

RECEIVED

Nov 14 2024

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

—————
Certiorari to Berkeley County

Honorable Kristi F. Curtis, Circuit Court Judge
—————

JOSEPH S. WADFORD, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-001216
—————

APPENDIX
—————

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Appellate Defender

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Attorney General

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Division of Appellate Defense
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
2 COUNTY OF BERKELEY) CASE NO. 2019-254
3) 2019-255

4 STATE OF SOUTH)
CAROLINA,)
5) Transcript of Record
6 Plaintiff,)
7 vs.)
8 JOSEPH WADFORD,) Date: January 23, 2019
9 Defendant.)

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B E F O R E:
The Honorable R. Markley Dennis

* * * * *

Denise J. Lauder, RPR
Ninth Judicial Circuit

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A P P E A R A N C E S

REPRESENTING THE STATE OF SOUTH CAROLINA:

KAMILA SZYMCZYNSKA-SAS, ASSISTANT SOLICITOR
Ninth Circuit Solicitor's Office
300B California Avenue
Moncks Corner, SC 29461

REPRESENTING THE DEFENDANT:

JULIE SHIVERS, PUBLIC DEFENDER
Berkeley County Public Defender's Office
219 North Highway 52, Suite E
Moncks Corner, SC 29464

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INDEX OF EXHIBITS

(No exhibits were offered or
marked for identification.)

1 (The following proceedings were had
2 January 23, 2019, Berkeley County, 11:53 a.m.)

3 MS. SZYMCZYNSKA-SAS: The State calls
4 Joseph Wadford.

5 EXAMINATION

6 BY THE COURT:

7 Q. You are Joseph Wadford?

8 A. Yes, I am.

9 Q. Mr. Wadford, I've been handed
10 Indictment 2019-254 which charges you with assault
11 and battery of a high and aggravated nature. Do
12 you understand that?

13 A. Yes, sir.

14 Q. Has your lawyer explained that charge
15 to you?

16 A. Yes, sir.

17 Q. And explained to you the possible
18 punishment?

19 A. Yes, sir.

20 THE COURT: This is the 20-year.

21 MS. SHIVERS: Yes, sir.

22 THE STATE: Yes, Your Honor.

23 BY THE COURT:

24 Q. Do you understand I could sentence you
25 to 20 years?

1 A. Yes, sir.

2 Q. Understanding that, what is your plea?

3 A. Guilty.

4 Q. Do you understand it's a violent
5 offense?

6 A. Yes, sir.

7 Q. And a non-parolable offense?

8 A. Yes, sir.

9 Q. And it's a serious offense?

10 A. Yes, sir.

11 Q. Meaning a strike; do you understand
12 that?

13 A. Yes, sir.

14 Q. Do you understand that any sentence I
15 impose that you would have to serve 85 percent?

16 A. Yes, sir.

17 Q. You also understand that after -- when
18 you're released after serving the 85 percent, you
19 still would have to complete the two-year community
20 supervision program?

21 A. Yes, sir.

22 Q. That's basically a probation for two
23 years?

24 A. Yes, sir.

25 Q. If you fail, though, unlike probation,

1 you could be returned up to periods of one year at
2 a time until the balance of the sentence is
3 satisfied. Do you understand that?

4 A. Yes, sir.

5 Q. Understanding all of that, what is your
6 plea to the charge?

7 A. Guilty.

8 Q. Are you satisfied with your lawyer?

9 A. Yes, sir.

10 Q. She's also explained to you that this
11 indictment has not been sent to the grand jury?

12 A. Yes, sir.

13 Q. And it's your decision to go forward
14 with this today?

15 A. Yes, sir.

16 Q. And that's why you checked the box
17 indicating you want to waive presentment and
18 initialled it?

19 A. Yes, sir.

20 Q. And that's your decision?

21 A. Yes, sir.

22 Q. Indictment 2019-255 charges you with
23 assault and battery in the third degree. Do you
24 understand that?

25 A. Yes, sir.

1 Q. And your lawyer has explained to you
2 that that carries a potential sentence of up to
3 three years in jail. Do you understand that?

4 MS. SHIVERS: It's 30 days, Your Honor.

5 THE COURT: Oh, third degree. You are
6 correct.

7 BY THE COURT:

8 Q. Thirty days in jail. Do you understand
9 that?

10 A. Yes, sir.

11 Q. What is your plea?

12 A. Guilty.

13 Q. Satisfied with your lawyer on that one,
14 too?

15 A. Yes, sir.

16 THE COURT: Solicitor, is there a
17 recommendation?

18 MS. SZYMCZYNSKA-SAS: Your Honor, the
19 State is recommending a cap of ten, and we're
20 asking for active time.

21 THE COURT: Okay. Ms. Shivers, is that
22 your understanding?

23 MS. SHIVERS: It is my understanding of
24 what they would be requesting, yes, sir.

25 THE COURT: And you've discussed this

1 matter fully with your client?

2 MS. SHIVERS: I have.

3 THE COURT: He's been advised of his
4 rights and the consequences of the plea?

5 MS. SHIVERS: He has.

6 THE COURT: Do you concur with his
7 decision here today?

8 MS. SHIVERS: I do.

9 BY THE COURT:

10 Q. Mr. Wadford, is that true?

11 A. Yes, sir.

12 Q. And you understand if I accept the
13 plea, you will not have a jury trial; you will not
14 confront the witnesses against you; you're giving
15 up your right to remain silent?

16 A. Yes, sir.

17 Q. Have there been any threats or promises
18 made to you to get you to plead guilty?

19 A. No, sir.

20 THE COURT: Solicitor, tell me the
21 facts.

22 MS. SZYMCZYNSKA-SAS: Thank you. May
23 it please the Court.

24 Your Honor, on October 26, 2017, law
25 enforcement was dispatched to the Bonneau area of

1 Berkeley County to an elderly man who was the
2 victim on an assault and battery third, being
3 assaulted by this defendant.

4 That victim was apparently picking up
5 some tin cans in the community and had prior
6 permission from one of the residents. This
7 defendant approached him and said he didn't have
8 permission and punched him in the face causing
9 laceration to the right side of his face.

10 Another person witnessed the incident,
11 assisted that victim, and also later helped to
12 identify this defendant.

13 Law enforcement arrived, first talked
14 to the elderly victim and then located this
15 defendant. When they approached him, asking if he
16 knew who punched the victim, he admitted that he
17 did. At that time, the defendant was told to put
18 his hands behind his back and that he was under
19 arrest for the assault on the victim.

20 He resisted, grabbed and pushed the
21 officer, was throwing punches and trying to
22 basically dig the officer's eyes out, Your Honor.
23 He was able to throw the officer on the ground when
24 the officer was trying to place him in a headlock,
25 and he got on top of the officer. At that point,

1 he was jamming his thumbs into the officer's eyes.

2 There was another individual who got
3 involved and tried to assist the officer and was
4 able to distract this defendant and the officer was
5 able to get away. He drew his weapon at the
6 defendant.

7 At that point, the defendant actually
8 grabbed the weapon, Your Honor, and was told to let
9 go. At some point he did. The backup arrived and
10 he was placed in custody.

11 The officer and the other victim were
12 both transported for treatment. The officer was
13 treated for a shoulder injury and eye injury. He
14 had a rotator cuff surgery at some point. The eye
15 injury was identified as a traumatic hemorrhage in
16 his eye. He went through several treatments.

17 I think at this point the doctor gave
18 him some options for surgical intervention. He is
19 choosing not to proceed with that at this point.

20 Your Honor, he has been notified of
21 this plea agreement. We are also dismissing an
22 assault on a police officer charge. Initially, the
23 assault on the elderly victim, due to his age and
24 vulnerability, was charged as an ABHAN. We are
25 reducing that to an assault and battery third.

1 The officer was on board with this
2 offer. He also wanted active time.

3 The prior history of the defendant is
4 only a 2002 simple battery, Your Honor, but due to
5 the nature of the offense -- there is body cam
6 footage from this incident which kind of captures
7 step-by-step of what happened, and to the gravity
8 of the injuries and the potential of the damage to
9 the officer, we would ask for the active time.

10 THE COURT: Okay. Thank you.

11 BY THE COURT:

12 Q. Are those facts correct, sir?

13 A. The officer pulled -- started pulling
14 on me, sir. And --

15 MS. SHIVERS: He's asking if you
16 assaulted the officer.

17 THE DEFENDANT: Yes, I did.

18 BY THE COURT:

19 Q. You did all of those things?

20 A. Yes, sir.

21 Q. Have you truthfully responded to each
22 of my questions?

23 A. Yes.

24 Q. You've understood them?

25 A. Yes, sir.

1 Q. And you've given me complete answers?

2 A. Yes, sir.

3 Q. You aren't under the influence of any
4 alcohol or medications here today?

5 A. No, sir.

6 THE COURT: I find there is a
7 sufficient factual basis to support the plea in
8 each case; I find that he's had the benefit of very
9 competent counsel with whom he's stated he's
10 satisfied.

11 Happy to hear from you, Ms. Shivers.

12 MS. SHIVERS: Thank you, Your Honor.

13 Mr. Wadford is 52 years old. He'll actually be 53
14 on Monday of next week. He is a 1983 graduate from
15 St. Stephens High School. He's been married for
16 14 years; however, he is separated for the last
17 three years when his wife moved in with her new
18 boyfriend. He does not have any children.

19 He was a truck driver for 25 years
20 prior to being medically disabled. He currently
21 suffers from cataracts on his eye, which he has
22 appointments on February 11th because he needs a
23 cataract surgery; but more significantly than that,
24 he suffers from kidney failure and has since 2012.

25 He is required three times a week as a

1 life-saving measure to go to dialysis, and he's
2 been on dialysis since 2012. I do have a letter
3 from his nephrologist that I asked for him to
4 prepare if I could pass that forward.

5 THE COURT: Okay.

6 MS. SHIVERS: He has been on the kidney
7 transplant list since 2012. According to the
8 nephrologist, it apparently takes five to seven
9 years generally to receive a kidney. He's
10 currently past that time frame; however, he has not
11 received one yet.

12 I asked specifically of the
13 nephrologist what would be the result if he were to
14 go to an active prison sentence. And, certainly,
15 as I suspected and as the letter will indicate, he
16 will be removed from the kidney transplant list and
17 would not be eligible to be back on the list until
18 he's released from prison. And then, obviously,
19 the five to seven-year clock would run thereafter.

20 He's certainly very remorseful. He
21 knows this officer. It's a small town. He's known
22 him for many years. He understands that he was
23 completely and utterly in the wrong. He did ask
24 the officer not to grab on him; however, he
25 responded in the worst way humanly possible.

1 And, quite frankly, when I first met, I
2 told him you're lucky to even be standing here.

3 THE COURT: Absolutely.

4 MS. SHIVERS: Because if you were
5 anybody else in any other time, you likely would
6 have been shot and killed, and rightfully so. And
7 he understands that he's lucky to be here and very
8 thankful that the officer was not any more injured
9 than he was.

10 He certainly feels terrible about what
11 happened and he understands the gravity of the
12 charge, the consequences that he's facing, and he
13 is very remorseful for his actions.

14 He certainly has a prior history from
15 2002, but he's not -- he does not have an extensive
16 history. I understand that -- and I've talked to
17 him about the likelihood of him going to prison.
18 We would humbly ask Your Honor to consider an
19 alternative to that.

20 I have spoke with him at length about
21 the possibility, and that would I be asking Your
22 Honor to consider a significant house arrest
23 sentence. The reason being based on his health.
24 I'm hopeful that he would be able to stay on the
25 kidney transplant list.

1 I've talked to him about how it's
2 certainly much easier for him to go in and do the
3 time and just be done and how difficult house
4 arrest is. He does not work. The only thing he
5 does is go to dialysis three times a week and sees
6 his medical doctors.

