shoot'n at the man
15 but he shot me going out the door and I felt it in my back.
16 I was wearing a black jacket with a hood; I had it over my
17 head. When I was running out the store I was shoot'n kind
18 of behind me. I knew my back hurt. I see him lying on the
19 floor and I start running. Me and Terrell run back to the
20 car. My brother was coming toward the store because he
21 heard the shots he told me later. He was coming to make
22 sure I was alright. Ben had heard the shots too and he had
23 started running away from the car. I yelled for them to
24 get in the car and I drove myself to the hospital in
25 Hartsville. I got out of the car at the hospital; Davoris

1 came in. Jessica came to the hospital. I called Jessica
2 and told her she going to be mad at me. I told her I'd be
3 back by 2:00 a. m.; I told her I got shot. The police came
4 and I told them I got shot in Farmington. I'm nineteen, I
5 finished the eleventh grade. Growing up I never had see
6 any doctor like a psychiatrist or psychologist but I wasn't
7 in my right mind that night. That night I even got with my
8 brother; I got with some people at Hypnotic Club in
9 Florence and they was talking about some B pills. She told
10 me to try it and I took it but that's it. If I wouldn't
11 took that pill maybe the whole nightmare had been
12 different. Ben took the 380 back because it's his gun.
13 Right now Ben either have the gun on him or it's at his
14 sister's Monday Bishop but he probably took it back to
15 Philadelphia. Terrell stay on Cameo. One other thing -
16 one other thing Terrell had two other masks. I was wearing
17 one of the masks in the store; Terrell was wearing a
18 bandana on his face in the store.

19 The police were able to determine that the vehicle in
20 the parking lot at the hospital was a stolen vehicle. He
21 acknowledged that he had been in possession of it; that he
22 had driven it there; the car was worth in excess of five
23 thousand dollars. Also the police pursuant to their
24 investigation took photographs. Here's a photograph of the
25 car that they drove in. The police in Hartsville took

1 photographs of the bullet wound at the hospital. There's
2 the small caliber a bullet wound that is in Dontavious
3 Mack's back. The facts of the case and the location of the
4 shell casings indicate that the shooting did not start as
5 he was running out the door. The shell casings were found
6 behind the counter and the first shot struck Mr. Marshall
7 while he was standing at the swinging door and caused him
8 to fall down where he ultimately lay dying as they fled the
9 store and that he was shot once again the chest probably by
10 Mr. Mack as he left the store but the first shots that hit
11 him were while he was standing there and Mr. Mack was
12 behind the counter because shell casings were found behind
13 the counter. There was a significant amount of additional
14 investigation that went on after the arrest of the Mack
15 brothers and also in addition to that Mr. Terrell Addison
16 was ultimately apprehended. Mr. Ben Stewart as I indicated
17 is still being sought to extradite from Philadelphia.
18 There was a significant amount of post investigation that
19 was done in the area of forensics and Mr. Thompson is
20 prepared to relate that information to the court.

21 Mr. Thompson.

22 MR. THOMPSON: May it please the court your Honor.

23 THE COURT: Yes, sir.

24 MR. THOMPSON: The number of things that they did
25 specifically with the defendant; one had to do with the

1 bullet that was in his back. While he would not consent to
2 that bullet being taken out for comparison the court did
3 allow us to take certain video or certain x-rays and they
4 was given to me. It's an old procedure that SLED had once
5 done and we found a lady who did that at SLED but is now
6 retired but still does this. It's called tomography
7 phantom or a more common term that would be used now is
8 bullet powered determination through x-rays. We have the
9 x-rays. Basically what it does is it creates a one on one
10 comparison so that you can look at the size of the bullet
11 within the body and compare it to a standard size of what
12 the standard caliber bullets are. I would show this to the
13 court. This would be the x-ray of the bullet within the
14 defendant's back near his spinal column. And then as you
15 would compare it you would see then they have the
16 comparisons of the number of calibers coming through. The
17 expert from SLED would testify that the .22 caliber as you
18 can place them against each other and actually lay them up
19 against each other would be the most likely caliber of the
20 bullet within his back that it was definitely a small
21 caliber bullet and the .22 being most likely the one that
22 it would be within his back. So that was one of the things
23 to help prove that this was a type caliber bullet that was
24 used in the case. In addition to that your Honor there
25 were a number of other things to the scene. That

1 particular BP station where it's located and the apartments
2 are located some where about three hundred yards away from
3 that BP station that ultimately where the defendants had
4 their car parked. And I will show these photographs
5 they're State's Exhibit One through Five starting with
6 State's Exhibit One and the defense has seen these as well.
7 That's looking from near where the bank is that is near the
8 BP station looking up and you see the car wash at the BP
9 station and you notice the dirt on the ground. Early that
10 morning it had rained slightly. While it had dried on the
11 pavement the ground itself was still a little wet so having
12 run through that area when they came out of the store they
13 came across that parking lot and left footprints on the
14 next picture Picture Number Two there is a set of
15 footprints that go that way. So they go that way and they
16 all head towards the apartment and a close up you can see
17 that they are pretty accurate foot prints they leave a lot
18 to be seen. SLED compared those footprints and as you can
19 see you go down and you turn back around from your view in
20 that parking lot of the back and the apartments are still
21 down here along that tree line. And as you come down into
22 that you can see the apartments themselves down in that
23 area. But from being able to review a number of shoe
24 prints they were able to determine after the defendants
25 were apprehended the shoes actually that they had on at the

1 time that they were apprehended ended up being likely the
2 shoes they wore. From looking at the video and from
3 looking at a number of other things both Terrell Addison he
4 had a specific type of shoe; this defendant had a specific
5 type of shoe, there were similar shoes to each other and
6 they were able to determine that these shoe prints are
7 consistent with the shoes that the defendants were wearing
8 that night during the robbery.

9 In addition to that your Honor there are four 380
10 shell casings from within the business as Mr. Brackett had
11 said that were recovered. Of course one behind the
12 counter, two very close to the victim and one just near a
13 bandana stand that is right after you come to the other
14 side of the counter as you were leaving the store that that
15 would be from the shot that was fired then. In addition a
16 toxicology on the victim showed that he had no alcohol or
17 drugs in his system that he was certainly perfectly clean
18 that evening. In addition there was DNA testing and
19 fingerprinting of the vehicle itself. The fingerprints
20 within the vehicle showed that Davorius Mack and Terrell
21 Addison both left fingerprints within the vehicle. In
22 addition this defendant's South Carolina Identification
23 Card was found in the vehicle and he told the officer's at
24 Hartsville that that was the vehicle that he had driven
25 into the hospital. Of course it's the vehicle that he

1 describes in his statement. In addition they were able to
2 confirm through the witnesses at the apartment complex that
3 said around - right around 4:30 that morning they heard a
4 commotion outside they looked out there was a - young black
5 males out there one of them was yelling hurry up come on
6 get in the car, get in the car and that they saw at least
7 two people getting into the car heard at least three car
8 doors closing and knew that there at least someone in the
9 car when all of this starting happening. They watched the
10 car speed off. It actually backed out very quickly and
11 they said squeal its tires as it then pulled out of the
12 parking lot and then turned left coming out onto Celanese
13 going toward 77. In addition there was DNA testing some
14 touch DNA done on parts of the car conclusively linking
15 some of the defendants to that. The DNA did not link this
16 defendant but does link some of the other co-defendants.
17 So there was a number of things done to show this was the
18 proper vehicle including someone at the apartment complex
19 having described this very vehicle to a very close detail.
20 So we were able to of course recover that and through the
21 statements of the co-defendant Devorius Mack he also agreed
22 that that was the vehicle that they had come in that
23 evening. Those are the extent your Honor of the testing
24 that we've done.

25 MR. BRACKETT: And that would be the factual

1 presentation that supports the basis for this charge.

2 THE COURT: Mr. Mack, you've heard the facts recited
3 to the court by the solicitor's office with regard to each
4 of these charges. Do you disagree in any way with what
5 they say happened as to these charges?

6 MR. MACK: No, sir.

7 THE COURT: I find the decision of the defendant
8 Dontavious Ricardo Mack to plead guilty to these charges to
9 be made freely, voluntarily and intelligently; has had the
10 representation of competent attorneys with whom he says he
11 is satisfied. I find the facts presented to the court by
12 the solicitor's office concurred in by the defendant fully
13 support the guilty pleas in this case and I'll accept the
14 pleas as freely and voluntarily made.

15 Mr. Mack, if you disagree with the proceeding in which
16 we are currently involved you have ten days from today's
17 date within which to file a notice of intent to appeal. Do
18 you understand your right to appeal today's proceeding?

19 MR. MACK: Yes, sir.

20 THE COURT: Okay. Counselor, I think if you wish to
21 present any victims who wish to be heard or we can hear
22 from the defense first which ever way you would like to
23 proceed.

24 MR. BRACKETT: We can hear from the defense first
25 that's fine.

1 THE COURT: All right. Counsel, let me hear from you
2 then please.

3 MR. DEST: May it please the court.

4 THE COURT: Yes, sir.

5 MR. DEST: Your Honor, I know that there are a mired
6 of emotions that are in this courtroom today and we fully
7 recognize that some of these emotions will deal with
8 frustration; it will deal with anger and some of these
9 emotions we hope will stop today. Because what I have
10 learned in my seventeen years as a criminal defense lawyer
11 is that anger only breeds more anger; hatred only brings
12 more hatred and that hopefully - my sincere hope is that
13 all parties that are affected by this tragedy can regain
14 their lives and move forward today.

15 We have spent a considerable amount of time
16 investigating this case. Mr. Barrowclaugh and I along with
17 Kendall Johnson another attorney in our office and Mr.
18 O'Kelly and we concur with Dontavious's decision to plead
19 to these charges today. As the solicitor indicated this is
20 a straight up plea your Honor where he is facing a minimum
21 sentence of thirty years up to life. So the question is
22 your Honor what is in store for Dontavious Mack for the
23 rest of his life or at least for the next thirty years. We
24 know your Honor that no matter what happens today your
25 decision to sentence him he will have to do at least thirty

1 years if you give him the minimum. Thirty years your
2 Honor. As the solicitor indicated he was nineteen years
3 old when this occurred; he is twenty years old now. I
4 would submit to the court that thirty years in the
5 Department of Corrections is a long long time. In fact

6 your Honor we know of the brutality that exist behind the
7 walls of the Department of Corrections and I will submit to
8 the court that because of that brutality in the form of
9 assault, sexual assaults and gang activity it is very
10 unlikely that one can survive more than thirty years in the
11 Department of Corrections.

12 If you look at the statistics from the South Carolina
13 Department of Corrections from 2002 through 2006 you will
14 see your Honor that over ninety percent of the prison
15 population is below the age of fifty. In that age bracket
16 between fifty and fifty-five is only five point two percent
17 of the prison population. And within that five point two
18 percent three percent were admitted at the age of fifty or
19 fifty-five. My point is your Honor that the likelihood of
20 surviving beyond that point based on statistical
21 information is very very questionable. But Dontavious Mack
22 will do at least thirty years; at least thirty years day
23 per day. And as the court knows that anything beyond
24 thirty days is day per day as well since it is a no-parole
25 offense. So the question becomes your Honor what type of

1 individual will Dontavious Mack be thirty years from now.
2 I would submit to the court that thirty years from now
3 having lived that amount of time in the Department of
4 Corrections he will be much older; he will be much weaker
5 but more importantly your Honor he will be much wiser. He
6 will be much wiser because he will have thirty years to
7 reflect upon what he has done here in York County that one
8 night of his life. He will have to reflect and think about
9 how much pain he has caused the Marshall family and how
10 much pain he has caused his own family. And your Honor I
11 would ask you to think about thirty years from now when
12 Dontavious Mack is looking in the mirror within the
13 Department of Corrections what he will look like; what he
14 would have gone through. Your Honor I would submit that
15 that Dontavious Mack will be a much different person that
16 is standing before you right now and that Dontavious Mack
17 will want to go back in time; would give anything to go
18 back in time to that night and shake that nineteen year old
19 kid who committed a foolish stupid and dangerous act.
20 There won't be a day that goes by that he won't want to do
21 that. And as he gets older he will learn the true
22 consequences of what he has done thirty years from now.
23 And that Dontavious Mack thirty years from now will
24 want to bestow some of the wisdom and maturity that he
25 would have gained through the passage of time because by

1 that time your Honor he would have spent the vast majority
2 of his life behind prison walls. So the question today
3 your Honor is I would submit to the court is he
4 salvageable? Is he salvageable thirty years from today and
5 can he be rehabilitated? Some of those emotions that I
6 talked about earlier your Honor the court does not bring to
7 this courtroom. And I know that the court will look at his
8 entirety, the entirety of his life before it makes it's
9 decision. This court more than most has the vast
10 experience and knowledge of not only general sessions court
11 but the family court and probate court to understand the
12 frailty of human nature. And I ask in the next few moments
13 I respectfully request that you analyze his life in its
14 entirety.

15 Your Honor, he was born and raised in Hartsville,
16 South Carolina. He unfortunately did not have a father
17 that was around. His natural father spent the vast
18 majority of his life in prison and as a young boy he was
19 raised by a single mom who helped raise three young boys.

20 Your Honor, when he was a child he did well in
21 elementary school. In talking to his family members who
22 are here in the courtroom today they talked about how well
23 he did as a young boy in school. In fact they allowed me
24 to look at and wanted me to submit to the court several
25 certificates regarding his achievement when he was a young

1 boy.

2 (NOTE: PAPER WORK HANDED UP TO THE COURT.)

3 MR. DEST: As I indicated your Honor Dontavious as a
4 young boy did not have a father figure; his mother worked
5 various jobs sometimes two or three jobs to make ends meet.
6 The problems in his life really didn't start until 1998 as
7 the letter from Doctor Morgan indicates. In 1998 his
8 grandfather passed away who was really the only strong male
9 figure in his life. In 2001 he was in the Department of
10 Juvenile Justice and a psychological and social evaluation
11 was done along with other records indicate that at that
12 time he tried to commit suicide because of the loss of his
13 grandfather. He was admitted to the Department of Juvenile
14 Justice and at the age of fourteen a psychological social
15 evaluation was done which indicates that a man - a young
16 boy I should say with low self esteem and was looking for
17 peer approval. In the psychological social evaluation that
18 was done in 2001 I quote your honor it says "his responses
19 suggest that he is unsure of his status among peers; that
20 is overly sensitive to real or perceived criticism.
21 Dontavious's responses further suggest that he often feels
22 rejected and maligned by others; tends to lack self
23 confidence in the social arena and has difficulty avoiding
24 peer pressure". That was the test result of the money
25 check list examination that was done in 2001. Along with

1 that examination was the masking test of course which
2 Doctor Morgan refers to in his report your Honor that
3 indicates that Dontavious produced a valid profile
4 suggesting a need to be viewed in a favorable light and has
5 - and has emotional composed although extreme defenses is
6 not indicated. Elevations do not suggest pathology
7 clinical symptoms of concern or patters suggestive of
8 ingrained antisocial personality features. In essence your
9 Honor not anti-social. But obviously we have a young man
10 with low self esteem.

11 But one thing I want to point out to the court your
12 Honor in trying to determine the issue of can he be
13 rehabilitated is what is his intellectual function?
14 Despite having been admitted to DJJ and despite having some
15 behavioral problems in adolescent years some of his school
16 records indicate that he was an excellent student as Doctor
17 Morgan refers to in his report that he did well at DJJ
18 having a 90 average in subjects. I also would like to
19 hand up to the court several school records from the
20 Hartsville County school system which indicate academic
21 excellence at certain periods of his adolescent life. You
22 have before you the middle school records which indicate
23 his averages in the various subjects. Your Honor, also
24 after he left the Department of Juvenile Justice he
25 attended Hartsville High School and excelled there at times

1 as well. Your Honor, I hand up records from Hartsville
2 High School where he at that one semester had a three point
3 nine grade average. And shortly after that time frame the
4 National Honor Roll Association wrote Dontavious and his
5 parents.

6 (NOTE: PAPER WORK HANDED UP TO THE COURT.)

7 MR. DEST: Your Honor, I present that to you to
8 illustrate the point that he does have a good mind and that
9 with the passage of time I believe he will come to truly
10 understand what he did that night and how it affected other
11 people. I believe he has not only the psychological makeup
12 but the intellectual makeup to be a productive citizen not
13 in an effort to get some definitive finding regarding that
14 issue we retained the services of Doctor Harold Morgan who
15 is a forensic psychiatrist with I believe over forty years
16 experience and as you well know your Honor has appeared in
17 this court many times on issues regarding psychological
18 evaluations but not only competency but any mental issues
19 but also the issue of the psychological profile of an
20 individual and whether or not they can be rehabilitated.
21 And I would like to read into the record your Honor the
22 report that Doctor Morgan presented to me so that I can
23 present it to the court as part of this record.