7 So we would ask Your Honor to consider
8 a significant house arrest sentence with an order
9 that he not be able to leave, other than for his
10 medical appointments. And that is what he's asking
11 for today, Your Honor.

12 BY THE COURT:

13 Q. Okay. Mr. Wadford, anything you wish
14 to tell me?

15 A. No, sir.

16 Q. Mr. Wadford, I read a letter from Dr.
17 Broader, dated January 4, 2019. And it says that
18 you have been on life-sustaining treatment since
19 July 2012, five years before this incident
20 occurred.

21 And I understand that what I'm about to
22 do -- and I don't derive any significant pleasure
23 out of this. This is probably a death sentence to
24 you, and I'm sorry. But there is no way in the
25 world we can allow somebody who is in that

1 situation to do what you did without punishment.
2 And there is -- there is nothing that justifies
3 what you did.

4 A. No, sir.

5 Q. I don't care if the officer -- if you
6 thought the officer didn't have any reason to do
7 anything. One thing we know is -- we learn that
8 you have to say, yes, sir, and you challenge that
9 at another time and place. But to do what you did?
10 No, sir, not a chance that I'm going to let you
11 walk out of this courtroom.

12 And the fact that you have the
13 consequence of losing your spot on the -- for a
14 kidney transplant, I'm sorry. You initiated that;
15 I didn't.

16 The sentence of the Court on 2019-255
17 is that you be committed to the Department of
18 Corrections for a term of 30 days.

19 Did he serve any time before bonding
20 out?

21 MS. SHIVERS: Fifteen days.

22 THE COURT: I'll give you credit of 15
23 days jail time for that.

24 The sentence of the Court on 2019-254
25 is that you be committed to the Department of

1 Corrections for a term of 15 years provided -- I'm
2 going to suspend that upon the service of eight
3 years. That is within the recommendation of the
4 cap of ten.

5 The reason I have that is if you are
6 out, then I want you to have that potential for
7 about eight years to be hanging over your head so
8 you'll do the two years community supervision. I
9 hope you make it. Good luck to you.

10 MS. SHIVERS: Thank you, Your Honor.

11 MS. SZYMCZYNSKA-SAS: Thank you, Your
12 Honor.

13 (These proceedings were concluded at
14 12:08 p.m.)

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CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 28TH day of May, 2020 at Charleston, Charleston County, South Carolina.

S/Carol Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

KSS/0336040
WITNESSES

Bonneau Police Department

AGENCY CASE NUMBER

2017-1017356

ARREST WARRANT NUMBER

2017A0820100054

DATE OF ARREST

10/27/2017

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2019-GS-08-00254

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2019

THE STATE

VS.

JOSEPH SAMUEL WADFORD, JR.

W/M DOB: [REDACTED]

Indictment for

**ASSAULT & BATTERY OF A HIGH AND
AGGRAVATED NATURE**

SC Code: § 16-03-0600(B)(1)

CDR Code: 3411

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

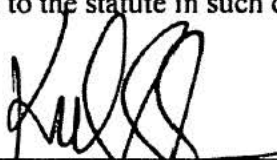
INDICTMENT

At a Court of General Sessions, convened February 2019, the Grand Jurors of Berkeley County present upon their oath:

ASSAULT & BATTERY OF A HIGH AND AGGRAVATED NATURE

That in Berkeley County, South Carolina on or about October 26, 2017, the Defendant, Joseph Samuel Wadford Jr., did commit an unlawful act of injury upon the victim, Jerry Haynie, and as a result, the victim suffered great bodily injury or the act was accomplished by means likely to produce death or great bodily injury, in violation of Section 16-3-600(B)(1) of the South Carolina Code of Laws (1976) as amended.

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



KAMILA SZYBCZYŃSKA-SAS
ASSISTANT SOLICITOR

COUNTY OF BERKELEY

STATE VS.

JOSEPH SAMUEL WADFORD, JR.

AKA: Joseph Wadford
Race: White Non-Latino/Caucasian Sex: M
DOB: SS#:
Address: N. Hwy 52
City, State, Zip: St. Stephen, SC 29479
DL# SID# SC01527749

INDICTMENT/CASE#: 2019-GS-08-00254
A/W: 2017A0820100054
Date of Offense: 10/26/2017
S.C. Code #: 16-03-0600(B)(1)
CDR Code #: 3411

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Assault & Battery Of A High And Aggravated Nature
In violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

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

The charge is As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, Negotiated Sentence, Recommendation by the State.
The pleas: Without Negotiations or Recommendation.
ATTENT:

Kamila Szymczak-Sas, Assistant Solicitor SC Bar # 100437
Defendant Joseph S. Wadford
Attorney for Defendant Attorney for Defendant SC Bar # 100403

WHEREFORE the Defendant is committed to the State Department of Corrections or County Detention Center,
for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 8 days/months/years and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 15 days

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211 (Conv. Surcharge), §14-1-211 (DUI Surcharge), §56-5-2995 (DUI Assessment), §56-1-286 (DUI Breath Test), Proviso (Public Del/Probation), §14-1-212 (Law Enforce. Funding), §14-1-213 (Drug Court Surcharge), §50-21-114 (BUI Breath Test Fee), §56-5-2942(J) (Vehicle Assessment), 3% to County (if paid in installments), TOTAL \$178.75

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

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

Clerk of Court Deputy Clerk: A. Howell
Court Reporter: Denise Linder

Presiding Judge: M. Mark...
Judge Code: 2060
Sentence Date: 1/31/19

FILED

JAN 23 2019

CLERK OF COURT
BERKELEY COUNTY, SC

Handwritten signature/initials

KSS/0336040
WITNESSES

Bonneau Police Department

AGENCY CASE NUMBER

2017-1017356

ARREST WARRANT NUMBER

2017A0820100056

DATE OF ARREST

10/27/2017

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2019-GS-08-00255

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2019

THE STATE

VS.

JOSEPH SAMUEL WADFORD, JR.

W/M DOB: [REDACTED]

Indictment for

ASSAULT & BATTERY, 3RD DEGREE

SC Code: § 16-03-0600(E)(1)

CDR Code: 3414

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

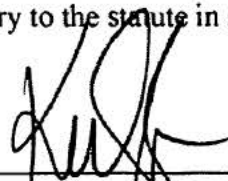
INDICTMENT

At a Court of General Sessions, convened February 2019, the Grand Jurors of Berkeley County present upon their oath:

ASSAULT & BATTERY, 3RD DEGREE

That in Berkeley County, South Carolina, on or about October 26, 2017, the Defendant, Joseph Samuel Wadford Jr., did commit an unlawful act of injury upon the victim, David Benjamin White, or did offer or attempt to injure the victim, David Benjamin White, with the present ability to do so. This is in violation of Section 16-3-600(E)(1) of the South Carolina Code of Laws (1976) as amended.

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



KAMILA SZYM CZYNSKA-SAS
ASSISTANT SOLICITOR

COUNTY OF BERKELEY

STATE VS.

JOSEPH SAMUEL WADFORD, JR.

AKA: Joseph Wadford
Race: White Non-Latino/Caucasian Sex: M
DOB: [redacted] SS#: [redacted]
Address: [redacted] N. Hwy 52
City, State, Zip: St. Stephen, SC 29479
DL# [redacted] SID# SC01527749

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

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

TO: Assault & Battery, 3rd Degree

In violation of § 16-03-0600(E)(1) of the S.C. Code of Laws, bearing CDR Code # 3414

[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS [] §17-25-45

The charge is: [] As indicted, [] Lesser Included Offense, [X] Defendant Waives Presentation to Grand Jury.
The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: Kamila Szymczynski, 100437, Assistant Solicitor SC Bar #
[Signature] Defendant
[Signature] Attorney for Defendant 100403 SC Bar #

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

[] CONCURRENT or [] CONSECUTIVE to sentence on:
[X] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 15 days
[] The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP
Total: \$ ___ plus 20% fee: \$ ___ days/hours Public Service Employment
Payment Terms: Obtain GED []

[] Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. FILED

Recipient: May serve W/E beginning
Substance Abuse Counseling []
Random Drug/Alcohol Testing []
Fine may be pd. in equal consecutive weeks/monthly NO
pmts. of \$ ___ Beginning LEAH GUERRY DUPREE
\$ ___ Paid to Public Defender Fund CLERK OF COURT
BERKELEY COUNTY, SC

Table with 3 columns: Description, Amount, Total. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211 (A)(1)(Conv. Surcharge) \$100, §14-1-211 (A)(2)(DUI Surcharge) \$100, §56-5-2995 (DUI Assessment) \$12, §56-1-286 (DUI Breath Test) \$25, Proviso (Public Del/Probation) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$150, §50-21-114 (BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$, TOTAL \$128.75

Clerk of Court (Deputy Clerk) A. Haver
Court Reporter: Denise Linder

Presiding Judge: [Signature]
Judge Code: 2060
Sentence Date: 1/23/19

FILE FORM 5

2019-CP-08-2008

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

County of Berkeley

2019 AUG 12 PM 2:42

Joseph Wadford Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR POST-CONVICTION REVIEW

CLERK OF COURT BERKELEY COUNTY, SC

19 AUG 13 AM 10:16

FILED

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.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings.

- 1. Place of detention Berkeley County Det.
2. Name and location of Court which imposed sentence Berkeley County Court of General Session
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2019-GS-08-00254 ABHAN 15 yrs
(b) 2019-GS-08-00255 Assault & Battery 3rd degree 30 days

(c) _____

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

(a) January 23, 2019 8 yrs.

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

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

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

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

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

(a) _____

(b) _____

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

- (a) ineffective assistance of counsel
- (b) _____
- (c) _____

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

- (a) mitigating evidence
- (b) _____
- (c) _____

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

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

(a) which grounds have been presented:

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

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

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

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

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

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Mrs. Julie Shivers Berkeley County Public
Defenders office P.O. Box 1687 Moncks
corner, S.C. 29461
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. arraignment and plea
 - ii. _____
 - iii. _____

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

New Trial

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

N/A

STATE OF SOUTH CAROLINA)
County of Berkeley)

VERIFICATION

I, Joseph Wadford Jr., 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.

Joseph S. Wadford Jr.

SWORN to and subscribed before me this 8th day of August, 2019 (L.S.)

[Signature]
Notary Public

My Commission Expires IANELLE T. SPEARMAN
Notary Public - State of South Carolina
My Commission Expires August 26, 2025

19 AUG 13 AM 10:17
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

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

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

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

Joseph D. Wadford Jr.
Applicant

SWORN or affirmed to and subscribed before me this
19th day of August 2019.

Janelle T. Spearman
Notary Public

My Commission Expires August 26, 2025

FILED

19 AUG 13 AM 10:17

CLERK OF COURT
BERKELEY COUNTY, SC



FILED *SM*

19 AUG 13 AM 10:19

**LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY
COMMON PLEAS**

**LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC**

POST OFFICE BOX 219
MONCK'S CORNER, SOUTH CAROLINA 29461-0219
(843) 719-4400 (843) 567-3136 (843) 723-3800

TO: Joseph S. Wadford Jr.
RE: New PCR Case # 2019-CP-07-02008

The enclosed document is being returned for the following reason(s):

- This document is not signed / notarized
- The filing fee is insufficient. The correct amount is _____
- This document is a copy. We must have original.
- This is not a Berkeley County case
- The check or money order must be made payable to the Clerk of Court.
- The case is ended. Date ended: _____
Reason Ended: _____
- Your Check must be signed. Stale dated check
- Inmate litigation must comply with S.C. Code of Laws, Title 24, Chapter 27
- There is not a case listed in our system that matches this caption.
- The required new case coversheet is not included.
- The required motion/order coversheet is not included.
- The required order (Form 4) coversheet is not included.

Information may be obtained from our web-site at www.berkeleycountysc.gov.

Other Sending Stamped Copies back

Please make the necessary corrections and return this document for filing.
Thank you for your assistance.

Staff Initials *SM*

Date 8/13/19

Joseph S. Wadford Jr. #378918
B.R.C.I. MLT1040B
4460 Broad River Rd.
Columbia, SC 29210

ML

COLUMBIA SC 290

FILED

AUG 2019 PM 2 FOREVER USA



Barn Swallow

2019-CP-08-2008

19 AUG 13 AM 10:17

CLERK OF COURT
BERKELEY COUNTY, SC

RECEIVED

AUG 08 2019

BRCI
MAILROOM

Berkley County Court
300 California Ave

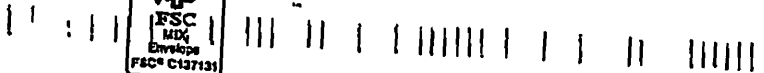
29461-03633

Mantron



**THE DEPARTMENT OF CORRECTIONS HAS NOT CENSORED
THIS ITEM, THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR IT'S CONTENTS.**

**BROAD RIVER CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS**



THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT

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LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY
 POST OFFICE BOX 219
 MONCKS CORNER, SOUTH CAROLINA 29461-0219
 (843) 723-3800 (843) 719-4400 (843) 567-3136

ju
FILED
 2020 JAN 24 PM 4: 11
 LEAH GUERRY DUPREE
 CLERK OF COURT
 BERKELEY COUNTY, SC

January 23, 2020

Office of the Attorney General
 Post Conviction Relief Section
 PO Box 11549
 Columbia, SC 29211-1549

Re: Joseph Wadford, Jr. #378918 vs. State of South Carolina
 2019-CP-08-2008

Dear Sir/Madame:

Please find enclosed a Post-Conviction Relief application for the above mentioned Applicant. I have also enclosed copies of the applicant's General Sessions files. Please contact our office if you need any further assistance.

Sincerely yours,

Leah Guerry Dupree

Leah Guerry Dupree
 Clerk of Court

/jw

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Joseph S. Wadford Jr., #398918,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 IN THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-08-2008

RETURN

LEAH GOLDBERG, CLERK OF COURT
 BERKELEY COUNTY, SC
 20 DEC -2 AM 11:35

Handwritten signature
FILED

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on August 13, 2019, but not received by the State until January 24, 2020, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In February of 2019 Applicant was indicted for Assault and Battery of a High and Aggravated Nature (2019-GS-08-00254) and Assault and Battery, 3rd Degree (2019-GS-08-00255). Applicant waived presentment to the grand jury on both indictments. Julie Shivers, Esquire represented Applicant. Assistant Solicitor Kamile Szymczynska-sas, Esquire prosecuted the case. On January 23, 2019, Applicant pleaded guilty as indicted to all charges before the Honorable R. Markley Dennis, Jr. Judge Dennis sentenced Applicant to imprisonment for 30 days with credit for 15 days time-served for the Assault and Battery, 3rd Degree and 15 years imprisonment suspended upon the service of 8 years for the Assault and Battery of a High and Aggravated Nature. Applicant did not appeal his conviction or sentence.

Attached to this Return and incorporated by reference are the records of the Berkeley County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. “Ineffective Assistance of Counsel,” in that:
 - a. Mitigating evidence

III.

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286

S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither 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, 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.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws 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 expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: *Benjamin Limbaugh*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

November 30, 2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Joseph Wadford, #398918)
)
 Applicant,)
)
 vs)
)
 State of South Carolina,)
)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS
 2019-CP-08-2008

CERTIFICATE OF SERVICE BY MAIL

FILED
 20 DEC -2 AM 11:36
 LEAN GERRY DUNN
 CLERK OF COURT
 BERKELEY COUNTY, SC

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

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
146 Fairchild Street, Suite 130
Charleston, SC 29492

DATED this the 30th day of November, 2020.

Jennifer Jennison
 Jennifer Jennison, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
)	
COUNTY OF BERKELEY)	DOCKET NO. 2019-CP-08-2008
)	
)	
JOSEPH W. WADFORD, JR.)	
)	
Applicant)	
)	
vs.)	
)	
STATE OF SOUTH CAROLINA)	
)	
Respondent)	
)	
)	
)	
)	
)	TRANSCRIPT OF RECORD

June 21, 2022
Moncks Corner, S. Carolina

B E F O R E:

THE HONORABLE KRISTI F. CURTIS, JUDGE

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

CHRISTOPHER R. GEEL, ESQ.
Attorney for the Applicant

SAMANTHA J. WEIDAUER, ESQ.
Attorney for the Respondent

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

[Certified Transcript Provided to: SCCID]

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Joseph S. Wadford, Jr. v. State of S.C.
Post-Conviction Relief Hearing
June 20, 2022

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PROCEEDINGS

THE COURT: Okay. I see that we are back to Mr. Wadford who was originally scheduled for yesterday that we shifted to today. This is case number 2019-CP-08-2008. And Mr. Geel you are here on behalf of Mr. Wadford?

MR. GEEL: Yes, Your Honor.

THE COURT: And Ms. Weidauer for the State?

MS. WEIDAUER: Yes, Your Honor.

THE COURT: Okay. And Mr. Geel your client wants to go forward with the petition this morning?

MR. GEEL: Yes, Your Honor.

THE COURT: Okay. Just a few things to go over with you Mr. Wadford before we go forward I'm showing that you pled guilty to assault and battery of a high and aggravated nature and that you also pled guilty to assault and battery in the third degree and received a, is it a 10 year sentence?

MR. GEEL: It was 15 suspended to eight.

THE COURT: Okay. Mr. Wadford, you understand that the offense of assault and battery of a high and aggravated nature carries up to 20 years.

MR. WADFORD: Yes, ma'am.

THE COURT: So if you are successful in your petition today it means that your case goes back for a new

Joseph S. Wadford, Jr. v. State of S.C.
Post-Conviction Relief Hearing
June 20, 2022

1 trial in which case all bets are off. So you could be
2 sentenced for up to 15 years if your case went back for a
3 retrial.

4 MR. GEEL: Judge, it's 20.

5 THE COURT: I'm sorry; up to 20 years if your case
6 went back for a new trial. You understand that?

7 MR. WADFORD: Yes, ma'am.

8 THE COURT: And what you received in your case was
9 a 15 year sentence suspended to eight years I think with
10 15 days credit; something like that?

11 MR. GEEL: I believe that's correct, Your Honor,
12 yes.

13 THE COURT: So, when is Mr. Wadford's max out date
14 currently do you know?

15 MR. GEEL: According to SCDC Your Honor his
16 projected release date is October 24th, 2025 but that's
17 just the prison record of course. I mean that's not
18 parole; it's unofficial.

19 THE COURT: So, I just want to make sure you
20 understand Mr. Wadford if this goes back for a new trial
21 the previous sentence that Judge Dennis gave you is of no
22 consequence whatsoever. It means whatever judge hears
23 your case if you were convicted could sentence you up to
24 the 20 years and you understand that?

25 MR. WADFORD: Yes, ma'am.

Joseph S. Wadford, Jr. v. State of S.C.
Post-Conviction Relief Hearing
June 20, 2022

1 THE COURT: And you still want to go forward today
2 with your petition?

3 MR. WADFORD: Yes, ma'am.

4 THE COURT: And Mr. Geel you've gone over with him
5 the possible sentence as well?

6 MR. GEEL: Yes, Your Honor. And just for the
7 purposes of the record I'll add that pursuant to this
8 plea deal a second count of ABHAN was dismissed. And
9 there was also an assault on a law enforcement officer
10 and I believe that that was the one that was reduced to
11 assault and battery third if I'm not mistaken.

12 But in any even if Mr. Wadford returned to a pre-
13 trial posture he'd be facing two counts of ABHAN and one
14 count of assault on a law enforcement officer. Your
15 Honor, that latter charge is a zero to 10.

16 THE COURT: It looked to me like there was an ABHAN
17 on the police officer and then the original charge that
18 was reduced to assault and battery third was the ABHAN
19 for the 81 year old.

20 MR. GEEL: Right.

21 THE COURT: That that ABHAN was reduced to assault
22 and battery third.

23 MR. GEEL: And the law enforcement officer charge
24 was dismissed.

25 THE COURT: Right.

Joseph S. Wadford, Jr. v. State of S.C.
Post-Conviction Relief Hearing
June 20, 2022

1 MR. GEEL: That was the one -- so I misspoke about
2 the ABHAN being dismissed; it was in fact reduced.

3 THE COURT: So, Mr. Wadford you understand again
4 that charge that was dismissed would also be back in play
5 and you could be facing trial on that charge as well.

6 MR. WADFORD: Yes, ma'am.

7 THE COURT: Okay. And you still want to go forward
8 today?

9 MR. WADFORD: Yes, ma'am.

10 THE COURT: Okay. Mr. Geel?

11 MR. GEEL: Thank you, Your Honor. Just to sort of
12 frame-up what we're here for today. Mr. Wadford filed an
13 application for post-conviction relief. He alleged a
14 single ground of ineffective assistance of counsel. He
15 enumerated it as quote mitigating evidence.

16 Just for the Court's information I've discussed this
17 with Mr. Wadford in a little more detail and I spoke with
18 Ms. Weidauer as well about what we anticipate the
19 testimony here is showing today.

20 Mr. Wadford had a number of very serious medical
21 issues that he feels were not adequately presented to the
22 sentencing Court and so he'll go into a little bit more
23 detail about that.

24 And essentially so in our ground for relief
25 mitigating evidence what we are alleging is that at

Joseph S. Wadford, Jr. v. State of S.C.
Post-Conviction Relief Hearing
June 20, 2022

1 sentencing Mr. Wadford's medical situation was not
2 adequately presented to the Court and so we are
3 essentially asking for post-conviction relief on that
4 basis. So, we are ready with Mr. Wadford to testify when
5 the Court is ready.

6 THE COURT: Okay. Ms. Weidauer?

7 MS. WEIDAUER: I just wanted to note for the record
8 the 30 days credit was for the assault and battery third
9 and he got 15 days time served for that charge otherwise
10 I think Your Honor has adequately covered the procedural
11 history leading up to this matter.

12 THE COURT: Okay.

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Joseph S. Wadford, Jr. v. State of S.C.
Post-Conviction Relief Hearing-Joseph Wadford-Direct Examination by Mr. Geel
June 20, 2022

1 MR. GEEL: Thank you, Your Honor. At this time
2 we'd call Joseph Wadford.

3 THE COURT: He can stay right there and testify
4 from there if you're comfortable with that.

5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]

7 THE CLERK OF COURT: Please state your full name
8 and spell your last name.

9 THE WITNESS: My full name is Joseph Samuel
10 Wadford, Jr., W-A-D-F-O-R-D.

11 - - - - -

12 JOSEPH WADFORD,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GEEL:

17 Q. Mr. Wadford, please tell the Court as much as you
18 can recall the first time that you ended up meeting the
19 lawyer who represented you in this case. Can you tell
20 the Court a little bit about that?

21 A. Yes. I had got into an altercation with a young
22 man. A police officer was called on me and me and this
23 officer knew each other well and he knew that I had back
24 problems and I had just come out of dialysis and he was
25 just snatching on me and I blacked out and I hurt him. I

Joseph S. Wadford, Jr. v. State of S.C.
Post-Conviction Relief Hearing-Joseph Wadford-Direct Examination by Mr. Geel
June 20, 2022

1 didn't mean to. I would never try to hurt a man. While
2 we were going through all this I ended up having surgery
3 on my back and the lawyer never mentioned that to the
4 Judge.