24 It says "Dear Mr. Dest, based upon my examination of
25 your client I believe that he has the potential to be

1 rehabilitated into a productive citizen. This conclusion
2 is based upon my examination of him on January 31st 2007 and
3 reviewed of all the medical, legal and psychological and
4 educational records that you provided. The educational
5 records and the rap sheet show that he has a serious
6 behavioral problem beginning in 1998 when he was eleven
7 years old. Some of his behavioral problems can probably be
8 attributed to the lack of supervision. His father was in
9 prison and his mother worked leaving Dontavious and his
10 younger brother virtually on their own. The school records
11 indicate that he is capable of learning. He spent part of
12 the ninth and tenth grades at Hartsville High where his
13 total GPA was three point nine and part of these years at
14 DJJ Birchwood High where his grades were in the nineties.
15 This suggest that he has responded favorably to the
16 structured environment at DJJ. His behavioral problems
17 appeared to arise from the immaturity, impulsivity and
18 gullibility. He is easily influenced by those with more
19 dominate personalities. Psychological testing was
20 conducted at the Department of Juvenile Justice when he was
21 fourteen years old. The result of the Millionth Adolescent
22 Clinical Inventory did not suggest pathology, clinical
23 symptoms of concern or patters suggestive of ingrained
24 anti-social personality features. On the Mooney Problem
25 Check List his responses suggest that he is unsure of his

1 status among peers and is overly sensitive to real or
2 perceived criticism. His responses further suggest that he
3 often feels rejected and maligned by others, tends to lack
4 self confidence in the social arena and has difficulty
5 avoiding peer pressure. On the Wesler Abbreviated Scale of
6 Intelligence his full IQ was 89 with verbal and performance
7 scores of 86 and 96 respectively. In view of the test
8 results and my findings from examining him I believe that
9 the passage of time will bring maturity and better judgment
10 as well as decrease in his testosterone levels and this will
11 diminish his energy for troublesome behavior. With a
12 performance IQ of 96 he is a good candidate for vocational
13 training. In summary his historical records show that
14 despite of his past Dontavious has the potential to benefit
15 from educational and vocational training". And of course,
16 your Honor, in the very first sentence of his letter Doctor
17 Morgan states that he has the potential to be rehabilitated
18 and be a productive citizen some day.

19 Your Honor, before I turn the presentation over to Mr.
20 Barrowclaugh I would respectfully request that you consider
21 a thirty year sentence in this matter for all the reasons
22 that I have conveyed to the court thus far. Your Honor,
23 when Mr. Barrowclaugh goes over the facts of this case it
24 will be clear that Dontavious Mack is guilty of the charges
25 but what you have your Honor is a nineteen year old kid who

1 is immature, foolish and impulsive who went into that store
2 that night with the intent to commit a robbery and not a
3 murder. Thank you.

4 THE COURT: Counsel.

5 MR. BARROWCLAUGH: May it please the court your Honor.
6 Your Honor, before I get started there's two administrative
7 matters. I would like to make this plea affidavit filled
8 out and gone over by Dontavious Mack and myself and signed
9 by Dontavious Mack a part of the record.

10 THE COURT: It will be included in the record.

11 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER ONE MARKED AND
12 ENTERED INTO THE RECORD.)

13 MR. BARROWCLAUGH: Thank you, your Honor. And the
14 second thing is that as serious as this case is I don't
15 want to over look the fact that for this kidnapping charge
16 because of relation of the fact by the state there was no
17 allegation of any sort of sexual assault of a sexual nature
18 I would ask the court to make a finding that Mr. Mack
19 regardless of whatever sentence you deem appropriate should
20 not have to register as a sex offender.

21 THE COURT: You do not disagree with that do you,
22 Solicitor?

23 MR. BRACKETT: There was no sexual misconduct.

24 THE COURT: That finding will be made.

25 MR. BARROWCLAUGH: Thank you, your Honor. Now your

1 Honor the first thing I will ask the court to do is
2 recognize that Mr. Mack has extensive family who do care
3 about him and have showed up in support of him. They even
4 are here to support him and do not wish to address the
5 court; however, I would ask everyone who is here in support
6 of Mr. Mack to please stand and be recognized by the court.

7 (NOTE: LARGE NUMBER OF PEOPLE IN COURTROOM STOOD.)

8 MR. BARROWCLAUGH: Thank you, you may be seated.

9 Your Honor, there are five letters from Mr. Mack's
10 family and friends I would like to share with the court and
11 then there are two family members who wish to address the
12 court. And then I would briefly like to address the court
13 as well myself with regards to Mr. Mack's sentencing. Your
14 Honor, the first letter is from Dontavious's mother who
15 felt like she would too over come with emotion to address
16 the court herself so this is her letter and she asked me to
17 read it for her.

18 It says "I Monica Mack Townsend the mother of
19 Dontavious and Davorius Mack would first of all like to
20 apologize to the Marshall family on behalf of me and my
21 sons. I'm sorry for the loss of your husband, father,
22 brother, uncle, grandfather. I know this is maybe a
23 difficult time for you. I ask that you find it in your
24 hearts to forgive my sons for their actions. I know that
25 you may never forget but I hope that you may find it in

1 your hearts to forgive. The Bible speaks that everything
2 happens for a reason. I don't know what the reason may be
3 but I know that only the Lord knows the answers to all of
4 our questions. But during the growing of their lives I
5 feel that I tried as a single parent but I could have done
6 more. It was hard but by the grace of God I managed.
7 Donta was a smart intelligent young man. There's nothing
8 he would not have done towards helping others. He was an
9 academically smart student since kindergarten. He also
10 helped his brothers whenever they needed help with things
11 like homework. Donta started crawling at the age of three
12 months, he started walking at the age of one, he started
13 Saint Joseph Head Start at the age of two. I was very
14 proud of Donta. I just wished that he had never got on
15 drugs and that he would have used better judgment. He
16 should not have been a follower but a leader. I know that
17 God has his back and I trust in him to see my sons through
18 this and I hate that this day every happened. I hate that
19 it has come to this point in their lives where they are in
20 court for murder but the Lord already has your life planned
21 out so maybe they will see Donta through this. Donta and
22 Devorius were just getting ready to get a fresh start on
23 their lives with me in Horry County but they were led to do
24 the wrong thing not knowing that it's going to cause them
25 to spend their lives in jail but to cause the life of

1 another to end in death. Again I say to the Marshall
2 family I apologize on behalf of me and my sons. I know
3 that there is a price to pay for his actions I just wished
4 things would not have been this way". And it's signed by
5 his mother.

6 Your Honor, I have this letter here from Audra Marine
7 that says "To whom it may concern. I am here writing this
8 letter in support of and as a character evaluation for
9 Dontavious Mack. I have known Dontavious all of his life
10 from childhood to young adult. His mother Monica and I are
11 life long friends and were at the time of Dontavious's
12 birth through the present. Dontavious has always been an
13 intelligent inquisitive friendly and outgoing young man.
14 He excelled in his school work and had strong friendships
15 with a lot of children in the Hartsville area. When in my
16 presence Dontavious has always been kind polite and never
17 rude. Even in his young adult years Dontavious has always
18 addressed me in a respectful manner has been kind and
19 courteous to my family and has never given me any reason to
20 feel negative towards him. It is unfortunate that
21 Dontavious has now allowed outside influences to alter what
22 could have been a very prosperous and rewarding future. I
23 will not hesitate to speak on his characteristics but I
24 know of my interactions with Dontavious he is a bright
25 young man. Respectfully submitted Audra Marine".

1 The next one is from Reginald McCleod who is the
2 pastor to the Mack family. "To Whom It May Concern. As
3 pastor to the members of the Mack family I am keenly aware
4 of the plight concerning Dontavious. The family is active
5 in a local church and have sought to find affective
6 solutions concerning the nurturing of Dontavious. This has
7 been done not only through the word of God and prayer but
8 also through practical sound advice. As much as possible
9 along with his family I will continue to support and
10 encourage him".

11 Your Honor, the next letter is from Kathy Peterson.
12 "To Whom It May Concern: It is with deep regret that I
13 find myself having to write this letter on behalf of the
14 Mack and Mason family and specifically Dontavious. The
15 circumstances that Dontavious finds himself in are far from
16 those planned or anticipated of his future. It is on
17 behalf of his future that I solicit your consideration. As
18 his God mother I reflect on his upbringing and know the
19 talented student he was academically. In the hopes of a
20 prosperous future that will be pleasing to God, his
21 parents, family and friends. It is now that we petition
22 you to consider allowing him to have a future. One way to
23 reflect on his mistakes and seek forgiveness and be
24 restored spiritually to the purposeful man that God had
25 created him to be. Because of my strong spiritual

1 upbringing and close intimate relation to God I know that
2 he can work good out of each and every situation and
3 ultimately allow God to be glorified. Sincerely Kathy
4 Peterson".

5 And your Honor, the last letter is from Teresa
6 Benjamin who writes "I'm writing this letter in reference
7 to Dontavious Ricardo Mack. I've known this young man for
8 over eighteen years and he has demonstrated nothing but
9 kindness, respect for myself and befriended my children. I
10 feel that in today's society our young men don't have
11 enough to do to occupy their time; if they were given a
12 chance at employment to show them responsibility.

13 Dontavious Mack attended Darlington County schools with my
14 children. As far as I know he was a good student and
15 friend. He also participated in church functions and
16 community events. When he would see me he always respected
17 me and my family. He could still be a productive part of
18 the community if given a chance. Sincerely, Teresa K.
19 Benjamin".

20 Your Honor, those letters are indicative of the type
21 of person that he was growing up as well as his family and
22 community support that he had from people in the Hartsville
23 area. Your Honor, I would ask you to hear from Levy
24 Johnson who is Dontavious Mack's uncle.

25 Mr. Johnson, just come up here and say your name for

1 the record and then address the Judge.

2 MR. JOHNSON: My name is Levy Johnson. I'm the uncle
3 of Dontavious and I just want to say as a character
4 witness. We have a program that you - we call the
5 Christmas in April program. And what we does is we pair
6 the senior citizen, disabled people in low income family
7 housing and Donta had volunteered - it's all volunteers
8 program and Donta is a volunteer who worked with this
9 program and helped repair these peoples houses. And if you
10 get this base in you once you start it grows on you and my
11 belief is that Dontavious if he is then at the mercy and
12 able to return back to society that he can be a productive
13 citizen. I believe that Dontavious will continue in this
14 type of work if he ever turn back of course he has the
15 basics. Sometime you fall but that doesn't mean that you
16 have to stay down. That's the prodigal son fell but he
17 rised and turn back home. So Donta even though he fell my
18 belief that he will arise above this if given the
19 opportunity. I am very sorry for the family for their loss
20 and I apologize to them. I regret it for them. I hope
21 that they can find in their heart to forgive and move on
22 forward in a positive manner.

23 THE COURT: Thank you, sir.

24 MR. BARROWCLAUGH: Thank you, Mr. Johnson.

25 And your Honor, the second person will be Tasha

1 Jackson who is Dontavious Mack's aunt.

2 MS. JACKSON: My name is Tasha Jackson. I am
3 Dontavious' aunt. First of all I - I deeply, deeply regret
4 the loss that the Marshall family have experienced. When
5 you loose someone close to you words cannot express the way
6 you actually feel for that person or you feel for that
7 family. And there is nothing I can say; there is nothing I
8 can do. If I could turn back the hands of time I would.
9 If I had a genie and I can rub that bottle I would but I
10 can't. All I can continue to do is pray for their family.
11 Pray for Dontavious, pray for our family as well as I've
12 been doing throughout this whole time. I know without a
13 shadow of a doubt that if Donta could live that day all
14 over again it wouldn't have happened. None of us would be
15 here today. Not the Marshall family not our family. When
16 we leave our homes and we go to any other destination it's
17 not anybody's intention to get in a car accident, get a
18 flat tire or go on a bridge and for that bridge to only
19 collapse. And it wasn't Dontavious intention for anybody
20 to get hurt. How many times have we done something wrong?
21 How many times have we done something illegal but because
22 of God's grace and because of God's mercy we made it
23 through and we're here today and we're still here we're
24 standing here. The Bible tells us that a just man falls
25 seven times but he gets back up again. In closing there is

1 a scripture and it's found in Ezekiel the Thirty-Seven
2 Chapter the first to the tenth verse and it speaks about a
3 valley of dry bones. And in this text it tells about a
4 prophet that God sends to this valley to revive these dry
5 bones. And he asked God a question how - how can these
6 bones live? You looking at bones just laying around;
7 you're looking at this and you're wondering how, how can
8 you do this? Well God asked this prophet to speak to these
9 dry bones and these bones began to come together and they
10 began to form and they began to shake. And then God tells
11 him to speak and the bones began to gain muscle, they began
12 to gain skin. And then he ordered the four winds the wind
13 from the east, the west, the north and the south to breathe
14 in these bones and these bones began to have breath. And
15 the reason for me bringing this up and for me saying this
16 is Dontavious has that same capability, that same strength;
17 that same potential; that same mind and he has that same
18 heart that these bones did to do something great. He's not
19 mean; he's not ruthless or what someone may call a threat
20 to society. Being in the wrong place at the wrong time
21 could have happened to any of us. So I am here today to
22 ask for forgiveness from the Marshall family as God
23 continuously forgives us for things that we say and things
24 that we do that's out of his will. Thank you.

25 MR. BARROWCLAUGH: Your Honor if it pleases the court.

1 THE COURT: Yes, sir.

2 MR. BARROWCLAUGH: I've been on this case since the
3 very beginning. I was the first attorney to meet with
4 Dontavious and reviewed the discovery; reviewed the
5 discovery with him and analyzed this case. Your Honor, I
6 thought long and hard about what to say and how to access
7 this case and the appropriate punishment. In reviewing
8 everything that happened in this case with Dontavious
9 clearly he is guilty of murder, clearly he was in there to
10 commit an armed robbery, clearly he fired the shot that
11 killed Mr. Marshall and that makes him guilty of murder
12 whether by the definition of malice or whether by felony
13 murder there are a number of different ways that he is
14 guilty of murder. Given that fact, your Honor, the
15 question becomes what would the appropriate punishment be
16 on a scale of thirty years to life in prison or anything in
17 between that leaves a wide variety of choices for your
18 Honor to make. And I think part of the reason for that
19 your Honor, is because the charge of murder covers such a
20 wide variety of circumstance. Having stated clearly that
21 Dontavious is in fact guilty of murder there are some
22 points about the case itself and the facts itself that I
23 would like to point out in mitigation and hopefully to help
24 guide your decision of an appropriate sentence in this
25 case.

1 The first thing, your Honor, that I think is clear
2 from the fact that Dontavious consistent with Doctor
3 Morgan's findings and the DJJ findings was not the ring
4 leader of this group of four young men. Terrell Addison
5 was in charge; Terrell Addison was the reason why these
6 young men were even in Rock Hill. Terrell Addison was the
7 reason why these young men were even going to commit an
8 armed robbery. Terrell Addison is the reason why that
9 particularly BP gas station was selected and Terrell
10 Addison was the person who was the driving force behind
11 this group. Dontavious Mack as his mental health records
12 indicate is both seeking acceptance from his peers. And
13 granted he has to take responsibility for surrounding
14 himself with a peer group that wants to go commit either a
15 car jacking or armed robbery. But he's seeking acceptance
16 from his peers and he's also not a dominate personality;
17 he's the follow personality. He's the one who is in the
18 car and says here take my gun. Dontavious says take my
19 gun.

20 Terrell ask him says come with me and they go and then
21 because of his own short comings. And I would also submit
22 your Honor because of the fact that he did not have a
23 strong male figure in his life from which he could derive
24 the strength to stand up to it somebody like a Terrell
25 Addison or a Ben Stewart and say no I'm not doing this he

1 goes along and he goes in there to commit an armed robbery.
2 And of course there are - there have been sadly a lot of
3 convenient store murders, your Honor. One's prosecuted in
4 this jurisdiction and one's that I'm familiar with with the
5 intention of the person going into the convenient store was
6 to kill the clerk. We've seen the video where the
7 defendant walked right into the store and the first thing
8 he does is gun down the clerk and then take whatever he
9 wants. Even though he is guilty of murder it was not his
10 intention going into that store to take a life. It was not
11 his intention to kill anybody. It was not his intention to
12 commit a murder. It was his intention to go along with
13 Terrell Addison and commit a robbery as I think the video
14 shows and as Mr. Brackett and Mr. Thompson have pointed out
15 he went in there he was the one with the gun he had a gun
16 and he was in that situation. Mr. Marshall had a gun too.
17 I don't think him or Mr. Addison expected that situation.
18 Once that occurred once Mr. Marshall also was armed with a
19 gun I think he panicked. That's no excuse and it doesn't
20 mean it's not a murder because clearly he was in the wrong
21 for even being there. But given the fact that as it's been
22 already stated he is young, he is impulsive, he is
23 immature. At that point, your Honor, I think he acted out
24 of fear and in panic as opposed to out of evilness or
25 desire to kill somebody. And again that also goes back to

1 being consistent with what the mental health people found
2 that he is not an anti-social personality or in layman's'
3 terms an evil personality but instead an immature person
4 who reacted in a panic state to the situation that he put
5 himself in by following Terrell Addison.