5 Q. Let's back up if we could; sorry to cut you off.
6 Tell the Judge how long after you were arrested did you
7 first meet with your attorney do you recall?

8 A. It was I was in jail for 17 or 18 days so it was
9 about a month after I was arrested.

10 Q. Okay. Now, tell the Court if you could what were
11 the medical issues that you were dealing with at that
12 time, like around the time of your arrest and the weeks
13 that followed.

14 A. I was having trouble with my back and I was on
15 dialysis and going three times a week to dialysis.

16 Q. And why is it that you need dialysis?

17 A. Because of kidney failure.

18 Q. And how long have you had issues with your kidneys?

19 A. Since, they started failing on me in 2011.

20 Q. Okay. And what about you said you had some back
21 trouble. Can you tell the Court a little bit about that?

22 A. Yes. I was having problems with my back and I
23 didn't realize what was going on with it at the time but
24 my doctor that was taking care of me he found a walking
25 disc in my back and he had to replace it.

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1 Q. Could you say that one more time? He found a what
2 in your back?

3 A. A walking disc.

4 Q. Now what is that?

5 A. A disc that was walking up and down the spine and it
6 was pinching my nerves to my legs.

7 Q. And how long had that situation been bothering you
8 at the time of your arrest I mean?

9 A. Off and on for a couple of years.

10 Q. Okay. So you had the back problem and then you also
11 had the kidneys. At the time of your arrest had you had
12 back surgery or did that come later?

13 A. No, that came afterwards.

14 Q. Okay. So, at the time of your arrest when you first
15 met with your lawyer you had this back problem that had
16 been you said had been persisting for a few years?

17 A. Uh Huh.

18 Q. And then you had this kidney issue which had been
19 since 2011 roughly?

20 A. Yes.

21 Q. So, as to the kidney issue that had been going on
22 for about six years before you were arrested, does that
23 sound about right?

24 A. Yes.

25 Q. Okay.

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1 A. They didn't completely quit on me until 2015. But
2 they started going out and my nephrologist out in
3 Charleston kept monitoring me every six months and he
4 finally put me on dialysis in 2015.

5 Q. All right. Now, moving back to those initial
6 meetings with your attorney did you tell her -- let me
7 back up. Ms. Shivers, your lawyer, did she represent you
8 the entire time?

9 A. Yes ---

10 Q. --- in this case? So you didn't have any other
11 lawyers at any point?

12 A. No.

13 Q. Okay. When you were first arrested and you
14 initially had those contacts with Ms. Shivers did you
15 tell her about these medical issues that you ---

16 A. --- yes, yes.

17 Q. Did you tell her about them in as much detail as you
18 just told the Court now ---

19 A. --- yes ---

20 Q. --- or was it more or less?

21 A. I told her just what I'm telling you right now.

22 Q. Okay. Now at some point later on did you end up
23 being released from the jail?

24 A. Yes, after 17 days in there I was released.

25 Q. Okay. And were you out on bond?

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1 A. Yes.

2 Q. And where did you stay when you were out on bond?

3 A. I stayed in my mother's mobile home in Bonneau.

4 Q. And from the time that you bonded out until you
5 eventually went to Court and were sentenced did you seek
6 out medical treatment?

7 A. Yes ---

8 Q. --- did you continue getting treatment ---

9 A. --- yes ---

10 Q. --- for these issues ---

11 A. --- yes, yes.

12 Q. Did you discuss that treatment with Ms. Shivers at
13 any point?

14 A. Yes.

15 Q. Tell the Court what you remember about those
16 discussions.

17 A. After I had back surgery in 2018 I let Ms. Shivers
18 know about it. She told me we were going, she was going
19 to discuss it with the Court about me having surgery on
20 my back and I had it done in September of 2018 and we had
21 Court in January of 2019.

22 Q. Okay. And what kind of surgery did you have on your
23 back?

24 A. Artificial disk replacement.

25 Q. Now, what is that exactly? Is that, was that

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1 addressing the issue that we discussed before; the
2 walking disc?

3 A. Yes.

4 Q. Okay.

5 A. They took the disc out and put a new disc in where
6 that disc came out of.

7 Q. Now did that fix the problem or just reduce it or
8 how did that work?

9 A. It helped for a little while and then my back
10 started giving me problems again. I've been falling over
11 at, since I've been in SCDC I fell probably eight or nine
12 times and several of those have been on my back because
13 my legs keep going out on me.

14 Q. Okay. So at the time when you were preparing to go
15 to Court was this back issue was it a problem at that
16 time?

17 A. Yes.

18 Q. Okay. And did you discuss that issue with Ms.
19 Shivers?

20 A. Yes.

21 Q. What did you tell her about, I guess let me put it
22 this way. What did you tell her about what your
23 expectations were as far as resolving the case or what
24 you hoped to do as far as your health problems were
25 concerned?

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1 A. We talked about me trying to do house arrest at the
2 time and being put on probation where I could continue
3 with my medical help with my back and my dialysis.

4 Q. Now just to be clear from the time period from when
5 you were released from the jail until you went to Court
6 did you continue to receive dialysis ---

7 A. --- yes ---

8 Q. --- treatments? And how often were you receiving
9 dialysis?

10 A. Three times a week.

11 Q. Okay.

12 A. Tuesday, Thursday, and Saturday.

13 Q. And at that time were you seeking out a kidney
14 transplant or anything?

15 A. Yes. I was on the transplant list.

16 Q. Tell the Court a little bit about that. How long
17 were you on the list?

18 A. I was on the transplant list from 2015 to 2019.

19 Q. And did you tell Ms. Shivers that you were on the
20 kidney transplant list?

21 A. Yes.

22 Q. What was significant about that for you? Why did
23 you feel that, why did you tell her about that?

24 A. Because it was pertaining to my health and I was
25 trying to keep as healthy as possible.

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1 Q. Now, what did you think, did you have any concerns
2 as far as resolving the case and being on the transplant
3 list?

4 A. Yes, I did.

5 Q. What were the concerns?

6 A. I was told that if I had to go to prison that I
7 would come off the transplant list. And I was trying not
8 to come off that list because when I do go back on the
9 list I'll be going to the bottom of the list.

10 Q. So, just to make sure I'm understanding you it was
11 your belief that if you got a prison sentence you would
12 be removed from the kidney transplant list?

13 A. Yes.

14 Q. You would not receive a kidney.

15 A. Yes, sir.

16 Q. And in fact has that come to pass?

17 A. Yes.

18 Q. You did get removed from the kidney transplant list?

19 A. Yes.

20 Q. Okay. So backing up to before your sentencing you
21 told Ms. Shivers that you had to avoid prison if you
22 wanted to stay on the list?

23 A. Yes.

24 Q. So let's talk a little bit about when you eventually
25 did get your sort of plea offer and your discussions with

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1 Ms. Shivers. Can you tell the Court a little bit about
2 what you were expecting in terms of the deal?

3 A. We discussed before Court about trying to get house
4 arrest and probation where I could stay on my kidney
5 transplant list and get my back finished taking care of
6 at the same time.

7 Q. Did you have discussions with your attorney about
8 presenting your health issues at sentencing as
9 mitigation?

10 A. Yes.

11 Q. Tell the Court a little bit about that if you could.

12 A. Well, we discussed it and she said she was going to
13 talk to the Judge and the Solicitor about it. And she
14 didn't mention anything to the Court about that until
15 after I was sentenced that she was hoping that we could
16 get probation and house arrest.

17 Q. So tell the Court a little bit about your health
18 situation now as it stands. You said you were concerned
19 about being removed from the list and that indeed
20 happened?

21 A. Yes.

22 Q. How does the treatment in SCDC address your health
23 complications?

24 A. They put me on dialysis but they not doing the job
25 that they should be doing. They got my arm all swoll up

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1 with knots. My kidney doctor in SCDC has already
2 requested three times for them to get these knots cut out
3 but the surgeon at SCDC says that as long as my arms were
4 hurting he's not going to touch it.

5 Q. Okay. So the concerns you had about getting
6 adequate medical care in SCDC do you feel as though they
7 were justified in retrospect?

8 A. No, they don't do nowhere near what they do here on
9 the street.

10 Q. Okay.

11 A. It's hard for me to even get my binders and blood
12 pressure medicine renewed from them.

13 Q. Okay. And as we're here today for your PCR
14 application you had indicated that you felt like your
15 lawyer failed to present this evidence adequately during
16 your sentencing ---

17 A. --- yes ---

18 Q. --- is that fair to say?

19 A. Yes, sir.

20 Q. And it is your belief that if it had been presented
21 you would have received a lesser sentence?

22 A. Yes, sir.

23 Q. And you're asking the Court to give you another
24 chance to go back and get sentenced again is that...

25 A. Yes, sir.

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1 MR. GEEL: Beg the Court's indulgence.

2 [Whereupon, Mr. Geel reviews documents]

3 MR. GEEL: Okay. Thank you, Your Honor. That's
4 all I have.

5 THE COURT: Ms. Weidauer?
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1 CROSS-EXAMINATION

2 BY MS. WEIDAUER:

3 Q. Good morning, Mr. Wadford. How are you?

4 A. Doing okay, and you?

5 Q. Well. So you pleaded guilty in January of 2019

6 correct?

7 A. Yes, ma'am.

8 Q. Okay. And at that time had Ms. Shivers explained to

9 you the maximum sentence that you were facing?

10 A. Yes, ma'am.

11 Q. Okay. And when you pled guilty did you understand

12 that the Judge could give you that sentence if he wished?

13 A. Yes, ma'am.

14 Q. Okay. So she said that she was going to try to

15 mitigate for you I believe is your testimony and you

16 understood that you could get a sentence that was

17 something other than house arrest.

18 A. Yes, ma'am.

19 Q. Okay.

20 A. To my knowledge she didn't bring it up until after I

21 got sentenced.

22 Q. Okay. There has been some talk about meetings with

23 counsel. Do you recall about how many times you met with

24 counsel?

25 A. I met with Ms. Shivers I think roughly about four

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1 times the year that I was out on bond.

2 Q. Okay. And you said you discussed some of your
3 health issues. Did you discuss anything else during
4 those meetings with Ms. Shivers?

5 A. No ma'am, not that I can recall.

6 Q. Did she review discovery with you that would have
7 been provided by the Solicitor; what the Solicitor was
8 going to put up in your case?

9 A. No ma'am, she did not.

10 Q. She did not? Okay. And do you remember her
11 discussing with you the elements of these offenses; what
12 you were being charged with?

13 A. Yes, ma'am.

14 Q. Okay. And do you remember any discussions about
15 possible defenses to these charges?

16 A. Any what?

17 Q. Discussions about possible defenses?

18 A. No, ma'am.

19 Q. Okay. Did she discuss any of your rights with you;
20 jury trial, your right to a jury trial, your right to
21 remain silent, right to confront witnesses, etcetera?

22 A. No, ma'am.

23 Q. She did not discuss any of those with you?

24 A. No, ma'am.

25 Q. Okay. Do you recall during your plea hearing do you

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1 recall the Judge asking if you understood by pleading you
2 were waiving all of those rights? Your right to remain
3 silent.

4 A. Yes, ma'am. .

5 Q. Right to a jury trial, you do recall?

6 A. Yes, ma'am.

7 Q. Okay. And do you recall answering that you did
8 understand you were waiving those rights by pleading
9 guilty?

10 A. Yes, ma'am.

11 Q. Okay. Do you recall telling, and this is Judge
12 Dennis the plea judge, that you wanted to plead guilty?

13 A. Yes, ma'am.

14 Q. Okay. And what was your reasoning for wanting to
15 plead guilty at that time instead of go to trial?

16 A. Because I thought Ms. Shivers had talked to the
17 Judge and the Solicitor about getting house arrest.

18 Q. Okay.

19 A. But she didn't, as far as my knowledge is she didn't
20 bring it up until after the sentencing.

21 Q. Okay. But you did understand that you could get a
22 larger sentence than house arrest?

23 A. Yes, ma'am.

24 Q. Okay. And you knew that prior to pleading guilty,
25 is that correct?

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1 A. Yes, ma'am.