6 And, your Honor, the shots were exchanged and of
7 course he did get shot in the back and go for treatment.
8 Your Honor, when he was encountered by law enforcement and
9 met with them they arrested him and brought him to Rock
10 Hill and he gave the statement that Mr. Brackett read. In
11 talking to him of course doing my job as an attorney I
12 wanted to know the circumstances surrounding how his
13 statement was obtained. Really the only thing that law
14 enforcement said to him to get him to give that statement
15 was that you know if you cooperate he can call his mama.
16 And I mean that's what he wanted to do was let his mother
17 know where him and his brother were because of course he
18 was taken from Hartsville to up here and she didn't know.
19 And I think that reflected both a desire to cooperate and
20 you should note that his statement not only implicates
21 himself but helped law enforcement with their investigation
22 of Terrell Addison, Ben Stewart, where they might be found,
23 where the gun might be found. I mean it was indicative of
24 a desire to cooperate. But it's also indicative of his
25 despite of having more of a high IQ than many of our client

1 I would say the emotional immaturity you know here he is
2 being served with warrants for murder and his concern is my
3 mama doesn't know where I am. And I think that reflects
4 the naivety in his character that again it's consistent
5 with how he came to be in this situation in the BP store
6 committing a robbery armed with a gun.

7 Your Honor, in light of all of that, in light of
8 everything that Mr. Dest has said about his background and
9 his personality and in light of the facts of this case I
10 would too ask the court to consider a thirty years
11 sentence. I have some hesitation in analyzing the
12 appropriate sentence and ask for a thirty year sentence and
13 I analyze my own hesitation. I think it is because your
14 Honor, the legislature has seen fit to attach the term
15 minimum to a thirty year day for day sentence and I think
16 that label of minimum in some sense diminishes the
17 perception of the severity of that sentence oh he got the
18 minimum. But getting past that and just looking at it for
19 what it is a thirty year day per day sentence. Thirty
20 years from now the world will be different. Thirty years
21 from now all the people involved in this case will be
22 different if they're even still alive. And thirty years
23 from now certainly as Mr. Dest said Dontavious Mack will be
24 different. And I would ask the court respectfully and
25 sincerely consider giving him that thirty year sentence.

1 Thank you.

2 THE COURT: Thank you, sir.

3 MR. BARROWCLAUGH: And your Honor, lastly Mr. Mack has
4 a brief statement he has prepared to read to you.

5 THE COURT: Mr. Mack, you wish to speak to the court?

6 MR. MACK: Yes, sir. I want to first and foremost
7 apologize to the family and friends of Mr. Marshall. And I
8 know it may be hard for you all but I would like to ask you
9 all to forgive me. I'm pleading to this because I am
10 guilty. The family and friends of Mr. Marshall what I did
11 was wrong especially. Taking the life of another human
12 being was just wrong. I am sorry for the bad decision I
13 made that night. I see and understand Mr. Marshall was
14 loved by many people and I did not have the right to take
15 him from you all. On January 18th '07 I got saved and made
16 Jesus Christ my lord and savior. I am a different person
17 when I first came here. I also want to apologize to my
18 family and friends and I also want to thank you all for the
19 love and support. You all should never been in the
20 courtroom under these conditions. I know you all raised us
21 up to be better but I chose the wrong road. You always
22 told me to treat others kind and to be kind to others and
23 to never be mean to others because if I didn't do these
24 things I wouldn't be any where around. I take full
25 responsibility for my actions and am here in court today to

1 receive the punishment for what I did. But before you make
2 your decision, your Honor, I would like to ask you to give
3 me a chance to return home years for now. I also ask for
4 mercy in a way that would give me some hope that last years
5 from today. And once again to the family and friends of
6 Mr. Marshall I would like to apologize and ask you for your
7 forgiveness.

8 THE COURT: Solicitor.

9 MR. BRACKETT: May it please the court your honor.
10 There are a great number of people in the courtroom who are
11 here on behalf of the Marshall family. Only a small number
12 of them are going to come up and actually address the court
13 and I would like to bring them up first and then I can ask
14 for everyone who is here on his behalf to stand up but at
15 this time I would like for Pam Corn Albright to step
16 forward please.

17 MS. CORN: My name is Pam Corn. I've been a family
18 friend of the Marshall family for thirty years. My husband
19 owns the store that Ned was murdered in that morning. You
20 are going to hear a lot from the family; how it has
21 affected a lot of lives in this town not only the family
22 but the friends in the community. Ned was a long time - he
23 was born and raised here, he was a great guy. I grew up
24 with his daughter. I grew up in Ned's house. He taught me
25 how to cook. He was like my second father. He was close

1 to my children and very close to my husband. My children
2 have suffered; my husband has suffered, we all have
3 suffered. I'm sorry.

4 We all have moments in our lives that we would like
5 to take back. I know I have plenty But you can't take
6 back moments once they happen they're gone. And at that
7 moment we lost a life and it was a good life. He worked
8 for my husband because he loved people. Not because he
9 needed a job but because he wanted to be around people.
10 And he had a following that came and drank coffee with him
11 in the morning. The employees that have suffered so much
12 through this loved him. Everybody loved him. So yes I
13 would like to take back that moment too as well as I would
14 like to take back many moments in my life. And I am sure
15 Dontavious would like to take the moment back as well. But
16 I feel that at that moment or those moments that morning he
17 had - Dontavious had no respect for Ned's life or his
18 dignity and I don't feel like we should have any respect
19 for his at this moment. My heart goes out to his family.
20 I cannot image his friends and family what they've gone
21 through. And I've heard from them that they're sorry for
22 what we have gone through and I am sorry for what they have
23 gone through. But the bottom line is there was no respect
24 that morning and I would like to see maximum sentence.
25 Thank you.

1 THE COURT: Thank you, ma'am.

2 A. Your Honor, my name is Ned Marshall Albright. I am a
3 first cousin of Ned's and I am sure you've read my
4 statement at least it's been submitted to the court. Ned
5 and I go back to our childhood. We're one years difference
6 in age and we were raised together, we spent summers
7 together. All though high school, all through our lives we
8 were together. We raised our families together in the same
9 neighborhood. We spent many many hours together and I feel
10 like almost like a brother to Ned and he brought a lot of
11 joy to a lot of people. He was a very good friend and a
12 good person. And all of us will miss Ned and we'll miss
13 his funny remarks about things; his witty sense of humor,
14 the joy that he brought. Pam's already mentioned the joy
15 he brought to all of his customers. The comments I've
16 heard since his death about - from everyone about how much
17 they loved him and the joy that he brought to so many
18 people. And we're all in pain here today. The defendant's
19 family, our family, all of us is hurting. All of us regret
20 what's happened. But our justice system is based on
21 repayment of a wrong and Dontavious took Ned's life and he
22 has to pay for that. I know that he is hurting; I know
23 that he wishes he hadn't done it, I know his family, all of
24 us are hurting but that's the way our system is. You know
25 you're the judge you know how the system is and it's time

1 for him to pay. Ned has paid; Ned paid back in October
2 he's gone forever and Dontavious has to pay and I regret
3 that. But - and its unfortunate the entire thing; it's
4 unfortunate that all of us are here today for this hearing.
5 I miss Ned.

6 THE COURT: Thank you, sir.

7 MR. BRACKETT: Joann and Barnes Marshall.

8 A. I'm Barnes Marshall, Ned's brother.

9 A. Your Honor, I am Joann Marshall and I would like to
10 read a statement from my husband if that's allowable? Ned
11 Marshall was my brother; my only brother. He was the name
12 sake of my grandfather and my father and because of the
13 actions of Dontavious Mack on October 10th, 2006 my brother
14 is no longer alive. Ned and I were born twenty months
15 apart and were inseparable as little boys. In fact many
16 people thought we were twins. Each time someone asked if
17 we were twins my mother and father gave us a quarter. When
18 I told the story to my daughter's when they were small it
19 was with laughter and now when I tell it to my
20 grandchildren it is with tears. We worked together as
21 teens and for over thirty years as adults in our family
22 owned business. Ned at age sixty-nine worked part time
23 because he loved being around people and also just to make
24 extra money for his golf expenses. He chose to work early
25 morning hours in order to play golf the rest of the day. I

1 was to retire on October 28th and had hoped to spend more
2 time with him but that was not to be. I try to keep my
3 emotions to myself. I cope by pretending that Ned died a
4 natural death but reality sets in. I have difficulty
5 sleeping as I wake up frequently with Ned's murder on my
6 mind. The strain and stress of this tragedy is
7 overwhelming and my life will never be the same. I am
8 grateful that my mother and father are not here suffering
9 through this ordeal. I live about twenty-five feet from
10 the house where Ned and I grew up. Ironically the Corn's
11 long time friends of the family who owned the BP station
12 where Ned was murdered now live in that house. When
13 Dontavious Mack murdered Ned during an armed robbery for
14 which he gained not one cent he opened up a horrendous
15 wound on the body of my family and me. That wound has
16 become infected and has spread to all members of the
17 Marshall family. Like a cancer it eats away at us and our
18 sense of well being has been shattered. The only way we
19 can begin to heal is to remove the cause of this wound -
20 Dontavious Mack - and isolate him from society for as long
21 as the law allows so that he will never have the
22 opportunity to hurt another family. Thank you, your Honor.

23 THE COURT: Thank you, ma'am.

24 MR. BRACKETT: And this is Sally Lemon.

25 MS. LEMON: My name is Sally Lemon. I'm the oldest

1 daughter of Ned Marshall. The murder of my father has
2 caused emotions that I have had to deal with that are
3 unlike the emotions that I experienced when other family
4 members and close friends have died. Complicated grief is
5 one description of what I have to endure. This includes
6 sleeplessness, loss of appetite, weight loss, depression,
7 anxiety and fear. Over the past seven months I have
8 undergone counseling to help me deal with these symptoms.
9 I have come to accept the fact that I will live the rest of
10 my life handicapped. This is not a physical handicap but
11 it is an emotional handicap that is a result of the memory
12 that I have when I learned of my father's death and exactly
13 how he died on the morning of October 10th 2006.

14 As I watched the news while preparing to go to work
15 there was a report that a homicide had occurred in Rock
16 Hill at the intersection of the Celanese bypass and India
17 Hook Road. I immediately recognized this address as where
18 my father's place of business was. I turned to my husband
19 and commented that this was the location of the BP station
20 where daddy worked. About fifteen minutes later our
21 telephone rang and as I answered the call my heart started
22 racing as I was informed that it was Sabrina Gast of the
23 York County Coroner's office stating that she was sorry to
24 inform me that my father was shot and killed during a
25 robbery attempt while he was at work this morning. The

1 coroner stated that she was at my parent's home with my
2 mother and when I asked to speak with my mother I was
3 informed that she was not able to come to the phone. My
4 husband and I along with our two children immediately left
5 our home which is about a one hour drive to Rock Hill. I
6 cannot describe the overwhelming thoughts and feelings of
7 despair that I experienced during that trip to Rock Hill.
8 When I arrived I found my mother crying hysterically. She
9 was not able to stand; she was so overwhelmed with sadness.
10 She had learned of his death by being awakened to the
11 doorbell ringing repeatedly at 5:30 a. m.. Because it was
12 still dark outside as she approached the front door she
13 could see the lights of the numerous police cars flash
14 through the windows. She was frightened and asked who was
15 at the door. She remembers being instructed to open the
16 door it's the coroner. Like me my mother struggles daily
17 with these horrible memories. My sister was not able to
18 attend this hearing today due to her overwhelming feelings
19 of this complicated grief. My heart goes out to my brother
20 who has attended many court hearings and endured the
21 emotions that each one of them has caused. No one should
22 ever have to go through what my brother has had to
23 experience as a result of this horrible crime. I hope and
24 pray that Dontavious Mack is never given the freedom to put
25 another family through the pain that our family has endured

1 for the past ten months and the sadness that we will live
2 with for the rest of our lives. Thank you.

3 THE COURT: Thank you, ma'am.

4 MR. BRACKETT: And now we have Ned Marshall.

5 MR. MARSHALL: Your Honor, I'm bringing my mom in
6 today. This is the first time she's been to a proceeding
7 but the real victim in this crime has been her and my
8 sister. You see our friends but this lady was married to
9 my father and had a wonderful marriage. They were married
10 together getting ready to celebrate their fiftieth wedding
11 anniversary. I'm the oldest son; I'm named for my father.
12 And I want to say while it's on my mind I've heard the
13 friends of the Mack family and the Mack family and I know
14 that their loss is tremendous as well and that over the ten
15 months one of my prayers has been that I could find
16 forgiveness in my heart and I have forgiven Dontavious
17 because hatred will ruin you. There was about ten days
18 there when we first found out that dad had been murdered
19 and we heard the details of how he has shot multiple times
20 and how he bleed to death and we had to listen to the
21 recording and I'm thankful that Dontavious was man enough
22 to admit his guilt and to spare a trial. We felt
23 compassion to take away the death penalty type trial if he
24 was going to enter a guilty plea and that's admirable and I
25 commend him for that for admitting his guilt. I want his

1 mother to know that I can't imagine how she must feel. I
2 have a twenty year old son in this courtroom who was his
3 oldest grandson and I cannot imagine having to say goodbye
4 to him. However we can't talk to my father any more he's
5 gone forever. There wasn't a judge and jury that morning;
6 Dontavious was the judge and jury.

7 I know my father wanted to live but I asked him many
8 times if somebody tried to rob this store what would you
9 do? He said I'd give them the money. He said I don't want
10 to die over fifty bucks. He died over eighty five dollars
11 and it was dropped on the floor. And that's been so hard
12 for me to imagine how someone can - like Pam Corn said just
13 have total lack of respect for the laws of this country and
14 an individual. My dad got up that morning to go to work to
15 make coffee; he had a lot of friends and to come home that
16 night to be with her. She lives in a silent house now. He
17 won't come home. My daughter got married December the 2nd;
18 my father was looking so forward to that dance with her.
19 She had to have - I mean it's on going. We have a life
20 sentence, your Honor, a life without my father.

21 As we go through these different milestones in life at
22 every point where he should be there he's not there and
23 it's evident. People ask me how am I doing and in order to
24 not just bore them with my grief I say I'm doing okay but
25 the truth of the matter is is this is like walking with a

1 rock in your shoe. There's days where I just can't seem to
2 get the rock out from under my foot and it's just all I
3 think about. And other days I walk and I know that the
4 rocks in my shoe but I'm able to get by. And I just - you
5 know the ramifications we - its all about what we decided
6 to do. My father was very much a man that believed in an
7 eye for an eye and tooth for a tooth. He wouldn't take a
8 dime from anybody and his word was his bond and he
9 instilled that in me and my sisters and his grandchildren.
10 And I know how he would feel if he were here today. I know
11 what he believed in. And the bottom line is that we must
12 reap what we sow. The bible talks about an eye for an eye.
13 We can forgive but there must be justice and when you cost
14 someone what he's cost our family you must pay. And I just
15 hope that the Mack family can understand that we forgive
16 them but you reap what you sow and he sowed bad seed; he's
17 caused an enormous amount of pain and suffering that will
18 never heal. We will move on but we won't forget. We miss
19 our father everyday. She misses her husband everyday.

20 I worry about my mother. She's sixty-nine years old
21 and she needed him. This is at the point in life where the
22 grandchildren are coming around and everything is good and
23 it was all disrupted. Why? Because he chose to rob; he
24 chose a stolen car, he chose a gun. When you play with
25 that kind of stuff you've got to send a message out to this

1 young society out there that ha you reap what you sow. If
2 you kill and take life then you must give life.
3 Everybody's faced everyday with good versus evil and you've
4 got to make decisions to do right or wrong. And we've all
5 - we're all sinners. Nobody here has not broken the law;
6 gotten a speeding ticket or done bad things. But this is
7 murder; it's in the bible thou shall not kill. So I'm just
8 asking you to impose a sentence so that the citizens of
9 York County that are missing my father; the friends and the
10 family that are missing my father that we can see that
11 justice is served. And as the people of this state as they
12 read about this case that they will see and hopefully
13 others that are thinking about maybe doing this rather than
14 going to work and getting the money taking the money riding
15 around with guns guns kill and when you make bad decisions
16 you put your life on the line. My father did not deserve
17 to die that morning and I know he didn't die quickly
18 because I have his watch on and when it came to me in a
19 coroner's bag that morning there were fingerprints on the
20 dial and I struggle with wondering how long he laid there
21 bleeding. I know he was probably wondering who's coming in
22 the door, somebody's going to be here soon, maybe I can
23 hang on but he bled to death, a slow painful death. He was
24 shot in the hand; through both legs. I read the autopsy
25 report. I think about that all the time. He died - he had

1 a shot through his chest across his chest out his side and
2 through his arm and he bled to death. I can't imagine what
3 he must of thought when he looked up and saw a masked man
4 with a gun telling him to come to the front of the store
5 and I think about wonder what words was used. Was he
6 saying come to the front or was he cussing and talking to
7 him meanly? I don't know what happened but I have
8 struggles; I have gone to some counseling myself and tried
9 to pick up my life but, your Honor, this is - death is
10 forever, murder is forever and I just hope that the
11 sentence that you impose is one that is just and that it
12 will send a message out that we must reap what we sow. We
13 must make the decisions if you are going to kill you put
14 your life on the line. And so I ask that you give
15 Dontavious - he's got family that can come see him; he'll
16 be getting meals and doctor treatment. Even the bullet
17 that's in his back today if he wants it out they'll take it
18 out. He's got all that cared for. My father is gone
19 forever. She's alone forever and I'll miss him forever.
20 Thank you..

21 THE COURT: Thank you, sir.

22 MR. THOMPSON: May it please the court your Honor.
23 James Marshall III - I have a few other victim impact
24 statements that I'll pass up but these are - -

25 THE COURT: These have been shown to the other side?

1 MR. BRACKETT: They have, your Honor.

2 MR. THOMPSON: James Marshall III was sixty-nine when
3 he was killed that day. And as you know his - my father's
4 nickname was Ned but he also had another nickname that he
5 went by it was Clyde and he had that on the tag - from his
6 name tag at work. And you can see the people that are here
7 for him today. There's a lot of people in the community
8 that he meant a lot to. I want to point out just a couple
9 of things in particular about the facts your Honor. A lot
10 was said about impulse or the wrong place at the wrong time
11 but I think the facts show this case is not that because
12 obviously these young men got together in Hartsville and
13 came to York County. They had to travel at least an hour
14 and fifteen minutes. That's how long it took them to get
15 back to the hospital in Hartsville and in that time of
16 traveling they had with them guns at least two; mask, and
17 as Dontavious's statement goes at least the 380 that Ben
18 Stewart had was in the trunk along with masks. They came
19 here for a purpose. When he first says he saw that car
20 that day his brother was driving. He drove the car back
21 according to his own statement. They had a good idea of
22 what they might be doing in Rock Hill and that's also
23 evidence by his statement and by the other statements of
24 the other co-defendants. When they came in they were here
25 for quite some time. They would have had to have left

1 according to him he planned to be back by two o'clock is
2 what he told his girlfriend. They left the night before on
3 October the 9th sometime that evening and came to Rock Hill
4 and drove around through Rock Hill until 4:30 that morning
5 when this robbery occurs. That's a large number of hours
6 to be in a place that you're not from and to be looking
7 around. Obviously they talked specifically about robbing
8 Dominos about robbing another guy in a car before they came
9 to this. It's not the wrong place the wrong time. They
10 were planning; they were laying the seeds of what they were
11 going to do; they had a good idea of what they were going
12 to do and they had the utensils to do it and they came a
13 long way to do it.

14 The fact that Ned Marshall exercised his right under
15 the law for self defense should not be a mitigating factor
16 for the defendant because unfortunately if it hadn't been
17 for that bullet that he did finally put in the defendant's
18 back its very likely we never would have caught the
19 defendant. It was the fact that he had to turn himself in
20 in Hartsville to the hospital - treatment that was really
21 the thing that was his downfall that got him caught. And
22 of the gun shot wounds that Ned Marshall received it was
23 the last one that had to have killed him because according
24 to the autopsy that would have put him - incapacitated him
25 at that point. He would have been unable to sit up and do

1 other things so it's the last bullet that killed him. At
2 any point Dontavious Mack could have stopped firing
3 obviously four shots. If he had stopped with the other
4 three it likely then that Marshall would be here today and
5 this wouldn't be a murder but he didn't. Even as he ran
6 out he turned as you can see in the photographs to point
7 back and fired. In addition as to the impulse of wrong
8 place wrong time you can see there was a plan when they
9 went in the store and the plan was for him to come in one
10 door and his co-defendant Terrell Addison to come in the
11 other. Terrell Addison according to the defendant's
12 statement was supposed to hold Ned Marshall to prevent
13 anything like this but he didn't. And you can see even
14 from the still shots and from the descriptions that Mr.
15 Brackett gave you this wasn't a situation where Terrell
16 Addison was directing what was happening within the store.
17 I think it's obvious when you see these photographs the
18 person directing is the man with the gun who comes in with
19 that gun out in his hand stretching it out when he first
20 walks into the store. And while we've heard a number of
21 good things about him as a young man unfortunately that's
22 not who's before the court today. Unfortunately that man
23 who came in with the gun and the mask demanding money is
24 who the court has to sentence today. The man who decided
25 to shoot and kill Ned Marshall that's who we sentence today

1 and I ask the court to consider that. Thank you.

2 MR. BRACKETT: Your Honor I just want to point out a
3 few things to the court. First of all I want to give you
4 some sense of who Dontavious Mack is because he is no boy
5 scout. This man has been in trouble almost all of his
6 youth from the age of twelve to the man who stands before
7 you now. His first offense was an ABHAN and pointing a
8 firearm in 1998; he was a juvenile then. He had a
9 disturbing schools and petit larceny in 2000 and that
10 involved he and his brother running in and out of class
11 rooms at school and stealing wallets. In 2000 he also had
12 - he pled to an ABHAN down from a CSC and in addition to
13 the CSC was charged with burglary and kidnapping. It
14 involved a child who had been held down and forcibly
15 sexually assaulted. As a result of that conviction in 2001
16 he had his probation violated and he was committed to DJJ.
17 He was placed in a group home; he was in the group home for
18 about five months. The first month he had four infractions
19 then eight the next month then twenty then twenty-two and
20 fourteen the final month. These ranged from simple things
21 like horse play and being where he shouldn't have been all
22 the way up to stealing, lying and acting in an
23 inappropriate sexual manner with other residents. He was
24 ultimately dismissed from the group home. He is currently
25 out on several bonds since he's been an adult and these

1 charges are all pending in Darlington County. They have a
2 backlog docket there and they haven't reached these cases
3 but they date back to 2004 and some of them are serious
4 felonies. He was convicted of a simple possession of
5 marijuana and ultimately culminating his trip to Rock Hill.

6 Mr. Dest and Mr. Barrowclaugh pointed to a 2001
7 psycho-social evaluation that was done as a result of his
8 DJJ - his infractions in Family Court - and they attempt to
9 draw some mitigation from this. I see none. I've read the
10 same report and I don't read it that way. They say he has
11 - and this is the same language that Mr. - that Doctor
12 Morgan apparently quotes from his report to the court
13 indicating there is no in-grained anti-social personality
14 behavior. That's in 2001. You can't diagnose someone with
15 anti-social personality disorder at the age of fourteen but
16 you can diagnose them with conduct disorder which I have
17 taken the liberty of giving a copy of - I know and I am
18 grateful of your Honor's background in this area too
19 because I am sure you are familiar with the DSM IV. I took
20 the liberty of having my copy of that brought to the
21 courtroom. In that same report Axis I diagnose - at the
22 Axis I diagnoses by the examiner Doctor Jennifer Miller
23 Green 3 1 2.8 conduct disorder which at the age of fourteen
24 is significant because the diagnostic criteria for 301.7 in
25 this book for anti-social personality disorder there is

1 list of things that have to be present before you can
2 diagnose anti-social personality disorder. There is a
3 pervasive pattern of disregard for and violation of the
4 rights of others occurring since age fifteen years as
5 indicated by three or more of the following: Failure to
6 conform to social norms with respect to lawful behaviors as
7 indicated by repeatedly performing acts that are grounds
8 for arrest - check. Deceitfulness as indicated by repeated
9 lying, using of aliases or coning others for personal
10 profit or pleasure - check. Impulsivity or failure to plan
11 ahead - check. Even the defense cited that. Irritability
12 and aggressiveness as indicated by repeated physical fights
13 or assaults. Perhaps there are some assaults that are
14 pending; there has been no disposition on them. Reckless
15 disregard for safety of self or others - check. Consistent
16 irresponsibility as indicated by repeated failure to
17 sustain consistent work behavior or honor financial
18 obligations. Finally lack of remorse as indicated by being
19 indifferent to or rationalizing having hurt and mistreated
20 or stolen from another. The individual is at least
21 eighteen years old. And finally there is evidence of
22 conduct disorder with onset before age fifteen - check.

23 Mr. Mack is an anti-social personality which is just a
24 fancy short hand way of saying a psychopath. An individual
25 who doesn't care about other peoples wants and needs and

1 concern and an individual who can never be changed from
2 that behavior. He didn't care about what happened in the
3 BP. Why in the world would you go into the BP with a gun
4 you know you may have to use it?

5 Some of his family and the defense intimated that he
6 was in the wrong place at the wrong time. Mr. Mack prowled
7 the streets of Rock Hill for several hours looking for
8 targets with those other individuals. He's a menace and a
9 predator. Finally he took the life of this man; this
10 husband, his father, his brother and friends and so many
11 good people who come here today. He took his life and this
12 your Honor, this is how he left him lying in a pool of his
13 own blood in a store where he worked where so many people
14 came to see him and shared his good company. And this man
15 is the author of all of this misery. This man is the
16 author of all their grief. He is the author of their grief
17 too. He points to his family and says they're good people.
18 We've raised him better than this. I believe it. They
19 seem like good people. I have no reason to doubt them. He
20 had the benefit of that and yet still he stands here today
21 before you in this condition guilty of taking the life of
22 this good man and they ask for thirty years. They think
23 that thirty years is going to make up for a lifetime of
24 misery and sorry that he has brought to hang over the
25 houses of these good people. Thirty years is a joke. This

1 is an aggravated murder. I have sat with these people for
2 nearly a year in my conference room wiping the tears from
3 their eyes and telling them what they faced in going to
4 court. And telling them that this yes this was a death
5 penalty case; armed robbery and kidnapping and a murder,
6 this was a death penalty case and if that's what they
7 wanted we would go forward. I told them what that would
8 entail. The years of appeals and the consequences of that
9 and after going through and explaining to them everything
10 that they faced and in an act of just magnificent mercy the
11 Marshall family decided to let him plead guilty and not
12 face the death penalty. They agreed that that should be
13 taken off the death penalty - that should be taken off the
14 table. Your Honor, that is all the mercy Dontavious Mack
15 deserves for what he did. I join the Marshall family in
16 calling for a life sentence for Mr. Mack for taking the
17 life of Ned Marshall; for stealing this good person from
18 our community. Thank you.

19 THE COURT: All right. Thank you, sir. I certainly
20 want to commend the state and the defense for preparing for
21 court and coming to court and presenting everything that
22 you have on each of your sides. And I think that both
23 sides have done an excellent job of investigating this case
24 and to see where we are; to bring it to the court's
25 attention and to bring everything that you have to the

1 court's attention I have the benefit of that. I want to
2 say that this is one of the most difficult jobs the judge
3 has and the one that I certainly - let me just say it's a
4 difficult job for a judge as well to try to make these
5 decisions and consider all of this and hear all of this and
6 made a decision. That's part of the responsibility that a
7 judge has.

8 I want to express my sympathies to the family of Mr.,
9 Marshall and for what you have gone through. I want to
10 express my sympathies to the family of Mr. Mack as well.
11 They have no choice in this; had no reasonability, no
12 choice in this and I certainly understand what you are
13 going through as well. It's a tragedy that affects both
14 families. I've considered everything that's been presented
15 to the court and the sentence I am going to enter I believe
16 does justice in this case.

17 In Case Number 2007-GS-46-683 Dontavious Ricardo Mack
18 having pled guilty to armed robbery sentence of the court
19 is he be committed to the State Department of Corrections
20 for a determinat term of thirty years. This sentence will
21 run concurrent with the other sentences today and I am
22 giving him credit for all jail time served.

23 Case Number 2007-GS-46-687 Dontavious Ricardo Mack
24 having pled guilty to the charge of kidnapping sentence of
25 the court is he be committed to the State Department of

1 Corrections for a determinant term of twenty years. This
2 sentence to run concurrent and he is given credit for time
3 served. The court finds that there are no sexual
4 allegations involved in this case and the defendant is not
5 required to register as a sex offender on this charge.

6 Case Number 2007-GS-46-681 Dontavious Ricardo Mack
7 having pled guilty to conspiracy to commit armed robbery
8 and kidnapping sentence of the court is he be committed to
9 the State Department of Corrections for a determinant term
10 of five years. This sentence to run concurrent and he is
11 given credit for time served.

12 Case Number 2007-GS-46-684 Dontavious Ricardo Mack
13 having pled guilty to possession of a pistol during a
14 violent crime sentence of the court is he be committed t
15 the State Department of Corrections for a determinant term
16 of five years. The sentence to run concurrent; he is given
17 credit for time served.

18 Case Number 2007-GS-46-685 Dontavious Ricardo Mack
19 having pled guilty to possession of a pistol by a person
20 under twenty-one years of age sentence of the court is he
21 be committed to State Department of Corrections for a
22 determinant term of one year. This sentence to run
23 concurrent and he is given credit for time served.

24 Case Number 2007-GS-46-686 Dontavous Ricardo Mack
25 having pled guilty to possession of a stolen vehicle valued

1 at over five thousand dollars sentence of the court is he
2 be committed to the State Department of Corrections for a
3 determinant term of five years. This sentence to run
4 Concurrent, he is given credit for time served.

5 In Case Number 2007-GS-46-682 Dontavious Ricardo Mack
6 having pled guilty to the charge of murder the sentence of
7 the court is he be committed to State Department of
8 Corrections for a determinant term of life without parole.

9 MR. BRACKETT: Thank you, your Honor.

10 THE COURT: We will take a short recess.

11 - END OF TRANSCRIPT -

12 - TIME IS 11:45 A. M.)

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STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

C E R T I F I C A T E

I, WANDA NELSON, OFFICIAL COURT REPORTER, CERTIFIED VERBATIM REPORTER AND NOTARY PUBLIC, DO HERBY CERTIFY THE FOREGOING HEARING WAS HEARD TRANSCRIBED UNDER MY SUPERVISION AND THAT THE FOREGOING SEVENTY-FOUR (74) PAGES CONSTITUTE A VERBATIM TRANSCRIPTION OF THE PROCEEDING HEREIN.

I DO FUTHER CERTIFY THAT I AM NOT OF COUNSEL FOR OR IN THE EMPLOYMENT OF ANY OF THE PATTIES TO THIS ACTION, NOR DO I HAVE ANY INTEREST, FINANCIAL OR OTHERWISE, IN THE OUTCOME HEREOF.

IN WITNESS THEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME, THIS 12ST DAY OF AUGUST, 2008.

Wanda Nelson

WANDA NELSON

OFFICIAL COURT REPORTER
CERTIFIED VERBATIM REPORTER
AND NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA.

MY COMMISSION EXPIRES:
12/06/2010

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

Defendant

Dontavious Ricardo Mack
hereby appear in my own proper person and plead guilty to the within indictment or to
as charged

X ~~Dontavious Mack~~
Defendant

Witness:
[Signature]
C.C.C. PLS. AND G.S. Specialist

DOCKET NO. 2007-GS-46-00681

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 15, TERM 2007

THE STATE

vs.

DONTAVIOUS RICARDO MACK

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410
CDR Code:0049

WITNESSES

HPD / Haire

ARREST WARRANT NUMBER

900289

ACTION OF GRAND JURY

[Signature]

[Signature]
oreperson of Grand Jury
2-15-07

VERDICT

oreperson of Petit Jury
ate:

WITNESSES

RHPD / Haire

ARREST WARRANT NUMBER

G-900291

ACTION OF GRAND JURY

FOR THE BILL

Foreperson of Grand Jury

2-15-07

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-46-00682

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 15, TERM 2007

THE STATE

vs.

DONTAVIOUS RICARDO MACK

Indictment for

MURDER

SC Code: § 16-3-10
CDR Code: 0116

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

Defendant

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

as charged

Defendant

Witness:

Under Turk Assoc.
C.C.C. PLS AND G.S.
Deputy Clerk

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

Defendant

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

as charged

Dontavious Mack
Defendant

Witness:
Clayton Mack Assoc
C.C.C. PLS AND G.S.
Deputy Clerk

DOCKET NO. 2007-GS-46-00683

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 15, TERM 2007

THE STATE

vs.

DONTAVIOUS RICARDO MACK

Indictment for
ARMED ROBBERY

SC Code: § 16-11-0330
CDR Code: 0139

WITNESSES

RHPD / Haire

mac

ARREST WARRANT NUMBER

G900293

ACTION OF GRAND JURY

STATE BILL

Debra Thompson
Foreperson of Grand Jury
Date: 2-15-07

VERDICT

Foreperson of Petit Jury
Date:

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

Defendant

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

as charged

x Dontavious Mack
Defendant

Witness:

[Signature]
S.C.C. PLS AND G.S. Specialist

DOCKET NO. 2007-GS-46- 00684

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 15, TERM 2007

THE STATE

vs.

DONTAVIOUS RICARDO MACK

Indictment for

POSSESSION OF A FIREARM
DURING THE COMMISSION
OF A VIOLENT CRIME

SC Code: 16-23-0490
CDR Code: 0549

WITNESSES

HPD / Haire

ac

ARREST WARRANT NUMBER

900295

ACTION OF GRAND JURY

WITNESS BILL

[Signature]
Preperson of Grand Jury
ate: 2-15-07

VERDICT

Preperson of Petit Jury
ate:

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

Defendant

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

as charged

Dontavious Mack
Defendant

Witness:

W. Mack, Assoc.
C.C.C. P.S. AND G.S.
Deputy Clerk

DOCKET NO. 2007-GS-46-00685

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 15, TERM 2007

THE STATE

VS.

DONTAVIOUS RICARDO MACK

Indictment for

POSSESSION OF A PISTOL BY
A PERSON UNDER THE AGE OF 21

SC Code: § 16-23-30
CDR Code: 2364

WITNESSES

HPD / Haire

ARREST WARRANT NUMBER

3900297

ACTION OF GRAND JURY

TRUE BILL

Oliver Hampton
Foreperson of Grand Jury
Date: 2-25-07

VERDICT

Foreperson of Petit Jury
Date:

WITNESSES

RHPQ/HAIRE

ARREST WARRANT NUMBER

G-900299

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

2-15-07

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-46-00686

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 15, TERM 2007

THE STATE

VS.