2 Q. Okay. Regarding your kidney failure and your
3 dialysis treatments do you recall Ms. Shivers discussing
4 that with you and what she intended to present to the
5 Court?

6 A. She told me that she was going to talk to the
7 Solicitor and the Judge and see what we could do about
8 getting probation and stuff because of dialysis.

9 And after I had my back surgery she told me she was
10 going to mention that to him also but like I said she
11 didn't even mention the surgery on my back at all to the
12 Judge; she just mentioned dialysis.

13 Q. Okay. Did Ms. Shivers tell you that she had reached
14 out to somebody about the possibility of keeping you on
15 the kidney transplant list?

16 A. No, ma'am.

17 Q. Okay. Do you recall at your guilty plea hearing her
18 mentioning that to the Judge?

19 A. No, ma'am. I don't remember her saying that.

20 Q. You don't recall her saying discussing that she had
21 spoken with a nephrologist about the time that it
22 generally takes to receive a kidney and whether as a
23 result of an active prison sentence you would be able to
24 stay on the kidney transplant list? You don't remember
25 that?

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1 A. No, ma'am. I brought to Court with me a letter from
2 my nephrologist stating that if I went to jail that I
3 would come off the transplant list. I brought a letter
4 to Court with that statement.

5 Q. Okay. So you brought that for Ms. Shivers?

6 A. Yes.

7 Q. And so you understood that should you receive a
8 larger sentence, should you receive active prison time
9 you would be taken off that list?

10 A. Yes.

11 Q. Okay. You mentioned a deal, you said deal earlier.
12 There wasn't a deal in place between the Solicitor or was
13 there a deal rather in place between ---

14 A. --- not that I know of.

15 Q. Okay.

16 MS. WEIDAUER: Nothing further, Your Honor.

17 MR. GEEL: Just one question, Your Honor.

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1 MS. WEIDAUER: The State would call Ms. Julie
2 Shivers to the stand.

3 [Whereupon, Ms. Shivers comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 - - - - -

7 JULIE SHIVERS,

8 Having been first duly sworn,

9 Was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. WEIDAUER:

12 Q. Good morning, Ms. Shivers.

13 A. Good morning.

14 Q. For a little bit of background how long have you
15 been practicing law in the state of South Carolina?

16 A. Since 2012.

17 Q. Okay. And how much of that has been criminal law?

18 A. All of it.

19 Q. 100 percent of it?

20 A. Yes.

21 Q. Okay. In this case were you appointed or retained
22 to represent Applicant?

23 A. I was appointed. I work for the Public Defender's
24 office.

25 Q. Okay. Do you recall roughly how long before you

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1 were, excuse me, before this plea you were appointed.

2 This plea happened in January of 2019.

3 A. I was appointed on December the 19th of 2017.

4 Q. Of 2017?

5 A. Yes, ma'am.

6 Q. So you had this case for a full year before the plea
7 happened?

8 A. Yes.

9 Q. Do you recall how many times you met with Applicant
10 during the course of your representation?

11 A. I would say roughly four or five times.

12 Q. Okay. And in the course of your representation did
13 you have a chance to review discovery with Applicant?

14 A. Absolutely.

15 Q. Okay. And would that have been reviewed more than
16 one time, would you have -- I'll let you answer that
17 question first.

18 A. Yes. He came to the office several times and we
19 discussed what the allegations were what the evidence
20 would be at trial.

21 I learned about the background between him and the
22 officer because they knew each other; it is a very small
23 community.

24 We also talked about how I felt that the one charge
25 related to the elderly man was overcharged and what the

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1 likely outcome would be if that charge went to trial I
2 believed that we would be potentially successful because
3 I felt that that should have been charged as an assault
4 and battery third which is ultimately what he pled to as
5 to that count.

6 And then we also talked about the elements of ABHAN
7 and the resisting, assault while resisting and what the
8 Solicitor would show at trial and what the likely outcome
9 could be should we go to trial.

10 Q. So what did you tell Applicant or give us a brief
11 overview of what the State's evidence was against him;
12 what they intended to present at trial.

13 A. He essentially, what the evidence was there was an
14 elderly man that was in the neighborhood who was picking
15 up some type of nuts off a tree on the ground. And he
16 would testify that Mr. Wadford became upset and asked him
17 to leave.

18 And when he refused, his testimony now obviously
19 this is different from Mr. Wadford's version just to be
20 clear, his testimony would be that Mr. Wadford punched
21 him in the face.

22 And that was the basis for the original ABHAN charge
23 to him. He called police. Mr. Wadford was back at his
24 residence and the police officer arrived on scene and
25 then attempted to arrest Mr. Wadford at which point Mr.

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1 Wadford was upset because of he has a familial, not
2 familial; he has a familiar relationship with the officer
3 and he was upset because the officer knew that he had
4 some health conditions. But the officer was attempting
5 to arrest him.

6 Then the officer would testify he began to assault
7 the officer. They ultimately ended up based on the
8 officer's testimony in a situation where one was on top
9 of the other.

10 And at one point the officer drew his weapon and Mr.
11 Wadford reached for the weapon and grabbed the officer's
12 weapon and then put his fingers inside the officer's
13 eyeballs.

14 And then eventually Mr. Wadford was just like okay,
15 I'm done and then he kind of allowed himself to be
16 arrested. And then the officer had to seek treatment
17 through Lowcountry Eye Specialists I believe for the eye
18 injury.

19 And they provided medical records for the injury to
20 the officer and that would be I believe the extent of
21 what the testimony would be. I do believe there was
22 another officer present as well that may have been a
23 witness.

24 Q. Okay. Or may have been a witness that the State
25 would ---

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1 A. --- right.

2 Q. You mentioned that there were some differences
3 between Mr. Wadford's story and the State's evidence or
4 what the State intended to put up as evidence. Can you
5 explain what you meant by that?

6 A. Mr. Wadford indicated that he didn't punch the
7 elderly man that he open hand slapped him. And so that
8 would have been one difference.

9 And then there were parts of the altercation when
10 him and the officer were fighting that he didn't really
11 recall because he indicated that he had kind of was not
12 really I don't know if he blacked out.

13 I mean he was certainly able to move at least from
14 him he didn't have a memory of all those things but he
15 certainly didn't contest what the officer was saying.

16 And he understood that should the jury hear what the
17 officer says that he did and believe him that he was
18 facing significant time in prison.

19 Q. So would you agree with the fact that Mr. Wadford's
20 indication -- inclination was that he should plead to
21 these charges?

22 A. Oh yes. That was always our talks. And we spent
23 the majority of the times that we met discussing how I
24 could mitigate to the Solicitor Kamila Sas who was on
25 there.

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1 And so when he initially met with me obviously, I
2 have a standard check list of things that I ask and so he
3 disclosed certain things.

4 And then once I got more information from him about
5 some of the stuff that was going on with him we were
6 focusing on those things so that when we were going to
7 work out a plea with the Solicitor one, I wanted to
8 mitigate his risk as much as possible as far as his
9 exposure that the Judge would have down from the 20
10 years.

11 And in addition to coming up with arguments that we
12 could mitigate to the Judge because I could only get
13 Kamila to agree to come so far because the officer was
14 insistent that he wanted to ask for significant time and
15 Ms. Sas I wasn't able to get her to come any lower than
16 the cap of 10.

17 Q. Okay. And that was still just a recommendation,
18 correct?

19 A. Correct. And she asked for every day of that 10
20 years.

21 Q. Okay. So you believe that you worked hard with the
22 Solicitor to try to mitigate his exposure, that's your
23 testimony correct?

24 A. I did. I provided information about his medical
25 condition to the Solicitor in asking for consideration as

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1 far as the offer. That was before the offer was made and
2 we talked several times via phone as we do frequently; we
3 have a lot of cases together. Then she made the official
4 offer.

5 And the reason I don't wait for Solicitors typically
6 to make offers because often times if I have information
7 that I think could be helpful for my client I want the
8 Solicitor to know that before they put an offer out
9 there.

10 So I was having those discussions as soon as I knew
11 that we were wanting a plea with the Solicitor. So when
12 she actually sent the offer in her offer she actually
13 says in there we've discussed this several times and this
14 is the offer.

15 So I knew that was going to be the offer when she
16 put it in writing and I relayed that to the client as
17 well. But we still were going to be seeking something
18 different from the Judge.

19 And Ms. Sas knew that as well which is why it wasn't
20 just a recommendation of 10 years and that's why she made
21 it a recommendation of a cap of 10 because she knew that
22 I would be asking for probation at the hearing from the
23 Judge.

24 Q. Okay. So at the hearing can you kind of tell the
25 Court what you put up as mitigation evidence before

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1 Applicant was sentenced?

2 A. Yes. I actually have my notes. So every time,
3 although I had met with client multiple times I always do
4 their rights and everything again at the time of the plea
5 because I always them to have it fresh on their mind
6 right before they go to the Judge.

7 And so I actually that morning went over with Mr.
8 Wadford something that I do every time that a client is
9 potentially facing prison which is an acknowledgement of
10 rights given up by entering a guilty plea form which goes
11 over all of their rights and we both signed it on January
12 23rd, the day of the plea indicating that he knew what
13 the offer was, what the maximum exposure was, whether or
14 not he was taking any medications or drugs that could
15 affect his ability to understand what he was doing.

16 At that time he disclosed blood pressure medication
17 and kidney medication which was disclosed to the Judge
18 because I actually hand this form up with the sentencing
19 sheet. In addition to that I always ---

20 Q. --- and for the record I'd like you to just look
21 over this sheet.

22 [Whereupon, the witness is shown document]

23 Q. And can you indicate for the Court whether that's
24 the sheet that you are pulling from your file right now.

25 A. Yes, that is it.

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1 MS. WEIDAUER: I'd like this marked as State's 1.

2 [Whereupon, State's exhibit number 1 is marked by
3 the court reporter]

4 A. And on the morning of I also go over like background
5 information. Now I already know a lot of the background
6 information but I always find it important to ask the
7 client what important information do you want the Judge
8 to know so I always start with the Judge.

9 And I actually have my paper so I can go over
10 exactly what it was. That he's 52 years old. He would be
11 53 the following Monday, the following week.

12 He graduated high school in 1983 from St. Stephens
13 High School. He had been married for 14 years but had
14 separated for the last three years after his wife moved
15 in with her boyfriend.

16 He had no children. He was a truck driver for 25
17 years. And the medical issues that he disclosed to me
18 the day of the plea that he wanted the Judge to know
19 about was that he had cataracts on his eyes and that he
20 had a pre-op appointment on February 11th for the
21 cataracts because they were going to require surgery.

22 In addition to that he had been suffering from
23 kidney failure since 2012. Lifesaving measures required
24 dialysis three times a week and he's been doing that
25 since 2012 up and until the point I would assume still

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1 | today but up to the point of the plea. I let the Judge
2 | know that he was on the kidney transplant list.

3 | I had indicated that since 2012 and said on average
4 | it takes five to seven years for a person who is on the
5 | kidney transplant list to actually receive a kidney.
6 | He's currently past that date of the five to seven years
7 | that an average person would take so he had already been
8 | on the list longer than that.

9 | And I said per the nephrologist if he were to go to
10 | prison he would be removed from the transplant list and
11 | he can't be put back on until he's released from custody.

12 | Then it would take another five to seven years or
13 | more to be able to get a kidney thereafter because that's
14 | the average time from the point that you get on the
15 | kidney transplant list.