DONTAVIOUS RICARDO MACK

Indictment for

POSSESSION OF A
STOLEN VEHICLE

SC Code: § 16-21-80 (3)
CDR Code: 0430

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

Defendant

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

as charged

Defendant

Witness:

James Williams Court
C.C.C. PLS. AND G.S. pericial

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

DOCKET NO. 2007-GS-46-00687

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 15, TERM 2007

THE STATE

vs.

DONTAVIOUS RICARDO MACK

Indictment for

KIDNAPPING

SC Code: §16-3-910
CDR Code: 0095

WITNESSES

RHPB / Haire

ARREST WARRANT NUMBER

Dir. Ind. Re: G-900291

ACTION OF GRAND JURY

FORFEIT BAIL

Elmer H. Hargrave
Foreperson of Grand Jury
2-15-07

VERDICT

Foreperson of Petit Jury

Date:

Defendant

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

as charged

Defendant

Dontavious Mack

Witness:

Gregory Childers Court
S.C.C.P.S. AND G.S. *Specialist*

2010-CP-46-1192

STATE OF SOUTH CAROLINA)

County of York)Dontaureus R. Nave #323350)

Full name and prison number, if any, of applicant)

v.)

State S.C.)

Name of Respondent)

CERTIFIED TRUE COPY

In the Court of Appeals
2010 MAR 23 PM 2:55DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SCAPPLICATION FOR
POST-CONVICTION RELIEFDAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2010 MAR 22 PM 2:55

FILED - CERTIFY

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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

- Place of detention Lee C.I. 990 Wiscacky Hwy., Bishopville,
South Carolina 29010
- Name and location of Court which imposed sentence York Co. General Session
Court
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2007- GS-46-00681; 2007- GS-46-00687; 07- GS-46-00683
CC Murder A/Rob
(b) 07- GS-46-00684; 07- GS-46-00685; 07- GS-46-00686;
F/Prov Rape Poss. S.Y.
(c) and 07- GS-46-00687
Kidnap
- The date upon which sentence was imposed and the terms of the sentence:
(a) August 08, 2007
(b) " " "
(c) " " "

5. Check whether a finding of guilty was made
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. York County South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Filed January 21, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unpublished Opinion No. 2010-UP-008
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel; Ineffective Assistance
- (b) of Appellant Counsel; Due Process Violations to US Const. 5th,
- (c) 6th and 14th Amend; Involuntary Guilty Plea/ all other Amended Issues
to P.C.R

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See Attachments for stated facts: "memo"

(b) See Attachments for stated facts: "memo"

(c) See Attachments for stated facts: "memo"

And to include all matters being amended to P.C.R.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

yes

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Direct Appeal Motion South Carolina Appeals Court.

ii. _____

iii. _____

iv. _____

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Appeal Dismissed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. January 21, 2010
- ii. _____
- iii. _____
- iv. _____

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

- i. Unpublished Opinion NO. 2010-UP-005
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented: N/A

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

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

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

15. If any ground set forth in (9) 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) ALL grounds submitted; PCR remedy is correct. Paced.

(b) " " " " " " " "

(c) " " " " " " " "

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

(a) your arraignment and plea? ✓ yes

(b) your trial, if any? _____

(c) your sentencing? ✓ yes

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

yes

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Harry Nisk Esq York Co. Public Defender
- ii. Robert Duckle S.C. Comm. on indigent Defense Division of Appellate
- iii. _____

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

- i. Plea Hearing for Sentencing
- ii. Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

Plea withdrawn, sentence overturned remanded for lesser Included
and or dismissal of all charges.

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

NO

STATE OF SOUTH CAROLINA)

COUNTY OF York)

VERIFICATION

I, Dontavious Mack # 323550, 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.

Dontavious Mack
Dontavious Mack

Sworn to and subscribed before me

This 17 day of Nov, 2010

[Signature] L.S.

Notary Public for South Carolina

My Commission Expires 5/10/11

FILED - RECEIVED
 2010 MAR 22 PM 2:55
 CLERK OF COURT
 C.C.P. & CS
 YORK COUNTY, SC

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

I, Dontavious Mack # 323550, 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 or 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 proceeding or give security therefor.

Dontavious Mack
Dontavious Mack
 Applicant

Sworn to and subscribed before me

This 17 day of Nov, 2010

[Signature] L.S.

Notary Public for South Carolina

My Commission Expires: 5/10/11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	Case No.: 2010-CP-46-1192
	)	
Dontavious R. Mack, # 323350,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its return to the application for post-conviction relief filed March 22, 2010, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the February 2007 term of the York County Grand Jury for Criminal Conspiracy (2007-GS-46-0681), Murder (2007-GS-46-0682), Armed Robbery (2007-GS-46-0683), Possession of a Weapon During the Commission of a Violent Crime (2007-GS-46-0684), Possession of A Pistol by a Person Under the Age of 21 (2007-GS-46-0685), Possession of a Stolen Vehicle (2007-GS-46-0686), and Kidnapping (2007-GS-46-0687). Harry A. Dest, Esquire, and B.J. Barrowclough, Esquire, represented the Applicant. On August 8, 2007, Applicant pled guilty as indicted. The Honorable Lee S. Alford sentenced him to confinement for a period of five (5) years for Criminal Conspiracy, life without parole for Murder, thirty (30) years for Armed Robbery, five (5) years for Possession of a Weapon During the Commission of a Violent Crime, one (1) year for Possession of A Pistol by a Person Under the Age of 21, five (5) years for Possession of a Stolen Vehicle, and twenty (20) years for Kidnapping – sentences running concurrently.

The Applicant filed a timely Notice of Appeal with the South Carolina Court of Appeals on August 8, 2007, and a brief was filed on Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Mack, Op. No. 2010-UP-008 (S.C. Ct. App. filed January 21, 2010).

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel;
2. Ineffective Assistance of Appellate Counsel;
3. Violations of Due Process (5th, 6th, and 14th Amendments); and
4. Involuntary Guilty Plea.

Attached herewith and incorporated herein are the Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and the appellate court records including the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials or information.

III.

In his first claim, the Applicant alleges he received ineffective assistance of trial counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges he received ineffective assistance of appellate counsel. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985); Tisdale v. State, 594 S.E.2d 166, 167 (S.C.2004). In order to show ineffective assistance of appellate counsel, the Petitioner must show that appellate counsel's performance was (1) deficient; and (2) that he suffered prejudice from appellate counsel's deficiency. Tisdale, 594 S.E.2d at 167.

The Anders brief procedure requires the appellate court to review the record in its entirety.

Here, the South Carolina Court of Appeals dismissed Applicant's appeal after a full review of the record pursuant to Anders with a finding that there were no meritorious issues.

Respondent asserts that Petitioner cannot meet his burden of proving deficient performance or prejudice on the part of appellate counsel. However, deficient performance is not an issue this Court needs to reach, because even assuming that the court concludes that appellate counsel's performance was deficient, Petitioner has not shown, and cannot show, the necessary prejudice to succeed on this claim. In this case, to establish prejudice, Petitioner would have to show that the South Carolina Court of Appeals would have found prejudicial error warranting reversal of his conviction and/or sentence if appellate counsel had not filed an Anders brief, which he cannot do. The South Carolina Court of Appeals has held that under Anders, the court is obligated to conduct a "full examination" of the record to determine whether the appeal is "wholly frivolous." According to Anders, the reviewing court is obligated to make a full examination of the proceedings on its own to determine whether there are any meritorious issues for appeal. *Sæ State v. Williams*, 305 S.C. 116, 406 S.E.2d 357 (1991). After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. *Sæ Anders*. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant 'the assistance of counsel to argue the appeal.' *Id.* At 744. The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal. *State v. McKennedy*, 559 S.E.2d 850, 854-855 (S.C.2002).

Therefore, when the South Carolina Court of Appeals denied Applicant's appeal, to the extent that an underlying issue was properly preserved for appellate review, Petitioner's case received a full review by the Court of Appeals and the merits of the appeal were reached. *State v. Sullivan*, 282 S.E.2d

838 (S.C. 1981)(objection or motion must be raised to trial judge in order to preserve issue for appellate review). Therefore, Applicant cannot, as a matter of law, show any prejudice due to his appellate counsel filing an Anders brief or due to appellate counsel's failure to raise various issues Applicant himself contends to have had merit. The Court of Appeals already determined there were no meritorious issues to be raised and briefed on appeal, and granted appellate counsel's motion to be relieved on this ground. Therefore, this issue is without merit and should be summarily dismissed.

V.

The Applicant also claims that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "...specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be summarily dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

VI.

In his last allegation, Applicant claims his guilty plea was involuntary. In an action for post-conviction relief, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing

that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). An applicant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the applicant. Statements made during the plea should be considered conclusive unless the applicant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

VII.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of trial counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

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

VIII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JENNIFER A. KINZELER
Assistant Attorney General

By: 

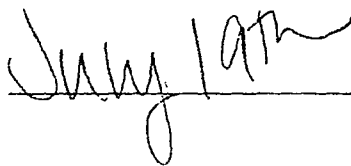
ATTORNEYS FOR RESPONDENT

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Telephone: (803) 734-3737

, 2010

1 STATE OF SOUTH CAROLINA

2 -----x

3 DONTAVIOUS MACK,

4 Applicant,

5 Case No.

6 -against-

2010-cp-46-1192

7 STATE OF SOUTH CAROLINA,

8 Respondent

9 -----x

10 October 10, 2013

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE EDGAR W. DICKSON

15

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

17 J. RUTELDGE JOHNSON, Esquire

18 Attorney for the Respondent

19

20 LEAH MOODY, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

1			<u>I N D E X</u>	
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	Dontavious Mack			
4	Ms. Moody	5		
5	Mr. Johnson		16	
6	Monica Townsend			
7	Ms. Moody	23		
8	Louise Addison	25		
9	B.J. Barrowclough			
10	Ms. Moody	28		
11	Harry Dest			
12	Mr. Johnson	36		
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
Petitioner's 1	Plea affidavit	30	

1 MR. JOHNSON: May it please the court, Your
2 Honor.

3 THE COURT: Yes, sir.

4 MR. JOHNSON: This is Dontavious Mack versus
5 State of South Carolina, case number
6 2010-CP-46-1192.

7 Mr. Mack was indicted the 2007 term of York
8 County Grand Jury for criminal conspiracy,
9 murder, armed robbery, possession of a weapon
10 during the commission of a violent crime and
11 possession of a pistol by a person under the age
12 of 21, possession of stolen vehicle and
13 kidnapping.

14 On August 8, 2007 he plead guilty as
15 indicted before the Honorable Lee S. Alford.
16 Before that there the was notice of to seek the
17 death penalty that was served. Judge Alford
18 pursuant to a straight up plea and concurrent
19 sentenced him to life without parole for murder,
20 thirty years for armed robbery, 20 years for
21 kidnapping, five years for criminal conspiracy,
22 five years for possession charge -- excuse me
23 possession of a weapon during the commission of
24 a violent crime and five years for possession of
25 stolen vehicle and one year for possession of

1 a pistol for a person under 21.

2 There was a notice of appeal and brief
3 pursuant to Honors v California submitted on his
4 behalf. South Carolina Court of Appeals affirmed
5 his conviction and sentenced him on January 21,
6 2010. A remitter was thereafter issued on
7 February 8, 2010.

8 Mr. Mack filed a timely PCR on March 26,
9 2008. The State made its return on August 5th
10 2010. He is represented here today by Leah
11 Moody.

12 THE COURT: All right, Miss Moody.

13 MS. MOODY: Thank you, Your Honor. May it
14 please the court.

15 THE COURT: Yes, ma'am.

16 MS. MOODY: At this time I would like to
17 call Mr. Mack to the stand.

18 THE COURT: All right.

19 DONTAVIOUS MACK, called as a witness, having
20 been duly sworn by The Clerk, was examined and
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MS. MOODY:

24 Q. Mr. Mack, would you please state your full name
25 for the record?

1 A. Dontavious Ricardo Mack.

2 Q. And you are here today on your PCR application,
3 correct?

4 A. Yes, ma'am.

5 Q. And where are you being currently detained?

6 A. Lee County.

7 Q. And you heard the charges that the Attorney
8 General stated, those are the correct charges?

9 A. Yes, ma'am.

10 Q. And can you please state for the Court what your
11 reasons for being here today?

12 A. Because I was -- involuntary took a guilty plea.

13 Q. Anything else?

14 A. My fifth and sixth amendment right and my
15 fourteen amendment.

16 Q. And ineffective assistance of counsel is one of
17 the grounds you alleged?

18 A. Yes. Yes, ma'am.

19 Q. And who was your counsel at the time that you
20 took this plea?

21 A. B. J. Barrowclough.

22 Q. Were there any other attorneys?

23 A. And Harry Dest.

24 Q. Okay. And when you initially took this plea
25 offer did you have -- well, before you took the plea

1 offer, did you have opportunity to meet with them on
2 your case?

3 A. Yes, ma'am.

4 Q. Do you recall how many times you met with them?

5 A. Probably about three, four times.

6 Q. And at each time that you met with them did you
7 have an opportunity to fully go through the evidence on
8 your case?

9 A. No, ma'am.

10 Q. What did you all discuss?

11 A. That the solicitor was seeking the death penalty
12 and that they came with a plea for a life sentence and
13 that if I wanted to take the life sentence or go to
14 trial and get the death penalty.

15 Q. Let me make sure I understand what you are
16 saying. You are saying your original offer was?

17 A. Life without parole.

18 Q. Life without parole from the solicitor's office?

19 A. Yes.

20 Q. And did you accept that offer?

21 A. No, ma'am.

22 Q. Did you get another offer?

23 A. Yes, ma'am.

24 Q. And what was that offer?

25 A. Open plea from thirty to life.

1 Q. An open plea from thirty years to life
2 imprisonment?

3 A. Yes, ma'am.

4 Q. Okay. And also that they would not seek the
5 death penalty?

6 A. Yes, ma'am.

7 Q. Okay. Now did you accept the offer at that time?

8 A. The only reason I accepted the offer --

9 Q. Did you accept it at that time?

10 A. Open plea?

11 Q. Yes.

12 A. Yes, ma'am.

13 Q. Okay. And why did you accept that offer?

14 A. I accepted it because they had brought my
15 brother. I didn't want my brother to testify against me
16 and then he told me I was going to get a thirty year
17 sentence because of my age and because I was shot in the
18 back I will get a thirty year sentence. That is the
19 only reason I took the plea.

20 Q. When you say "he" told you, who are you speaking
21 about?

22 A. B.J. Barrowclough.

23 Q. So B. J. Barrowclough told you that you would
24 only get thirty years?

25 A. He said I would receive a thirty-year sentence.

1 He said I have 99% chance that would get receive 30
2 sentence and that is what I was looking forward too that
3 is why I took the plea.

4 Q. So you did discuss the potential that the judge
5 could sentence you to life in prison?

6 A. Yes, ma'am.

7 Q. You did or didn't?

8 A. I did.

9 Q. You did. And after your discussion you still
10 went forward with the plea?

11 A. Yes, ma'am.

12 Q. And why did you still go forward?

13 A. Because I was under the impression I was going to
14 receive a thirty-year sentence.

15 Q. Okay, so when you discussed it -- I want to be
16 clear about this. When you discussed it with your
17 attorney, you were certain that you were going to get a
18 thirty-year plea?

19 A. Yes, ma'am.

20 Q. Did you have a negotiated sentence?

21 A. No, ma'am.

22 Q. Did you go in there with a recommendation from
23 the State?

24 A. No, ma'am.

25 Q. So you went straight up in front of the judge for

1 thirty years to life, knowing that the State was not
2 going to seek the death penalty?

3 A. Yes, ma'am.

4 Q. Now, did you -- what if anything did you go over
5 with your attorneys regarding your rights?

6 A. He said the things I went over like --

7 Q. Did you discuss your constitutional rights?

8 A. Yes. The constitutional rights as in?

9 Q. Okay. When did you go in any paperwork with your
10 attorneys?

11 A. Paperwork, no, ma'am.

12 Q. Do you recall submitting a plea affidavit to the
13 Court?

14 A. Yes, ma'am.

15 Q. Did you go over that with your attorney?

16 A. Yeah, he filled it out for me.

17 Q. But did you go through that plea affidavit?

18 A. Yes, ma'am.

19 Q. Did you understand that plea affidavit?

20 A. Not fully understand it.

21 Q. And why do you say you didn't fully understand
22 it?

23 A. Because I didn't no nothing about the law then.
24 I still don't really know nothing about it. I just know
25 that he asked me questions and telling me to answer the

1 question truthfully. I answered the questions
2 truthfully and that's all.

3 Q. Okay. So, was anybody else present when you went
4 over this plea affidavit?

5 A. My mother and my grandmother.

6 Q. Okay. And did your mother and grandmother ask
7 any questions on your behalf?

8 A. He also told them when they was in there that I
9 was going to receive a thirty-year sentence.

10 Q. Okay. Did he explain that it was open plea
11 thirty to life?

12 A. Yes, ma'am.

13 Q. So you went forward after that before the judge?

14 A. Yes, ma'am.

15 Q. And when you went forward did you understand the
16 questions that the judge asked you regarding your plea
17 of guilt?

18 A. Did I understand it?

19 Q. Yes.

20 Q. I understand them, but I wasn't really -- my mind
21 was somewhere else then?

22 Q. What do you mean your mind was somewhere else?

23 A. Cause I was -- I was my mind was somewhere else
24 cause after all this stuff that was going on. The life
25 sentence, the death penalty and all that. The only

1 thing was just worrying about is getting everything over
2 with.

3 Q. And getting everything over with what --

4 A. As in signing that plea for thirty-year sentence
5 and go ahead and get my time over with.

6 Q. Okay. So you went through the plea with Judge
7 Alford?

8 A. Yes, ma'am.

9 Q. And at the end of the plea he sentenced you to
10 life?

11 A. Yes, ma'am.

12 Q. In prison?

13 A. Yes, ma'am.

14 Q. And that was for the murder charge?

15 A. Yes, ma'am.

16 Q. Did you receive any other sentences?

17 A. Yeah, they were run concurrent.

18 Q. All the other charges?

19 A. I received a thirty-year sentence, twenty-year
20 sentence, a couple of five-year sentence and a one-year
21 sentence. That was all run concurrent.

22 Q. With?

23 A. The life sentence.

24 Q. And so you are here today -- why are you here
25 before the Court on these PCR application?

1 A. Because if I knew I wasn't going to receive the
2 thirty-year sentence I wouldn't have took a trial. Took
3 my chances to trial.

4 I was involuntary. I sign an involuntary guilty
5 plea. I was basically cohorsed (sic) like to take the
6 plea. I was always thinking if I didn't take a plea
7 they were going to seek the death penalty. If I didn't
8 do this what they going to do. So therefore when he
9 told me I would get the thirty years I went in and
10 signed the plea so I could get the thirty-year sentence.

11 Q. So, you feel that during the process in trying to
12 decide whether to go forward on a trial or a plea that
13 you were coerced by your attorney?

14 A. Yes, ma'am.

15 Q. And are you saying that you relied on the fact
16 that he said you would get thirty years?

17 A. Yes, ma'am.

18 Q. And you recall going through all questions with
19 the Court where they asked you whether you were
20 threatened or coerced?

21 A. Yes, ma'am.

22 Q. And do you recall saying no?

23 A. Yes, ma'am.

24 Q. Why did you tell the Court no?

25 A. Because I was under -- like I said I was under

1 the impression I was going to receive the thirty years.

2 Q. So you are saying it didn't matter, you just
3 wanted the thirty years?

4 A. Yes, ma'am.

5 Q. So what are you asking the Court to do here
6 today?

7 A. That they reverse my sentence. Give me the
8 thirty years that I was told I was going to receive.

9 Q. Well, do you understand the Court here today
10 can't give you thirty years?

11 A. Yes, ma'am.

12 Q. So you are the asking the Court to --

13 A. Grant me a retry. Grant me a reversal of my
14 sentence so I could grant me a retry.

15 Q. Well, you want the Court to give you an
16 opportunity to have a new trial?

17 A. Yes, ma'am.

18 Q. And you want him to vacate your sentence that you
19 received?

20 A. Yes, ma'am.

21 Q. Okay. And why do you want to go to trial? Do
22 you recognize that you still will be facing possibly the
23 death penalty, life without parole or the thirty years?

24 A. Yes, ma'am. It is a lose/lose situation. Either
25 if they seek the death penalty or still give me life,

1 but I know I ain't pleading to something. I ain't going
2 to go in to jump into something like the thirty years I
3 was suppose to have got. I wasn't going to sign the
4 plea if I wouldn't have got the thirty years. So
5 therefore I would have rather took my chances going to
6 trial and coming out like that, whether I receive a life
7 sentence or not.

8 MS. MOODY: No further questions for this
9 witness, Your Honor. Please answer any
10 questions.

11 THE COURT: Anything on cross examination?

12 MR. JOHNSON: Yes, Your Honor.

13 THE COURT: All right, Mr. Johnson.

14 MR. JOHNSON: May it please the Court.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. JOHNSON:

18 Q. Mr. Mack, you testified that during your guilty
19 plea you didn't understand what was going on because
20 your mind was somewhere else?

21 A. Yes.

22 Q. You were facing up to life in prison and your
23 mind was somewhere else?

24 A. Yeah. Yes, sir.

25 Q. Okay. You talk about your attorney promised you

1 thirty years. Are you aware that during the plea your
2 attorney argued in mitigation that you receive a
3 thirty-year sentence?

4 A. Yes.

5 Q. But actually the judge told you that you would
6 receive thirty to life; isn't that right and you said
7 you understood that?

8 A. Yes.

9 Q. You also said you understood the armed robbery
10 charge?

11 A. Yes.

12 Q. Understood the kidnapping?

13 A. Yes.

14 Q. Understood the criminal conspiracy?

15 A. Yes, sir

16 Q. Understood the weapons charge?

17 A. Yes, sir.

18 Q. Possession of a pistol charge?

19 A. Yes, sir.

20 Q. And possession of stolen vehicle?

21 A. Yes, sir.

22 Q. And you also understood all these offenses and
23 you wanted to plead guilty?

24 A. Yes, sir.

25 Q. You gave up your right to remain silent?

1 A. Yes, sir.

2 Q. As a matter of fact you gave a pretty damaging
3 confession to police didn't you?

4 A. To the police?

5 Q. Yes, sir. As a matter of fact you said I don't
6 know why I would started shooting at the man, but he
7 shot me going out the door and I felt it in my back and
8 that you were wearing one of the masks in the store that
9 was caught on video camera. I that what you gave the
10 statement to police?

11 A. I don't recall that.

12 Q. Wasn't that presented at your guilty plea?

13 A. I remember writing a statement. Giving my
14 testimony about what happened. My statement about what
15 happened, but I don't remember recall that right there.

16 Q. Do you remember the solicitor reciting the facts
17 in this case at your guilty plea?

18 A. Somewhat.

19 Q. If I showed you would that refresh your memory?

20 A. Yes.

21 MR. JOHNSON: May I approach?

22 THE COURT: Yes, sir.

23 Q. Page 20. This is the transcript of your guilty
24 plea.

25 A. What are you talking about?

1 Q. It says --

2 MS. MOODY: What line?

3 MR. JOHNSON: I am looking at line 14.

4 "I don't know why I starting shooting at the
5 man". It starts right there.

6 Q. So you would agree with me that was in your
7 guilty plea?

8 A. But that wasn't in the statement I gave, was it?

9 Q. The solicitor read the facts and he said that was
10 the statement you gave the police. That was presented
11 at your guilty plea.

12 A. The statement --

13 MS. MOODY: Your Honor, we would stipulate
14 that the transcript is what the transcript is?

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

16 Q. At this guilty plea, you gave up all of these
17 constitution rights. The judge asked if you still
18 wanted to plead guilty and you said yes. Isn't that
19 correct?

20 A. Yes, sir. I told him I wanted to guilty. I went
21 on with the guilty plea because I was under the
22 impression I was receiving thirty years.

23 Q. But he told you that the penalty for murder is
24 thirty to life and you agreed with that and you said you
25 still wish to plead guilty?

1 A. Yes, because I was under the impression I would
2 receive thirty years.

3 Q. That is not what the judge told you. That is not
4 what you agreed too?

5 MS. MOODY: Objection, Your Honor. I think
6 he answered.

7 THE COURT: He already answered it. You
8 can move on Mr. Johnson.

9 Q. You also told the judge there were no promisees
10 or threats made to you to get you to plead guilty; isn't
11 that correct?

12 A. Yes.

13 Q. You said were you satisfied with your attorney;
14 isn't that right?

15 A. Yes, sir.

16 Q. That you fully discussed the charges with your
17 attorney?

18 A. Yes, sir.

19 Q. That your attorney -- you told the attorney the
20 witnesses that you wanted to call on your behalf at
21 trial. Isn't that right?

22 A. Say that again.

23 Q. That you told your attorney of the witnesses that
24 you would want called on your behalf at trial?

25 A. Yes, sir.

1 Q. And he also told you of the witnesses and the
2 evidence the State would present at trial?

3 A. Yes, sir.

4 Q. And you also discussed your legal defenses?

5 A. Discussed my legal defenses as in?

6 Q. You told the judge that you and your attorney had
7 discussed any legal defenses you had?

8 A. Yes, sir.

9 Q. You had no drugs or alcohol in your system at the
10 guilty plea?

11 A. No, sir.

12 Q. Had no mental illness did you?

13 A. No, sir.

14 Q. And you were pleading on your own free will?

15 A. On my own free will?

16 Q. That's what you told the judge isn't it, you were
17 pleading because in fact you were guilty?

18 A. Yes, sir. I ain't disputing that. Like I said I
19 pleading guilty. The only reason I plead guilty to
20 avoid the death penalty, my brother testifying on me and
21 me receiving a thirty-year sentence.

22 Q. I am sorry, I didn't mean to interrupt you.

23 A. If I knew I wasn't going to receive a thirty-year
24 sentence I wouldn't have plead guilty.

25 Q. So you are not contesting whether or not you

1 committed this crime. You are just contesting the
2 thirty years or the life sentence you received?

3 A. Yes.

4 Q. As a matter of fact you actually took
5 responsibility for your actions, didn't you?

6 A. Yes.

7 Q. And you said first and foremost want to apologize
8 to the family and friends of Mr. Marshal?

9 MS. MOODY: Objection, Your Honor.

10 MR. JOHNSON: I am reading from the
11 transcript, Your Honor, which is in the record.

12 THE COURT: If you want to just point it out
13 to me that would be fine.

14 MR. JOHNSON: Page 51 and 52.

15 THE COURT: Thank you, sir.

16 Q. The point I wanted to make is your are pleading
17 guilty because you are guilty?

18 A. Yes, sir.

19 MR. JOHNSON: No further questions, Your
20 Honor.

21 THE COURT: All right. Anything on
22 redirect.

23 REDIRECT EXAMINATION

24 BY MS. MOODY:

25 Q. Mr. Mack, you are not disputing that you were

1 guilty. You are saying that -- to the Court, that you
2 want an opportunity to have a trial?

3 A. Yes, ma'am.

4 Q. And is that because you think there maybe some
5 issues that you don't know about because you are not a
6 lawyer?

7 A. Yes, ma'am.

8 Q. And because you were thinking that you were going
9 to get the thirty years that was the lowest that you
10 were going to get?

11 A. Yes, ma'am.

12 Q. And in fact you were told you were going to get
13 the thirty years?

14 A. Yes, ma'am.

15 Q. But you didn't receive the thirty?

16 A. No, ma'am.

17 MS. MOODY: No further questions, Your
18 Honor.

19 THE COURT: Anything on recross?

20 MR. JOHNSON: No, Your Honor.

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

23 MS. MOODY: Your Honor, at this time we
24 would call Monica Townsend.

25 MONICA TOWNSEND, called as a witness, having

1 been duly sworn by The Clerk, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MS. MOODY:

5 Q. Miss Townsend, could you please state your full
6 name?

7 A. Monica Regina Mack Townsend.

8 Q. And how are you related to Mr. Mack?

9 A. That is my son.

10 Q. And you are aware why we are here today?

11 A. Yes, ma'am.

12 Q. Were you present at the time Mr. Mack decided to
13 accept the plea offer?

14 A. Yes, ma'am.

15 Q. Or the plea to enter a guilty plea?

16 A. Yes, ma'am.

17 Q. And what was your understanding of his plea, him
18 entering a guilty plea?

19 A. My understanding was that he would was going to
20 get a thirty-year sentence.

21 Q. Well, were you present when his attorney Mr. B.J.
22 Barrowclough told him he would get thirty years?

23 A. Yes.

24 Q. Did you assist in getting him to plead?

25 A. Yes. That's why we got him to plea so he could

1 get thirty years.

2 Q. Well, what happened? What happened in that
3 meeting?

4 A. He ended up getting life without parole.

5 Q. Right. I mean when you went in to talk with your
6 son and he was making the decision to plead what, if
7 anything, was said in that meeting?

8 A. I told him -- we told him that Mr. Barrowclough
9 said that to try to get him to go in a plea and that he
10 was going to get thirty year sentence and that they was
11 trying to get the death penalty, but they wasn't. That
12 he was going to try and get him thirty-year sentence.

13 Q. He was going to try or he was going to get
14 thirty?

15 A. He was going to make sure that he got thirty-year
16 sentence.

17 Q. And is that what Mr. Barrowclough said?

18 A. Yes.

19 Q. Was there any other discussions? Did you meet
20 with your son again to get him to enter his guilty plea?

21 A. No, ma'am.

22 MS. MOODY: No further questions for this
23 witness.

24 THE COURT: Anything on cross?

25

1 MR. JOHNSON: No, Your Honor.

2 THE COURT: You may step down.

3 Thank you ma'am. All right.

4 MS. MOODY: At this time we would call
5 Louise Addison.

6 LOUISE JOHNSON ADDISON, called as a witness,
7 having been duly sworn by the clerk, was examined
8 and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MOODY:

11 Q. Miss Addison, could you please state your full
12 name for the record?

13 A. Louise Johnson Addison.

14 Q. And how are you related to Mr. Mark?

15 A. I am his grandmother.

16 Q. Were you -- what if any meetings did you have
17 with your grandson?

18 A. We discussed about the amount of time he could
19 get and that he would try to get the thirty years for
20 him and plus have a change venue.

21 Q. Now, have you talked to me before coming here
22 today?

23 A. No.

24 Q. So, you mentioned change of venue. You could you
25 please tell me what you mean by change of venue?

1 A. Because after it happened --

2 MR. JOHNSON: Your Honor, that is not
3 mentioned in the application. I would ask that
4 be dismissed.

5 THE COURT: I will sustain that objection.
6 That is not --

7 MS. MOODY: I am not saying --

8 THE COURT: I know. We don't need to get
9 into it.

10 MS. MOODY: Okay.

11 Q. Well, Miss Addison, could you please state what
12 you heard Mr. Barrowclough tell your grandson?

13 A. Like I said, he said he would try to get the
14 thirty years and then when we come before Court they
15 would try and get a change of venue and have a different
16 judge do the trial of the case.

17 Q. When he finally decided -- when Mr. Mack finally
18 decided to plead guilty do you know what caused him to
19 plead guilty?

20 A. His lawyer called and said --

21 MR. JOHNSON: Objection, Your Honor. That
22 is speculation as to why Mr. Mack plead
23 guilty.

24 THE COURT: I understand that. I will let
25 her answer the question.

1 MR. JOHNSON: Thank you.

2 MS. MOODY: Thank you.

3 Q. Did you have opportunity to talk to your grandson
4 before he plead?

5 A. Yes ma'am. He said he was asking me what I
6 thought he should do and then, I said well, after you
7 talked to the lawyer and he told us what, you know, to
8 expect I said, well, go ahead and plead guilty because
9 he thought he was getting thirty years.

10 Q. And how long after that conversation did your
11 grandson enter his plea of guilty?

12 A. He called and he decided that he would go ahead
13 and take the guilty plea because he thought he was going
14 to get the thirty years too.

15 MS. MOODY: No further questions for this
16 witness.

17 THE COURT: Anything on cross?

18 MR. JOHNSON: None Your Honor.

19 THE COURT: You may step down. Thank you
20 ma'am.

21 THE COURT: All right. Miss Moody your next
22 witness.

23 MS. MOODY: Beg the Court's indulgence.

24 THE COURT: Yes.

25 MS. MOODY: Your Honor, at this time we call

1 Mr. B. J. Barrowclough.

2 B.J. Barrowclough, called as a witness,
3 having been duly sworn by the Clerk, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. MOODY

7 Q. Mr. Barrowclough, could you please state your
8 full name for the record?

9 A. Bryson John Barrowclough.

10 Q. And you are aware why we are here today?

11 A. Yes.

12 Q. And you represented Mr. Dontavious Mack in his
13 murder case?

14 A. Yes.

15 Q. And when you became his attorney did you have an
16 opportunity to speak with him about what he was facing?

17 A. Yes.

18 Q. And what if anything did you all discuss?

19 A. We discussed, initially there was talk about this
20 being a death penalty case and we discussed the
21 ramifications of that. When I say we I also mean he, I
22 and Mr. Dest. But we talked about that and we talked
23 about, you know, the evidence and the possible ways it
24 could go. What we were going to try to do and we had
25 ongoing negotiations with the solicitor's office with

1 Mr. Thomspon and ultimately it did come down to for a
2 guilty plea they would not seek the death penalty and it
3 was what he called an open plea. What I would call a
4 straight-up plea to murder and the other charges. And
5 then there was as he referenced also the angle of his
6 brother was charged as a co-defendant in this and the
7 amount of consideration his brother would get. His
8 brother was in a position of having to testify against
9 Dontavious. He would get consideration if Dontavious
10 plead and also further consideration of Dontavbious if
11 he turned evidence against the other co-defendant, Mr.
12 Addison, although the solicitor's office would not
13 allocate that consideration towards Mr. Dontavious Mack
14 they would towards his brother's sentence which is
15 something he was also interested in and pursuing.