16 | I then indicated to the Judge that he was very
17 | remorseful for his actions. He understands how lucky he
18 | is to be alive. He knew the officer. He feels terrible
19 | about what happened. He understood the gravity of the
20 | charges and the consequences thereof.

21 | And then I asked the Judge I said we're asking for a
22 | suspended sentence with house arrest so that he can
23 | maintain his dialysis treatment and have a chance for a
24 | lifesaving transplant. I indicated as well I have notes
25 | here that he apparently; I have something here May 11th

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1 MUSC. There was an evaluation for the transplant list
2 and that he needed eye surgery and that he had not been
3 in any trouble since this incident with the police.

4 Q. Is that May 11th of 2018 or 2019? 2018 I would
5 assume ---

6 A. --- I wish I was a better note taker. I'm not sure.
7 It's along with my paperwork that I do with the plea ---

8 Q. --- it was prior to the plea?

9 A. Yes.

10 Q. There has been some testimony regarding back issues.
11 Was that ever raised as something that he wanted
12 presented to the Court or something that you believed was
13 an issue?

14 A. So in full candor I met with him for the very first
15 time on January the 24th of 2018. He came to my office
16 and I went over our standard it's a client intake form
17 that I have.

18 And some of the questions I ask is you know their
19 name, their date of birth, their age, where they live,
20 where they work. I ask about their marital status,
21 whether or not they have children.

22 I also ask about any health or mental health issues
23 that they have. On that date in January of 2018 he
24 indicated to me that he was on dialysis for renal failure
25 that he had had a quadruple bypass in 2011 and then he

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1 had back issues. That is the extent of what was
2 disclosed and that he was on the kidney transplant list.
3 In addition to that I also asked him about the case
4 itself and I took notes on that.

5 After that I don't recall him bringing up back
6 issues at all. Like this is, today is the first time
7 that I recall hearing anything about a surgery that
8 predated that and he did not mention that on the day of
9 the plea.

10 I always ask the clients what information, is there
11 anything else that I'm missing that you want the Judge to
12 know before we go into Court.

13 And that's why I ask them on the day of just in case
14 there is something that I have left out. I go over all
15 of these. I write it down with them sitting with me and
16 that was never brought up.

17 Q. Based on your knowledge and your interactions with
18 Mr. Wadford should that have been an issue he wanted
19 brought up would he have told you?

20 A. Yes.

21 Q. There were open communications between you and him?

22 A. Oh absolutely. He was lovely. I enjoyed him. He
23 is hilarious. He is a hilarious man and we had some
24 great conversations in all of our meetings. And I
25 believe if he wanted the Judge to know about that that

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1 day it would have been there. Certainly from my
2 perspective the most mitigating factor was the kidney
3 transplant issue because that is the thing that would
4 cost him his life potentially.

5 So my main focus was that. And I actually was the
6 one who was asking him questions about the transplant
7 process. And I was trying to figure out what would
8 happen should he go to prison because of that and so I
9 had him reach out to the nephrologist and bring the
10 letter to Court.

11 And I presented the letter from the nephrologist to
12 Judge Dennis just so he would have an official indication
13 because I felt that it was that important that he knew
14 that he would be off if he went to prison.

15 Q. And you had a discussion with Mr. Wadford about the
16 consequences of an active prison sentence?

17 A. I did and his response -- I was in the office. I
18 was actually training a new attorney who is now a
19 Solicitor here, Patrick Goodwin. He was actually in the
20 office with us.

21 We had the talk and when I went over the offer and I
22 was explaining to him that the Solicitor is asking for
23 prison and the Judge can still sentence you to prison.
24 Although I am going to ask for probation or house arrest
25 that the Judge -- and he said something along the lines

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1 of he kind of giggled and was like well if the State
2 wants to pay for my dialysis treatment then so be it was
3 his response to that.

4 Q. So you had no qualms or reservations that he
5 understood fully his options and what a plea, the
6 possibilities a plea could bring with it whether he got
7 house arrest or whether he got an active prison ---

8 A. --- no, I did not. And he actually wrote me several
9 times after the plea hearing and I have those letters as
10 well. And he has always been extremely polite. And I
11 actually responded to every letter that he has sent me.

12 And in the very first letter when he asked about
13 appealing the sentence it was past the deadline so I
14 explained that to him in the letter. I also reminded him
15 of the fact that he knew what the consequences were.

16 I reminded him of what his statement was to me about
17 the possibility of going to prison in that letter. Then
18 he wrote me asking for a plea transcript.

19 I explained to him it sounded like he was wanting to
20 file a PCR so I explained to him that if he were to file
21 that application that the plea transcript would come, it
22 would automatically -- he would have access to it that
23 way that we didn't have access or the ability to get that
24 through our office because it costs money. And then he
25 wrote me back and he asked me to help him with the PCR

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1 process and so I actually sent him the PCR application.
2 I advised him that he should only file the PCR on the
3 ABHAN charge related to the officer because the other
4 charge if he were to bring that up the time served on the
5 A & B third could be potentially reopened and he'd be
6 facing significantly more time.

7 And so I kind of walked him through all of that and
8 that kind of brings us to where we are today.

9 Q. Okay. Just one final question. Do you stand by the
10 representation that you gave Mr. Wadford? Was there
11 anything else you felt you could have done regarding
12 mitigation?

13 A. I absolutely stand by it. I am in agreement with
14 him. I think he got way too much time. I feel
15 absolutely horrible. It breaks my heart to see the
16 condition that he's in today.

17 I don't know why Judge Dennis made the decision he
18 made. It kind of turned my stomach. The way in which he
19 spoke to him about that this is I know this is
20 potentially a life sentence. I thought it was harsh.

21 I feel, but it wasn't anything that I, I don't think
22 there was anything that I could have added that would
23 have made Judge Dennis do anything differently.

24 Q. Thank you. Answer any questions Mr. Geel has.

25 MR. GEEL: Very briefly, Your Honor.

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June 20, 2022

1 CROSS-EXAMINATION

2 BY MR. GEEL:

3 Q. Ms. Shivers, so as a defense lawyer would you agree
4 that sometimes we have cases that are more mitigation
5 cases than sort of guilt innocence issues?

6 A. Yes.

7 Q. Would it be fair to characterize this as a
8 mitigation case?

9 A. Yes.

10 Q. So in other words it wasn't really ever a question
11 whether there was some criminal conduct that had taken
12 place; it was more the effort you were directly toward
13 minimizing the damage or minimizing the sentence?

14 A. Correct.

15 Q. And so also as defense lawyers when our clients tell
16 us things about their personal life for potential
17 mitigation as a defense lawyer you have to decide what
18 you are going to tell the Judge at plea and sentencing,
19 correct?

20 A. Yes.

21 Q. You have to exercise your own judgment. You don't
22 necessarily tell the Judge everything that your client
23 tells you is that fair to say?

24 A. Yes, because sometimes what they think will help
25 would actually hurt them and so I have to filter through

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1 that.

2 Q. Right. And it could also be irrelevant as well ---

3 A. --- yes ---

4 Q. --- and just not something the Judge would be
5 interested in hearing about is that fair to say?

6 A. Correct.

7 Q. So let's talk sort of more broadly about strategy.
8 Would you agree that if there is something that is likely
9 to be very helpful in terms of mitigation generally that
10 would count in favor of telling the Judge that?

11 A. Yes.

12 Q. Would you agree? And conversely like you just
13 mentioned if something would be harmful or irrelevant
14 then you want to avoid those kinds of things.

15 A. Yes.

16 Q. And so if you want to talk about the strategy at
17 sentencing it is essentially to highlight as much
18 mitigation as possible while not saying anything harmful
19 or irrelevant, would you agree?

20 A. Yes.

21 Q. Okay. So we have a transcript of your presentation,
22 which indicated a lot of mitigation evidence. To the
23 extent that there is anything from your presentation that
24 was missing can you identify a strategic reason for not
25 bringing up that information?

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1 A. If you're referring to the back surgery I didn't
2 know about that. So that would be the only reason. If I
3 would have known about that I absolutely would have
4 presented it.

5 If he would have told me that day that he wanted me
6 to indicate that because I talked about the cataracts and
7 all that too, which certainly back surgery would be more
8 mitigating than cataract necessity surgery. So I
9 absolutely had I known that would have presented it to
10 the Court.

11 Q. So, let me ask you this. As you sit here today do
12 you have an independent recollection of knowing about Mr.
13 Wadford's back issue or have you refreshed your
14 recollection from notes or how clear is -- I know you
15 have a lot of clients. How clear is your memory of those
16 discussions with Mr. Wadford?

17 A. So I only have the note that just says back issues
18 on the initial meeting. And so I don't have any -- when
19 he said that today it surprised me because I have, like I
20 remember him. He was a very likeable client.

21 I probably won't ever forget him because I feel
22 terrible about the fact that he had to go to prison at
23 all. So he is not somebody that I don't think about and
24 I -- had that been discussed it would be in the notes
25 here. So, if he wanted that to be presented I always ask

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1 that. I take notes at the time right before we go into
2 plea to make sure I didn't miss anything.

3 I go over my presentation of what I'm going to say
4 to the Judge to my clients every time before we go before
5 the Judge because obviously they know their life better
6 than me and I want to make sure that I'm not missing
7 anything that they feel is critical.

8 And that is not there so I don't have any other
9 indication that I was made aware of anything.

10 Q. Sure. Now speaking broadly you would agree that at
11 the very least the back issue is the type of thing that
12 you would think about bringing up to the Judge ---

13 A. --- yes ---

14 Q. --- is that fair to say?

15 A. Absolutely.

16 Q. Even if we don't say for sure you would have brought
17 it up, this is the type, this is what you're looking for
18 in terms of mitigation or least medical mitigation.

19 A. Absolutely.

20 Q. And I guess put another way there is not really any
21 strategic reason to sort of downplay a medical issue ---

22 A. --- no ---

23 Q. --- you would always want to sort of highlight them.

24 A. Absolutely.

25 Q. You would agree?

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1 A. Absolutely.

2 Q. So setting aside the back issue I mean just speaking
3 broadly again the strategic consideration for a defense
4 lawyer at sentencing is to bring up as much mitigation
5 that is relevant as you possibly can you would agree?

6 A. Yes.

7 Q. Okay.

8 MR. GEEL: Thank you, Your Honor. That's all I
9 have.

10 MS. WEIDAUER: No further questions, Your Honor.

11 THE COURT: Thank you. You can step down, ma'am.

12 [Whereupon, the witness is excused and exits the
13 witness stand]

14 MS. WEIDAUER: And we have no further witnesses so
15 the State would rest its case. Can we move State's
16 exhibit 1 into the record, Your Honor at this time?

17 MR. GEEL: No objection.

18 THE COURT: One is entered.

19 [Whereupon, State's exhibit number 1 is entered into
20 evidence by the Court]

21 THE COURT: Okay. Anything else on behalf of
22 either party?

23 MR. GEEL: Your Honor, I just have some closing
24 remarks. I can be brief if the Court would allow.

25 THE COURT: Go right ahead.

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Post-Conviction Relief Hearing-Closing Arguments-Remarks by Mr. Geel
June 20, 2022

1 CLOSING ARGUMENTS

2 BY MR. GEEL:

3 So obviously what Your Honor is tasked with today is
4 determining whether the presentation that we've made with
5 Mr. Wadford's medical issues whether those issues were
6 sufficiently articulated and presented to the Court at
7 sentencing, which of course we have a transcript of Ms.
8 Shiver's presentation which obviously does contain a
9 substantial amount of mitigation.

10 What the Court is tasked with doing here as the fact
11 finder is essentially weighing that record against what
12 Mr. Wadford has presented here today in determining
13 whether the Court thinks that there is a likelihood that
14 things would have gone differently if it was fully
15 presented.