16 Q. And so, based on all of which you just said, you
17 all began to talk about him entering his plea for thirty
18 years to life?

19 A. Correct.

20 Q. Now, you all went offer a plea affidavit?

21 A. Yes.

22 Q. How did that plea affidavit get discussed, do you
23 recall?

24 A. Well, over the timeframe of many months of
25 discussing this case and trial versus plea and the

1 evidence and all that we had obviously been going over
2 his rights, but in many cases, particularly homicide
3 cases where we are talking about, you know, potential
4 for large sentences, we like to do an additional plea
5 affidavit to go over everything again in a sort of very
6 explicit fashion. And so I don't have -- I read the
7 transcript where the plea affidavit is referenced. I
8 made it part of the record. I don't have it. I haven't
9 seen it, but I am sure that some time close proximity to
10 Mr. Mack appearing before the judge that we did go over
11 all the rights as delineated in the plea affidavit.

12 Q. I have it and I will let you see it.

13 MS. MOODY: I will have it marked.

14 (Petitioner's Exhibit i, plea affidavit,
15 marked for identification as of this date.)

16 Q. I hand you what has been marked petitioner's
17 exhibit number 1. Is that the plea affidavit you are
18 speaking of?

19 A. Yes, that is correct. This is it.

20 Q. Who completed that plea affidavit?

21 A. I did.

22 Q. And can you describe how you went through and
23 completed the affidavit?

24 A. Yes. I read him the questions that are contained
25 in the affidavit and marked the appropriate answer for

1 whatever he had responded. If he would have had any
2 questions along the way I would have stopped and
3 answered those questions.

4 Once it was all finished I would have turned it
5 over to him to read and check over and to make any
6 changes that he wanted to make if any. I am just
7 glancing through. I don't see any changes that were
8 made. And then I would have turned it over for him to
9 sign and then on the last page there is a certificate of
10 counsel where I would have signed it to indicated that
11 all this was true and accurate information and I did and
12 also Harry Dest also was present and he signed it as
13 well.

14 Q. At any point during discussions where you talk
15 about an open plea did you ever indicate to Mr. Mack
16 that he would receive thirty years?

17 A. No. I will tell you this right now based on what
18 I have heard. To say that I promised him thirty years
19 is absolutely not true. To say that I gave him a 99%
20 chance of getting thirty years is absolutely not true.
21 I did not do that. I would not do that. Listening to
22 what was testified to I am sure both Mr. Dest and I said
23 we are going to try our best to get you thirty years. I
24 am sure multiple times we went over with Mr. Mack and
25 his family, you know, the type of information we plan to

1 present to the judge to pursue thirty years.

2 I think if you read the transcript you will see
3 that we did the absolute best job we could to try to get
4 him thirty years. I wish he got thirty years, but I
5 mean, I would never in a big case. I have such a
6 healthy respect/fear of judges of what they are going to
7 do in serious cases I would never promise anybody or
8 even give them a 99% chance of getting the minimum
9 sentence.

10 Q. And at any point did you think that -- well, I
11 understand what you are saying. You are saying that you
12 would never promise that, but in this instance do you
13 think that he fully understood going up on what you
14 described as an open plea or a straight-up plea, what
15 the risk was without having any kind of recommendation
16 or negotiation other than the death penalty with the
17 State, that he understood that it was free range?

18 A. Yes, I think he understood that. Yes.

19 Q. And how -- what indication from him do you recall
20 him giving you?

21 A. Well, because we explained it in that fashion a
22 lot of times. We explained it. I mean it says it in
23 this form. We went over it multiple times and I am not
24 a psychologist, but I think what happened is, that being
25 disappointed with the results and sitting in jail for

1 the past five years in his mind he has twisted around
2 Mr.. Dest and I saying we hope you get thirty. We are
3 going to do our best for you to get thirty into some
4 sort of promise of thirty which absolutely did not
5 happen.

6 Q. Well, when you met Mr. Mack, how would you
7 describe his -- what would you say in terms of maturity
8 and his level of education, where he was in
9 understanding just the information that you presented to
10 him?

11 A. I think that in the transcript it talks about his
12 IQ. I don't know, but I think it was in 90's. I think
13 he was reasonably intelligent. I think he was
14 emotionally somewhat immature, and you know, I would
15 say, to me presented of somewhat average intelligence.
16 A nice soft spoken young man. I mean certainly, you
17 know, I did not feel there was any sort of communication
18 problems between he and I, between he and Mr. Dest. He
19 was always respectful. Asked intelligent questions. We
20 went over it.

21 To my recollection the biggest I would say issue
22 of law that he had trouble grasping was why this was not
23 self defense being that he was shot and in fact shot.
24 And we did explain to him multiple times how you can't
25 be a fault for bringing on the difficulty. Going in to

1 rob a convenience store is bringing on the difficulty. I
2 remember us having multiple conversation on that point,
3 but other than that he did not strike me in any way as
4 being sort of slow, or we didn't argue to where I felt
5 he wasn't listening to us. He always struck me as
6 reasonably intelligent.

7 Q. And so at the time that he entered the plea,
8 again you are saying that you didn't promise it to him
9 that he would get thirty years, but he understood based
10 on your conversations that it was open plea?

11 A. Right.

12 Q. Now, was there no opportunity for you to get any
13 other kind of recommendation or negotiation from the
14 State other than them taking the death penalty off the
15 table?

16 A. Well, we negotiated back and forth for a long
17 time. Many months. And you know, the open plea or the
18 straight up plea was pretty much the best we could get.

19 Q. What were the -- do you recall any of the offers
20 that you had prior to the open plea?

21 A. I do seem to recall that in between the talk of
22 serving the death penalty there was talk would he just
23 plead for life. When he testified to that, I do think
24 that is accurate. And then Mr. Dest and I told the
25 solicitor no and that's how we got to this position.

1 But then also like I said there was the other angle that
2 wasn't necessarily our responsibility, but it was
3 something he was concerned about and meeting with their
4 family they were concerned about the angle of trying to
5 position his case to try and get consideration for his
6 brother as well.

7 Q. And what did the other co-defendants receive?

8 A. I don't remember.

9 Q. Did any one receive-- no one else received life?

10 MR. JOHNSON: Objection, Your Honor. The
11 relevance of what the other co-defendants
12 received.

13 THE COURT: He already testified he doesn't
14 remember.

15 MS. MOODY: Okay.

16 THE COURT: Move on Miss Moody.

17 Q. In terms of you don't recall what everybody
18 specifically received, do you think what his open plea
19 was, that it was reasonable for him to enter a plea to
20 an open plea?

21 A. I think that given the circumstances, given his
22 confession, given the video, given the threat of a death
23 penalty, that yes, I do think it was reasonable for him
24 to enter a plea on an open plea to murder. Yes.

25 Q. And had they -- they identified him as being the

1 person in the store prior to him giving a statement?

2 A. That I don't recall.

3 MS. MOODY: No further questions of this
4 witness.

5 THE COURT: Anything on cross examination.

6 MR. JOHNSON: No, Your Honor.

7 THE COURT: All right. Thank you sir.

8 THE WITNESS: Thank you, Judge.

9 THE COURT: Your next witness.

10 MS. MOODY: No further witnesses, Your
11 Honor.

12 THE COURT: All right. Does the State have
13 any witnesses?

14 MR. JOHNSON: Call Mr. Harry Dest to the
15 stand, please.

16 THE COURT: Okay.

17 HARRY DEST, called as a witness, having
18 been duly sworn by the Clerk, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. JOHNSON:

22 Q. Goods morning Mr. Dest?

23 A. Good morning.

24 Q. Please introduce yourself to the Court.

25 A. My name is Harry Dest. I am the 16th Circuit

1 Public Defender.

2 Q. And do you remember becoming involved in this
3 case?

4 A. Yes, sir.

5 Q. And just some brief questions about plea
6 negotiations.

7 Did you ever offer Mr. Mack that he would get
8 thirty years? Did you ever confirm that he would get
9 thirty years in negotiations?

10 A. No, sir. Let me try to lay a little bit of a
11 backdrop to this. Mr. Barrowclough and I represented
12 Mr. Mack from the inception of this case and it was
13 clear to us once we reviewed the Discovery that we were
14 in a very, very serious situation.

15 In our preliminary discussions with Solicitor
16 Brackett and Deputy Solicitor Thompson there certainly
17 was from our perceptive a very strong possibility that
18 the death penalty could have been sought in this case.
19 In fact we had discussions about that. And I think that
20 at one time the State clearly was contemplating moving
21 forward in a death penalty fashion.

22 But what we had was an 19-year old kid, who
23 obviously was in a very difficult situation. Where
24 based upon the facts of the case, the fact that he gave
25 an incriminating statement, the fact that there was a

1 video, the fact that the forensic evidence would have
2 suggested that, you know, it would have been an open and
3 shut case for the State and based upon the fact that his
4 brother gave a statement implicating him and other
5 individuals as well, shortly after the incident, in
6 terms of our client making statements about what
7 happened, we did not want to be in a position to go to
8 trial where there is the very real possibility that a
9 death penalty case -- in a death penalty case. I mean
10 the aggravating factors were clear, obviously armed
11 robbery, kidnapping. Those would have been the
12 aggravating factors the case could have sought and in my
13 opinion it would have been virtually impossible to win.
14 But my primary concern was trying to salvage this young
15 man's life.

16 The solicitor indicated at one point in time
17 again they were contemplating the death penalty. They
18 came off the death penalty, but then insisted that he
19 plead to a life sentence. And so, in his rendition of
20 the facts that is true as Mr. Barrowclough indicated,
21 there was a point in time where they wanted him to plead
22 to life. That is extremely difficult in any situation.
23 To try to convince a 19-year old, even though he was
24 guilty of the crime, that he has to walk in there and
25 accept a life sentence. We had several discussions

1 regarding that. Dontavious was unwilling to do that and
2 quick frankly, I sort of concurred in that because I
3 really was concerned about trying to salvage his life.
4 So we basically staked out a position where we went back
5 to the solicitor, met with Solicitor Brackett and Deputy
6 Solicitor Thompson and said we simply can not plead a
7 19-year old kid to life in prison. We can't go in there
8 with that. After that discussion there was other
9 discussions and they finally revised their offer to
10 essentially a straight up plea to all the charges.

11 Based upon that we again started talking to
12 Dontavious about what we thought was reasonable. And we
13 told him that now that there is no longer a certainty of
14 a life without parole sentence that we needed to focus
15 our efforts on trying to convince a judge that a
16 thirty-year sentence is more appropriate. And as you
17 know, a thirty-year sentence in South Carolina is thirty
18 years day for day. So what we did was we went back and
19 looked at his school records, and we had Doctor Herald
20 Morgan a forensic psychiatrist interview him and review
21 his school records and do some preliminary interviews to
22 try to figure out what is this 19-year old kid really
23 like. What are his strengths. What are his weaknesses.
24 And what we learned was his strengths were that he was
25 pretty smart. I mean, he did well in school, in

1 elementary school. He did well at certain points in
2 middle school and high school and Doctor Morgan felt
3 that he had the intellectual capacity to be basically
4 salvageable. That he could basically be rehabilitated
5 so that down the road, thirty years down the road, he
6 had the intellectual and mental capacity to be somebody
7 very different then he is now.

8 The deficiencies that he had were tragically he
9 didn't have much of a father figure in his life. He
10 suffered from severe low self esteem and that Doctor
11 Morgan would characterize him as somewhat more of a
12 follower than a leader.

13 We tried to incorporate those points into our
14 mitigation along with the basic facts in terms of how
15 this really was a robbery that went awry. And what I
16 mean by that is, that I don't believe that it was
17 Dontavious's intention to go in there and harm anyone
18 initially and that when Mr. Marshall reacted the way he
19 did, he shot back and as he told you that there was
20 evidence that he was running out the door. But what he
21 didn't tell you which was what I was more concerned
22 about was, that from what I could gather and what was
23 presented at the plea, there were actually shots fired
24 by Dontavious before the fatal shot because there were
25 three shell casings that were found behind the register

1 or near the register which would indicate as I believe
2 Solicitor Brackett mentioned in his rendition of the
3 facts that maybe our client shot him in the finger as
4 Mr. Marshall is reaching for the gun. I think that is
5 sort of a reasonable explanation of what happened. He
6 panicked and then as Mr. Marshall fell he ran out the
7 door. And if you looked at the video Mr. Marshall is
8 attempting to shoot at him and he did shoot it is almost
9 simultaneous he turns like this (indicating) and shoots
10 him which was the fatal shot. It was tragic and there
11 is no other way to describe it. It was tragic and sad
12 because it destroyed Mr. Marshall's life and his family
13 certainly had a lot to deal with, and of course the Mack
14 family had to deal with basically the loss of their
15 son's life for all principal purposes.

16 Our main objective -- I know this is a rather
17 lengthy explanation -- our main main objective was to
18 try and convince the judge that a thirty year sentence
19 is appropriate. I argued for that. Mr. Barrowclough
20 argued for that. I met with the family. It was about a
21 month before the plea. I drove down to Hartsville and
22 presented a power point to them on all these fine points
23 of what I thought were relevant and needed to be
24 discussed and I told them that if we go trial we will
25 lose. And if we go trial and we lose then the choice is

1 either life or death. And I wanted the choice to be
2 either thirty years or life.

3 So, that is really the backdrop to all this and
4 that's what happened. B. J. And I went to him and we
5 did talk to him and we told him this was probably the
6 best that we could do under the circumstances was try to
7 convince the judge for a thirty-year sentence. We never
8 promised him a thirty-year sentence. I would never do
9 that. I know Mr. Barrowclough would never do that. But
10 that's what happened.

11 MR. JOHNSON: No further questions, Your
12 Honor.

13 THE COURT: Anything on cross examination?

14 MS. MOODY: No questions, Your Honor.

15 THE COURT: All right. You may step down.
16 Thank you.

17 THE WITNES: Thank you, Your Honor.

18 MR. JOHNSON: The State has no further
19 witnesses, Your Honor.

20 THE COURT: All right. All right Ms.
21 Moody, Mr. Johnson what I am going to do is I
22 will go back. I will read the transcript and I
23 will get back with you all with my decision.

24 MR. JOHNSON: Thank you.

25 MS. MOODY: Thank you, Your Honor.

(END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 10th day of October, 2012.

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

July 15, 2013



STATE OF SOUTH CAROLINA

COUNTY OF YORK

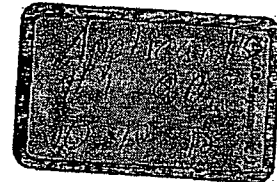
State of South Carolina

- vs -

Dontarius Mack

Defendant

IN THE COURT OF GENERAL SESSIONS

AFFIDAVIT OF DEFENDANT FOR
GUILTY PLEA

The Defendant states to the Court that the Defendant wants to plead guilty to the following charge(s): Murder, Possession of a Firearm During the Commission of a Violent Crime, Possession Pistol Under 21, Armed Robbery, Criminal Conspiracy, Kidnapping, Possession of a Stolen Vehicle

In connection with the plea, I certify that the answers to the following questions are true:

BACKGROUND OF DEFENDANT

- 1) How old are you? 20
- 2) How far did you go in school? 11th grade
- 3) (a) Can you read and write the English language?
☒ yes ☐ no
 (b) Are you able to read and understand this form?
☒ yes ☐ no
 (c) If not, who is explaining it to you and filling out your answers?
 Name of person: _____
- 4) What kind of work do you do? fast food and school student
- 5) Have you ever been treated for abuse of alcohol or drugs or for mental illness?
☐ yes ☒ no
 If so, when? _____
 For how long? _____
 Did you successfully complete the program? ☐ yes ☐ no
- 6) Have you taken any medication, drugs, or alcohol in the last 24 hours?
☐ yes ☒ no
 If yes, what? _____
 How much? _____

6) When? _____

Does this affect your ability to know and understand what you are doing here today? ☐ yes ☐ no

7) Are you today under the influence of any medication, drugs, or alcohol?
☐ yes ☒ no

8) Are you today aware of any physical, emotional, or nervous problem that might keep you from understanding what you are doing?
☐ yes ☒ no

If yes, explain: _____

9) Have you ever been ordered by a Judge to submit to a mental evaluation to determine your competency to stand trial?
☐ yes ☒ no

WAIVER OF CONSTITUTIONAL RIGHTS

1) Do you understand that you have the right to remain silent, that is, your right against self-incrimination? You cannot be compelled to testify or give evidence against yourself. Do you understand this right?
☒ yes ☐ no

Do you wish to give up this right and plead guilty?
☒ yes ☐ no

2) Do you understand that you have a right to a jury trial, you have a right to have a jury decide whether or not you are guilty beyond a reasonable doubt. They would base their decision upon evidence which the state presents and on any evidence you might wish to introduce. In a trial, you would be presumed to be innocent, and the state would have to produce evidence that would convince all 12 members of the jury that you were guilty beyond a reasonable doubt. Do you understand this right?
☒ yes ☐ no

Do you wish to give up your right to a jury trial and plead guilty?
☒ yes ☐ no

3) Do you understand that you have the right to confront and be confronted by the witnesses against you, that is, the right to see, hear, and cross-examine any witnesses that may be called against you during the trial and the right to subpoena and call witnesses in your own behalf. Do you understand these rights?
☒ yes ☐ no

Do you wish to give up these rights and plead guilty?
☒ yes ☐ no

4) If your case has not yet been before the grand jury, you have the right to have the case presented to the grand jury. After hearing evidence, 12 of the 18 people on the grand jury would have to agree that you were probably guilty before the charge against you could be reported out as a

- 4) True Bill ready for trial. A grand jury might return a No Bill, which would mean that the charge would be dismissed. Do you understand this right? ☐ yes ☐ no

Do you wish to give up your right to have the grand jury examine your case? ☐ yes ☐ no

- 5) Do you understand that when you plead guilty you give up these constitutional rights? ☒ yes ☐ no

Is that what you want to do? ☒ yes ☐ no

Do you understand that you will not get a jury trial if you plead guilty? ☒ yes ☐ no

NATURE OF THE CHARGE AND CONSEQUENCES OF PLEADING GUILTY

- 1) Has your attorney discussed with you the charge(s) and possible punishment for the charge(s)? ☒ yes ☐ no
- 2) What acts did you do which cause you to think that you are guilty of the charge or charges to which you now want to plead guilty?