16 Mr. Wadford has testified that he made Ms. Shivers
17 aware of the back issue in particular. Again, this comes
18 down to Your Honor's calculation of the weight of these
19 various pieces of mitigating evidence.

20 So we would respectfully submit to the Court that
21 the failure to present all of the, the entirety of Mr.
22 Wadford's medical situation was ineffective under the
23 Strickland framework and respectfully submit that Mr.
24 Wadford is entitled to a new sentencing proceeding on
25 that basis. Thank you.

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Post-Conviction Relief Hearing-Closing Arguments-Remarks by Mr. Geel
June 20, 2022

1 THE COURT: Ms. Weidauer, anything you want to tell
2 me, ma'am?

3 MS. WEIDAUER: Yes, briefly.
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Joseph S. Wadford, Jr. v State of S.C.
Post-Conviction Relief Hearing-Closing Arguments-Remarks by Ms. Weidauer
June 20, 2022

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CLOSING ARGUMENTS

BY MS. WEIDAUER:

As mentioned it's the Court's job today to look at both the underlying record and the testimony presented. I believe that Ms. Shivers' testimony was articulate and detailed and Ms. Shivers was credible in her accounts or past accounts of this.

Applicant's main concern seems to be that she did not bring up some back surgery mitigation and that maybe she did not fully present his dialysis treatment. The State would just assert that Applicant -- our belief is that Applicant has not shown that her representation fell below an objective standard of reasonableness and therefore this Court should deny and dismiss this application with prejudice. Thank you, Your Honor.

THE COURT: Thank you. I generally don't rule on PCR's at the time of the hearing so I'm going to take a hard look at it before I render a final decision. I'll email you of my decision. Thank you all.

MR. GEEL: Thank you, Your Honor.

MS. WEIDAUER: Thank you, Your Honor.

*****END OF TRANSCRIPT OF RECORD*****

Joseph S. Wadford, Jr. v State of S.C.
Certificate of the Court Reporter
June 20, 2022

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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Berkeley County, South Carolina on the 21st day of June, 2022.

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

January 25, 2023



Joyce C. Rueger, CVR-M
Court Reporter



STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF GENERAL SESSIONS
) WARRANT NO(S):
)

) ACKNOWLEDGEMENT OF RIGHTS GIVEN UP

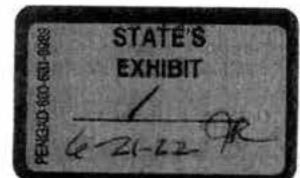
The State of South Carolina,
Plaintiff,

)
) BY ENTERING GUILTY PLEA

JOSEPH^{YS} WADFORD, JR
Defendant.

The Defendant desires to plead guilty to ABHIAN; A+B3D and certifies to the Court that the answers to the following are true:

1. The maximum sentence and penalty for my charge(s) is/are 20yrs ; 30days
2. Has the State agreed to recommend a sentence to the Judge? Yes No
If so, what is the recommendation? CAP of 10yrs
If so, has anyone promised you anything else to get you to plead guilty or assured you as to a particular sentence? Yes No
3. Has anyone promised you anything else, threatened you or put any pressure on you to get you to plead guilty? Yes No
If so, who and what? _____
4. Are you under the influence of any medications, drugs or alcohol? Yes No
If yes, explain. Blood pressure meds, Kidney meds
5. Are you aware of any physical, mental, emotional or nervous problem you may have that might affect your understanding of this plea or this court proceeding? Yes No
If yes, explain: _____
6. Do you understand that if you plead NOT GUILTY you have the right to have the help of a lawyer at all stages of the proceedings, and if you cannot afford to employ a lawyer, one would be provided to you free of charge? Yes No
7. Do you understand that when you plead guilty you give up your right to a jury trial? Yes No
8. Do you understand that in a trial you would be presumed to be innocent? That you would not be required to prove you were innocent or that you were not guilty? Yes No
9. Do you understand that in a trial you have the right to see and hear all witnesses called to testify against you and to confront, cross examine and question them, and confront all of the evidence? Yes No
10. Do you understand that in a trial you have the right to take the witness stand and testify, or not to take the witness stand as you choose, and that you cannot be required to take the witness stand? Yes No
11. Do you understand that at a trial you would have no burden of proof, and that the burden would instead be entirely on the State to prove you were guilty, and you could only be found guilty if all 12 jurors agreed that the State had proven each and every element of the crime against you beyond a reasonable doubt? Yes No



12. Have you talked with your lawyer at _____ and do you fully understand the elements of each crime you are pleading guilty to? Yes No

13. Do you understand that if you plead NOT GUILTY and that if you do not take the witness stand, the jury (1) cannot take that as evidence against you and (2) the court would tell the jury that, like any citizen, you have the absolute right to remain silent, and that your silence cannot be held against you whatsoever? Yes No

14. Do you understand that if you plead NOT GUILTY you have a right to use the subpoena power of the Court to make witnesses attend your trial and testify, whether they want to or not? Yes No

15. Do you know that if you plead GUILTY you will be found guilty without a trial and you will have given up all the rights mentioned in questions (9) to (14) along with your right to present any defense(s), and your right to challenge or contest any of the evidence against you including any searches or seizures made by law enforcement, any statements you may have made, and any testing that was done or should have been done? Yes No

16. If you are on Parole or Probation, do you know this plea could result in a revocation? Yes No

17. Has your lawyer gone over your rights and all circumstances of the charge(s) with you, and done everything you have asked him or her to do on your case? Yes No

18. Are you satisfied with your lawyer? Yes No

19. Do you understand what you are doing and all the rights that you are giving up? Yes No

20. Are you pleading guilty of your own free choice and will? Yes No

1-23-19

Date

[Signature]
Defendant's Signature

I certify that the above questions were answered by the Defendant after a full explanation of each question by the undersigned and in my opinion the Defendant understands the elements of the crime(s), the possible punishment(s) and his/her Constitutional rights that will be waived if the plea is accepted.

23 Jan 19

Date

[Signature]
Signature of Attorney for Defendant

Julie M. Shivers
Attorney's Name Printed

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Joseph S. Wadford, Jr., #378918)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

CASE NO. 2019-CP-08-2008

**ORDER OF DISMISSAL
 WITH PREJUDICE**

2024 JUL 15 PM 3:56
 LEAH GUERRY DUPREE
 CLERK OF COURT
 BERKELEY COUNTY, SC

FILED

This matter comes before the Court by way of Applicant Joseph S. Wadford, Jr.'s post-conviction relief (PCR) application, which was filed on August 13, 2019, and received by the South Carolina Attorney General's Office on January 24, 2020. The State of South Carolina (Respondent) served its Return to the application filed on December 2, 2020, and requested an evidentiary hearing for the claims of ineffective assistance of counsel. An evidentiary hearing was convened before this Court on June 21, 2022, at the Berkeley County Courthouse. Applicant was present and represented by Christopher Reginald Geel, Esquire. Respondent was represented by Assistant Attorney General Samantha J. Weidauer.

After a thorough review of all records and evidence before this Court, this Court finds Applicant has not met his requisite burden of proof establishing he is entitled to post-conviction relief and hereby denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In February of 2019, Applicant was indicted for Assault and Battery of a High and Aggravated Nature (2019-GS-08-00254) and Assault and Battery, Third Degree (2019-GS-08-00255). Applicant waived presentment to the

grand jury on both indictments. Julie Marie Shivers, Esquire (Plea Counsel), represented Applicant. Assistant Solicitor Kamila Szymczynska-Sas prosecuted the case.

On January 23, 2019, Applicant appeared before the Honorable R. Markley Dennis, Jr. and pled guilty to all the charges. Judge Dennis sentenced Applicant to imprisonment for thirty (30) days with credit for fifteen (15) days' time served for the Assault and Battery and fifteen (15) years imprisonment, suspended upon the service of eight (8) years, for the Assault and Battery of a High and Aggravated Nature. Applicant did not appeal his convictions or sentences.

SUMMARY OF FACT PRESENTED AT THE GUILTY PLEA HEARING

The facts for this indictment were articulated by the State at Applicant's plea hearing as follows:

Your Honor, on October 26, 2017, law enforcement was dispatched to the Bonneau area of Berkeley County to an elderly man who was the victim on an assault and battery third, being assaulted by this defendant. That victim was apparently picking up some tin cans in the community and had prior permission from one of the residents. This defendant approached him and said he didn't have permission and punched him in the face causing laceration to the right side of his face. Another person witnessed the incident, assisted that victim, and also later helped to identify this defendant. Law enforcement arrived, first talked to the elderly victim and then located this defendant. When they approached him, asking if he knew who punched the victim, he admitted that he did. At that time, the defendant was told to put his hands behind his back and that he was under arrest for the assault on the victim. He resisted, grabbed and pushed the officer, was throwing punches and trying to basically dig the officer's eyes out, your Honor. He was able to throw the officer on the ground when the officer was trying to place him in a headlock, and he got on top of the officer. At that point, he was jamming his thumbs into the officer's eyes. There was another individual who got involved and tried to assist the officer and was able to distract this defendant and the officer was able to get away. He drew his weapon at the defendant. At that point, the defendant actually grabbed the weapon, Your Honor, and was told to let go. At some point he did. The backup arrived and he was placed in custody. The officer and the other victim were both transported for

treatment. The officer was treated for a shoulder injury and eye injury. He had a rotator cuff surgery at some point. The eye injury was identified as a traumatic hemorrhage in his eye. He went through several treatments. I think at this point the doctor gave him some options for surgical intervention. He is choosing not to proceed with that at this point.

(Plea Tr. pp. 8-10).

CURRENT PROCEEDING

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

1. Ineffective Assistance of Counsel
 - a. Plea Counsel failed to present mitigating evidence of Applicant's medical issues.

As relief, Applicant seeks a "new trial."

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

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

¹ S.C. Code Ann. §§ 17-27-10 to -160.

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge

guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of Strickland remains unchanged, the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of Plea Counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

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

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

INITIAL FINDINGS

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing credible and persuasive, where she presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, she rendered adequate assistance and exercised reasonable professional judgment in

his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, supra). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Applicant advised the plea court Plea Counsel had explained the charges to him and possible punishment (Plea Tr. p. 4; 6-7); 2. Applicant understood the judge could sentence him to twenty years (Plea Tr. pp. 4-5); 3. Applicant understood he was pleading to a violent offense (Plea Tr. p. 5); 4. Applicant understood he was pleading to a serious offense and that he would receive a strike (Plea Tr. p. 5); 5. Applicant understood that he would have to serve eighty-five percent of any sentence the plea court imposed (Plea Tr. p. 5); 6. Applicant understood he would have to serve a two-year community supervision program after his sentence was served (Plea Tr. p. 5); 9. Applicant indicated he was satisfied with his attorney (Plea Tr. p. 6-7); 10. Plea Counsel discussed the State's recommended sentence of a cap of ten-year active time with Applicant prior to his plea (Plea Tr. pp. 7-8); 11. Plea Counsel advised Applicant of his rights and the consequences of a plea (Plea Tr. p. 8); 12. Applicant confirmed the truth of what Plea Counsel advised the plea court. (Plea Tr. p. 8); 13. Applicant indicated to the plea court he waived his rights to a jury trial, to remain silent, and to confront the witnesses against him (Plea Tr. p. 8); 14. No threats or promises were made to Applicant in exchange for his plea (Plea Tr. p. 8); 15. Applicant agreed with the State's recitation of the facts giving rise to his plea and stated he did assault the police officer (Plea Tr. p. 11); 16. Applicant clearly indicated to the plea court he had answered all the plea court's questions truthfully and understood the plea court's questions (Plea Tr. pp. 11-12); 17. Applicant was not under the

influence of alcohol or medication at his plea (Plea Tr. p. 12); 18. The plea court found there was a factual basis for the plea and that Applicant's plea was entered with the benefit of competent counsel with whom Applicant was satisfied (Plea Tr. p. 12); 19. Plea counsel advised the plea court of Applicant's various health issues and provided the plea court with a letter from Applicant's nephrologist (Plea Tr. pp. 12-15); 20. The plea court read Applicant's letter from his nephrologist (Plea Tr. pp. 15-16).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1a: Plea Counsel failed to present mitigating evidence concerning Applicant's health at the plea hearing.