I went into the store to rob the store. I had a gun. I
shot the men in the store. Then me and my co-defendants
left.

- 3) Are you pleading guilty for any reason other than the fact that you are guilty? ☐ yes ☒ no

If so, what is the other reason? _____

- 4) As you understand, the maximum possible penalty for this charge is:

Life in prison.

(Includes jail time, and forfeiture, if applicable)

- 5) If an offense with graduated penalties: Do you understand that if you plead guilty to this offense and you are convicted at a later time of the same crime, the punishment will be higher next time?

Possession of stolen car is a ☒ yes ☐ no

- 6) Property crime with graduated penalties - I understand what that means
Do you have any questions about the nature of the charge(s) against you and the possible punishments?

☐ yes ☒ no

6) If so, please write your questions here: _____

7) Do you understand that when you plead guilty you admit the truth of the charge(s) against you? ☒ yes ☐ no

8) You may have defenses to the charge(s) against you. The Judge does not know whether you do or not. Do you understand that if you plead guilty you will waive or give up any defense to the charge(s)?
☒ yes ☐ no

9) You may have given an incriminating statement in this case. Do you understand that if you plead guilty you waive or give up the right to contest or challenge whether such a statement was freely and voluntarily given in accordance with your constitutional rights?
☒ yes ☐ no

10) Understanding the nature of the charge(s) against you and the consequences of a guilty plea, do you still wish to plead guilty?
☒ yes ☐ no

PLEA NEGOTIATIONS

1) Has any plea agreement been made by you with the Solicitor's office?
☒ yes ☐ no

If so, exactly what do you understand the agreement to be?

The State has agreed not to seek the death penalty. That is the only consideration being given

2) Do you understand that the recommendation of the attorneys is not binding on the court and that the Judge could still sentence you up to the maximum if he/she felt it appropriate?
☐ yes ☒ no *NA*

3) Do you still wish to plead guilty?
☒ yes ☐ no

VOLUNTARINESS OF PLEA

1) Has anyone promised you anything or held out any hope of reward to get you to plead guilty? ☐ yes ☒ no

If yes, explain: _____

2) Has anyone threatened you or used force to get you to plead guilty?
☐ yes ☒ no

- 2) Has anyone used any pressure or intimidation to cause you to plead guilty? ☐ yes ☒ no

If yes, explain: _____

- 3) Have you had enough time to make up your mind as to whether or not you want to plead guilty? ☒ yes ☐ no
- 4) Are you pleading guilty of your own free will and accord? ☒ yes ☐ no

SATISFACTION WITH ATTORNEY

- 1) Has your attorney reviewed this form with you and answered any questions you have about it? ☒ yes ☐ no
- 2) Are you satisfied with the manner in which your attorney has advised you and represented you? ☒ yes ☐ no
- 3) Have you talked with your attorney as often and for as long as you feel necessary for him/her to properly represent you? ☒ yes ☐ no
- 4) Do you need more time to talk with your attorney? ☐ yes ☒ no
- 5) Have you understood your talks with your attorney? ☒ yes ☐ no
- 6) Has your attorney done everything for you that you feel he/she could have done or should have done? ☒ yes ☐ no

If no, explain: _____

- 7) Has your attorney done anything in this case that you feel he/she should not have done? ☐ yes ☒ no

If yes, explain: _____

- 8) Are you completely satisfied with your attorney's services? ☒ yes ☐ no
- 9) Do you have any complaint that you want to make about your attorney, the solicitor, or any of the police officers? ☐ yes ☒ no

If yes, explain: _____

- 10) Do you understand that you have a right to appeal your guilty plea and the sentence of the court and that you must do this within 10 days of the sentence?

☒ yes ☐ no

CONCLUDING QUESTIONS

- 1) Do you understand all of these questions?

☒ yes ☐ no

If not, which ones do you not understand? _____

- 2) Do you now want to plead guilty?

☒ yes ☐ no

SIGNED BY ME IN THE PRESENCE OF MY ATTORNEY, this 6th day
of August, 2012.

x [Signature]
DEFENDANT

CERTIFICATE OF COUNSEL

- 1) Print you name and telephone number: BJ Barcunsky
628-3021
- 2) I represent the defendant in this case.
- 3) I have read and fully explained to the defendnat the allegations contained in the indictment in this case.
- 4) To the best of my knowledge and belief the statements, representations, and declarations made by the defendant in the foregoing petition are in all respects accurate and true.
- 5) I have explained to the defendant the charge(s) contained in the indictment, the possible punishment, and his/her constitutional rights including his/her right to a jury trial.
- 6) I have explained to the defendant the right to have this case submitted to the grand jury for its consideration.
- 7) In my opinion, the defendant understands the charge, the punishment, and the constitutional rights in this case.
- 8) The defendant has indicated to me that he/she wishes to plead guilty.
- 9) The plea of guilty offered by the defendant to count(s) Murder, Armed Robbery and related charges accords with my understanding of the facts the defendant has related to me, is consistent with my advice to the defendant, and, in my opinion, is voluntarily and understandingly made.

SIGNED BY ME IN PRESENCE of the defendant and after full discussion of the contents of this certificate with the defendant, this 6th day of August, 2012.

[Signature]
ATTORNEY FOR THE DEFENDANT

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Dontavious R. Mack, #323350,

2010-CP-46-1192

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

EXHIBITION
C.C.P. & GS
YORK COUNTY, SC

2013 MAY -3 AM 11:00

FILED-RECEIVED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 22, 2010. The Respondent made its Return on August 5, 2010. An evidentiary hearing into the matter was convened on October 10, 2012, at the Moss Justice Center in York, SC. Leah B. Moody, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Monica Townsend, Louse Addison, BJ Barrowclough, Esquire and Harry Dest, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the February 2007 term of the York County Grand Jury for Criminal Conspiracy (2007-GS-46-0681), Murder (2007-GS-46-0682), Armed Robbery (2007-GS-46-0683), Possession of a Weapon During

the Commission of a Violent Crime (2007-GS-46-0684), Possession of A Pistol by a Person Under the Age of 21 (2007-GS-46-0685), Possession of a Stolen Vehicle (2007-GS-46-0686), and Kidnapping (2007-GS-46-0687). Harry A. Dest, Esquire, and B.J. Barrowclough, Esquire, represented the Applicant. On August 8, 2007, the Applicant pled guilty as indicted. The Honorable Lee S. Alford sentenced him to confinement for a period of five (5) years for Criminal Conspiracy, life without parole for Murder, thirty (30) years for Armed Robbery, five (5) years for Possession of a Weapon During the Commission of a Violent Crime, one (1) year for Possession of A Pistol by a Person Under the Age of 21, five (5) years for Possession of a Stolen Vehicle, and twenty (20) years for Kidnapping, sentences running concurrently.

The Applicant filed a timely Notice of Appeal with the South Carolina Court of Appeals on August 8, 2007, and a brief was filed on Applicant's behalf pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Mack, Op. No. 2010-UP-008 (S.C. Ct. App. filed January 21, 2010).

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel;
2. Ineffective Assistance of Appellate Counsel;
3. Violations of Due Process (5th, 6th, and 14th Amendments); and
4. Involuntary Guilty Plea.

At the hearing, the Applicant proceeded on his claim of ineffective assistance of plea counsel and involuntary guilty plea.

SUMMARY OF TESTIMONY

The Applicant testified he met with Counsel Barrowclough and Dest three or four times, but did not think he had enough time to fully discuss his case. He stated the Solicitor gave him notice of the State's intent to seek the death penalty. The Applicant testified there was an initial plea offer for life without parole, which he did not accept. He then testified there was another plea offer for a straight up plea for thirty years to life imprisonment, which he accepted. In exchange, the State would not seek the Death Penalty. He stated he accepted this plea because he did not want his brother, a co-defendant in the case, to testify against him. The Applicant testified Counsel Barrowclough advised him that he would only receive thirty years.

Additionally, the Applicant testified he discussed his Constitutional rights with Counsel and submitted a plea affidavit to the court. However, the Applicant stated he did not understand the plea affidavit. The Applicant testified that during the guilty plea, he was thinking about other things and just wanted to get the plea process over with as quickly as possible. The Applicant further claimed he was coerced into pleading and would have taken this case to trial. He stated he was coerced because if he had not accepted the guilty plea, he would have been facing the death penalty. The Applicant lastly stated he was coerced by Counsel because he relied on Counsel's advice that he would receive thirty years, and that he wants a new trial.

On cross-examination, the Applicant admitted the plea court explained all of the crimes for which he was charged and the penalties they carried. He also agreed that he understood all of these and wanted to plead guilty. The Applicant acknowledged he gave up his Constitutional rights at the guilty plea. He admitted there were no threats or promises to entice him to plead guilty. The Applicant also testified he was satisfied with his Counsel, fully discussed the charges with Counsel,

was advised of the witnesses and evidence the State would present at a trial, discussed the legal defenses with Counsel, and advised Counsel of witnesses that could be called on his behalf. He testified he was not under the influence of drugs or alcohol at the guilty plea and had no mental illness. The Applicant testified he pled own his own free will because he was, in fact, guilty of these crimes. He lastly admitted he apologized to the victim's family, admitted his guilt, and accepted responsibility for his actions.

The Applicant's mother, Monica Townsend, testified she was present when the Applicant signed the plea affidavit, and Counsel Barrowclough advised the Applicant he would receive a thirty-year sentence. The Applicant's grandmother, Louise Addison, testified she discussed the amount of time the Applicant would receive with Counsel. She also stated she spoke with the Applicant and wanted the Applicant to plead guilty because the Applicant thought he would receive thirty years' imprisonment.

Counsel (Barrowclough) testified he was appointed to represent the Applicant along with Counsel Dest. Counsel testified he discussed the death penalty and its ramifications with the Applicant, along with the evidence in the case. He stated the negotiations with the State included the Applicant's straight up plea in exchange for the State not seeking the death penalty. Counsel testified the plea was for a range of thirty years to life without parole. Counsel stated he presented a plea affidavit to the Applicant, read all of the questions to the Applicant, marked all of the Applicant's answers, the Applicant signed the affidavit and then he and Counsel Dest also signed the affidavit.

Additionally, Counsel testified he never told the Applicant he would receive a thirty-year sentence. However, Counsel argued to the plea court in mitigation that the Applicant should receive

a thirty-year sentence. He then stated the open/straight up plea was the only negotiation that was acceptable to the Solicitor and was reasonable under the circumstances.

Counsel (Dest) testified he did not advise the Applicant he would receive a thirty-year sentence. Counsel stated if this case was tried, there was a strong possibility of a conviction and a sentence of the death penalty for the Applicant. The State's evidence included the Applicant's statement to police, the video recording of the convenience store, forensic evidence, and a co-defendant's statements. Counsel testified the Applicant did not desire a trial with the potential of receiving the death penalty because it was nearly impossible to win and the statutory aggravating factors were clear in this case. Counsel stated his primary goal was to try and salvage the Applicant's life.

Counsel testified he was involved in plea negotiations with the State on the Applicant's behalf. Counsel stated the Solicitor insisted on life without parole. Counsel testified while it is difficult for a nineteen year old to accept life without parole, the Applicant was willing to plead, and he, Counsel, agreed with this decision. Counsel met with the Solicitor again to negotiate, and the Solicitor finally agreed to a straight up plea. Counsel testified he focused his efforts on explaining to the plea judge why a thirty-year sentence was appropriate in this case. Counsel stated he consulted a mental health expert to interview the Applicant, and Dr. Harold Morgan found the Applicant fully competent. Counsel stated the Applicant is a smart individual who had the capacity to be a productive citizen, but was a follower who suffered from low self-esteem.

Counsel further testified he incorporated Dr. Morgan's findings into the mitigation stage of the guilty plea. Counsel tried to explain to the plea court that this case was a robbery gone wrong. The victim in this case fired a weapon at the Applicant before the Applicant fired the fatal shot as the

Applicant was fleeing the convenience store. Counsel again stated his main objective at the mitigation stage was to convince the plea judge that a thirty-year sentence was appropriate. Counsel also testified he drove to Hartsville, SC to discuss this case with the Applicant's family and explained the outcomes if the Applicant chose a jury trial. If the Applicant was found guilty at the trial, the jury's only choices would have been life without parole or the death penalty. Counsel, lastly, testified this was an open plea, and reiterated that he never promised the Applicant he would receive a thirty-year sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within

the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, (1985).

This Court finds Counsel (Barrowclough and Dest) were competent and diligent in their representation of the Applicant in this case. Counsel sufficiently advised the Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel satisfactorily investigated this case based on the information supplied by the Applicant and the evidence available. Counsel also engaged in plea negotiations which were beneficial to the Applicant. This Court also finds the Applicant was well informed by Counsel in this case. The Applicant expressed to the plea court that he was satisfied with Counsel, had sufficient time with Counsel, and Counsel did all that the Applicant requested. Moreover, the Applicant admitted his guilt and accepted responsibility for his actions. The Applicant pled guilty without any threat or coercion and was not under the influence of any intoxicant at the plea. The

Applicant also waived his Constitutional rights afforded to him. This Court finds the Applicant pled knowingly, voluntarily, and on his own free will.

"Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

This Court further finds the Applicant's testimony regarding Counsel's promise of a thirty-year sentence is not credible while also finding Counsel's testimony is credible. Both Counsel Barrowclough and Dest testified they never promised the Applicant he would receive a thirty-year sentence, but that they advised the Applicant of the potential sentencing range and that they would argue in mitigation for a thirty-year sentence. This Court also finds the testimony of the Applicant's mother and grandmother not credible. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Involuntary Guilty Plea

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Lecke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not

invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

The Applicant alleged his guilty plea was not voluntarily entered because Counsel coerced him to plead guilty. At the PCR hearing, the Applicant testified he felt coerced into pleading because he relied on Counsel's advice to him that he would receive a thirty-year sentence. However, the guilty plea transcript and the Applicant's answers during cross-examination at the PCR hearing directly refute his claims.

At the guilty plea, the Applicant stated he understood the charges against him and the penalties the charges carried. (Tr. p. 4 line 25- p.7 line 9). He then stated he wanted to plead guilty to the charges. (Tr. p. 7 line 9). The Applicant also testified he understood his constitutional rights and waived those rights. (Tr. p. 7 line 10- p. 8 line 20). The Applicant testified he was not promised anything or threatened in any way to influence him to enter a guilty plea. (Tr. p. 8 line 25- p. 9 line 3). He also stated he was satisfied with his attorneys, that his attorneys had fully discussed the charges against him, that his attorneys had explained to him the witnesses and the evidence the State would have presented at trial, that his attorneys had discussed all potential legal defenses with him,

and that he had given to his attorneys the names of any and all witnesses that he could have called on his behalf. (Tr. p. 9 lines 4-23). The Applicant testified he was not under the influence of drugs or alcohol and that he had no mental or emotional condition that would interfere with his judgment. (Tr. p. 9 line 24- p. 10 line 7). He stated he was pleading on his own free will. (Tr. p. 10 line 10). The Applicant testified he was, in fact, guilty of the charges. (Tr. p. 10 line 13). Further, the Applicant did not disagree with the facts as presented by the State. (Tr. p. 27 line 6). Lastly, the Applicant, in a statement to the plea court, said, "I want to first and foremost apologize to the family and friends of Mr. Marshall...I'm pleading to this because I am guilty...I am sorry for the bad decision I made that night...I take full responsibility for my action and am here in court today to receive punishment for what I did." (Tr. p. 51 lines 6-7; lines 9-10; lines 12-13; line 24- p. 52 line 1).

On cross-examination at the PCR hearing, the Applicant freely admitted he testified to all of the above at his guilty plea.

Based on the foregoing, this Court finds the Applicant's testimony concerning an involuntary guilty plea not credible, while finding Counsel's testimony at the PCR hearing credible. This Court also finds the Applicant pled guilty freely, voluntarily and without any coercion, threats or promises. Therefore, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his

burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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 (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 if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. 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 Respondent.

AND IT IS SO ORDERED!



Edgar W. Dickson
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

April 18, 2013

Orangeburg, South Carolina