Applicant alleges Plea Counsel was ineffective for failing to present mitigating evidence at Applicant's sentencing hearing. Specifically, Applicant alleges Plea Counsel failed to present pertinent and helpful mitigating evidence at Applicant's sentencing hearing concerning his prior back surgery and certain aspects of his dialysis treatment. This Court finds this allegation is without merit.

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. Counsel is not required to investigate or submit every conceivable line of mitigating evidence, but a decision not to investigate must be reasonable. Von Dohlen v. State, 360 S.C. 598, 602 S.E.2d 738 (2004); Cf. Wiggins v. Smith, 539 U.S. 510, 522 (2003) ("counsel's failure to uncover and present voluminous mitigating evidence at sentencing could not be justified as a tactical decision ... because counsel had not 'fulfill[ed] their obligation to conduct a thorough investigation of the defendant's background'" (quoting Williams v. Taylor, 529 U.S. 362, 396 (2000))).

In determining prejudice, an applicant must show that but for counsel's deficiency in not presenting the mitigating evidence, he would have received a different sentence. Porter v. McCollum, 558 U.S. 30, 41(2009); See Wiggins, 539 U.S. at 536 (finding that had the jury been confronted with considerable mitigating evidence regarding the "sordid details of [Petitioner's] life history," there was "a reasonable probability that it would have returned with a different sentence"). The inquiry is not limited to cases where no or little mitigation was presented, and courts assess whether the new mitigating evidence "would barely have altered the sentencing profile presented" to the decisionmaker. Sears v. Upton, 561 U.S. 945, 954(2010), quoting Strickland, 466 U.S. at 700.

Relevant Excerpts from the Guilty Plea Hearing

The record reflects that prior to Applicant's sentencing, Plea Counsel advised the plea court of the following in mitigation:

Thank you, Your Honor. Mr. Wadford is 52 years old. He'll actually be 53 on Monday of next week. He is a 1983 graduate from St. Stephens High School. He's been married for 14 years; however, he is separated for the last three years when his wife moved in with her new boyfriend. He does not have any children. He was a truck driver for 25 years prior to being medically disabled. He currently suffers from cataracts on his eye, which he has appointments on February 11th because he needs a cataract surgery; but more significantly than that, he suffers from kidney failure and has since 2012. He is required three times a week as a life-saving measure to go to dialysis, and he's been on dialysis since 2012. I do have a letter from his nephrologist that I asked for him to prepare if I could pass that forward... He has been on the kidney transplant list since 2012. According to the nephrologist, it apparently takes five to seven years generally to receive a kidney. He's currently past that time frame; however, he has not received one yet. I asked specifically of the nephrologist what would be the result if he were to go to an active prison sentence. And, certainly, as I suspected and as the letter will indicate, he will be removed from the kidney transplant list and would not be eligible to be back on the list until he's released from prison. And then, obviously, the five to seven-year clock would run thereafter. He's certainly very remorseful. He knows this officer.

It's a small town. He's known him for many years. He understands that he was completely and utterly in the wrong. He did ask the officer not to grab on him; however, he responded in the worst way humanly possible. He certainly feels terrible about what happened and he understands the gravity of the charge, the consequences that he's facing, and he is very remorseful for his actions. He certainly has a prior history from 2002, but he's not -- he does not have an extensive history. I understand that -- and I've talked to him about the likelihood of him going to prison. We would humbly ask Your Honor to consider an alternative to that. I have spoke with him at length about the possibility, and that would I be asking Your Honor to consider a significant house arrest sentence. The reason being based on his health. I'm hopeful that he would be able to stay on the kidney transplant list. I've talked to him about how it's certainly much easier for him to go in and do the time and just be done and how difficult house arrest is. He does not work. The only thing he does is go to dialysis three times a week and sees his medical doctors. So we would ask Your Honor to consider a significant house arrest sentence with an order that he not be able to leave, other than for his medical appointments. And that is what he's asking for today, Your Honor.

(Plea Tr. pp. 12-15).

Additionally, the record reflects that the plea court addressed Applicant concerning the evidence presented in mitigation, as follows:

Mr. Wadford, I read a letter from Dr. Broader, dated January 4, 2019. And it says that you have been on life-sustaining treatment since July 2012, five years before this incident occurred. And I understand that what I'm about to do -- and I don't derive any significant pleasure out of this. This is probably a death sentence to you, and I'm sorry. But there is no way in the world we can allow somebody who is in that situation to do what you did without punishment. And there is -- there is nothing that justifies what you did. I don't care if the officer -- if you thought the officer didn't have any reason to do anything. One thing we know is -- we learn that you have to say, yes, sir, and you challenge that at another time and place. But to do what you did? No, sir, not a chance that I'm going to let you walk out of this courtroom. And the fact that you have the consequence of losing your spot on the -- for a kidney transplant, I'm sorry. You initiated that; I didn't.

(Plea Tr. pp. 15-16)

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Testimony Presented at Evidentiary Hearing
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On direct examination, Applicant testified he met with Plea Counsel for the first time about a month after his arrest, and at that time, he had issues with his back and was undergoing dialysis three times a week. (PCR Tr. p. 9). Applicant testified he was undergoing dialysis due to kidney failure, and he has had issues with his kidneys since 2011. Id. Applicant testified that his doctor had discovered he had a walking disc in his back that needed to be replaced, and this issue had been bothering him for a couple of years. (PCR Tr. pp. 9-10). Applicant testified he did not have back surgery until after his arrest. (PCR Tr. p. 10). Applicant testified he was put on dialysis in 2015 by his nephrologist. (PCR Tr. p. 11).

Applicant testified Plea Counsel represented him the entire time, and he informed Plea Counsel about his various medical issues in their initial meetings. Id. Applicant testified he told Plea Counsel everything he testified to at the evidentiary hearing. Id. Applicant testified he continued his treatment while out on bond. (PCR Tr. pp. 11-12). Applicant testified he informed Plea Counsel of the following concerning his treatment for his various health issues. (PCR Tr. p. 12). Specifically, Applicant testified he informed Plea Counsel about his artificial disk replacement. (PCR Tr. pp. 12-13). Applicant testified he and Plea Counsel discussed pursuing house arrest and probation based on his various medical issues. (PCR Tr. pp. 13-14). Applicant testified he was on the kidney transplant list from 2015 to 2019, and he was informed that if he went to prison, he would be taken off the transplant list. (PCR Tr. pp. 14-15). Applicant testified he was taken off the transplant list. (PCR Tr. p. 15). Applicant testified he advised Plea Counsel about this fact. Id.

Applicant testified he discussed presenting this evidence to the plea court with Plea Counsel, and Plea Counsel did not mention anything to the plea court until after he was sentenced.

(PCR Tr. pp. 15-16). Applicant testified the treatment in SCDC is inadequate, and he believes that if Plea Counsel had presented this mitigating evidence to the plea court, he would have received a lesser sentence. (PCR Tr. pp. 16-17).

On cross-examination, Applicant testified Plea Counsel did not bring up his health issues to the plea court until after he was sentenced. (PCR Tr. p. 19). Applicant testified his reason for pleading guilty was based on his understanding that Plea Counsel had discussed getting house arrest with the judge and solicitor. (PCR Tr. p. 21). Applicant testified he understood prior to his plea that he could get a larger sentence. (PCR Tr. pp. 21-22). Applicant testified he did not recall Plea Counsel advising the plea court that an active sentence would mean Applicant would be taken off the transplant list. (PCR Tr. pp. 22-23). Applicant testified he provided Plea Counsel with a letter from his nephrologist stating he would be taken off the transplant list if he went to jail. (PCR Tr. p. 23).

On direct examination, Plea Counsel testified Applicant's inclination was to plea, and most of their discussions concerned mitigation with the solicitor. (PCR Tr. p. 29). Plea Counsel testified that the focus was to mitigate Applicant's risk as much as possible and that the solicitor would only come down to a cap of ten years because the officer Applicant attacked was insistent on significant time. (PCR Tr. pp. 29-30). Plea Counsel testified she provided the solicitor with Applicant's medical condition and worked hard to get the solicitor to make an offer. (PCR Tr. pp. 30-31). Plea Counsel testified she had numerous discussions with the solicitor prior to them offering a plea. (PCR Tr. p. 31). Plea Counsel testified the solicitor did not recommend ten years active but a cap of ten years because she knew Plea Counsel intended to ask for probation. *Id.*

Plea Counsel, referencing her notes, testified Applicant signed a waiver an acknowledgment of waiver of his rights, indicated he understood the offer, what the maximum

exposure was, and disclosed that he was on blood pressure medication and kidney medication. (PCR Tr. p. 32; State's Exhibit 1). Plea Counsel testified this was disclosed to the plea court. Id. Additionally, Plea Counsel testified she went over background information with Applicant that morning and asked Applicant what information he believed was important for Plea Counsel to advise the plea court of. (PCR Tr. p. 33).

Plea Counsel testified that Applicant indicated he wanted Plea Counsel to advise the plea court of the following:

And I actually have my paper so I can go over exactly what it was. That he's 52 years old. He would be 53 the following Monday, the following week. He graduated high school in 1983 from St. Stephens High School. He had been married for 14 years but had separated for the last three years after his wife moved in with her boyfriend. He had no children. He was a truck driver for 25 years. And the medical issues that he disclosed to me the day of the plea that he wanted the Judge to know about was that he had cataracts on his eyes and that he had a pre-op appointment on February 11th for the cataracts because they were going to require surgery. In addition to that he had been suffering from kidney failure since 2012. Lifesaving measures required dialysis three times a week and he's been doing that since 2012 up and until the point I would assume still today but up to the point of the plea.

(PCR Tr. pp. 33, l. 4 – 34, l. 1; State's Exhibit 1). Plea Counsel then testified to all the evidence she presented to the plea court, which is reflected in the record of Applicant's plea hearing. (PCR Tr. pp. 34-35; Plea Tr. pp. 12-15).

Plea Counsel testified that in their initial meeting in January of 2018, Applicant disclosed his various medical issues, including dialysis for renal failure, his quadruple bypass in 2011, his back issues, and the fact he was on the kidney transplant list. (PCR Tr. pp. 35-36). Plea Counsel testified she believed the most mitigating factor was the kidney transplant issue, and she presented Applicant's letter from the nephrologist to the plea court. (PCR Tr. p. 37).

Plea Counsel testified she advised Applicant of the consequences of an active prison sentence and that the plea court could still sentence Applicant to prison time. Id. Plea Counsel testified that upon advising Applicant of this, Applicant giggled and said, "If the State wants to pay for my dialysis treatment, then so be it." (PCR Tr. pp. 37; 38, ll. 1-2). Plea Counsel testified that Applicant asked him about appealing his sentence after the deadline to appeal had passed, and Plea Counsel responded and reminded Applicant that he knew the consequences of pleading guilty. (PCR Tr. p. 38).

On cross-examination, Plea Counsel testified that Applicant's case was a mitigation case. (PCR Tr. p. 40). Plea Counsel testified she did not mention the back surgery in mitigation before the plea court because she was not aware of it. (PCR Tr. pp. 41-42). Plea Counsel testified that had she known about the back surgery, she would have presented it to the plea court. (PCR Tr. p. 42). Plea Counsel testified she only had an initial note indicating Applicant has back issues. Id.

Findings

As an initial matter, this Court notes that the cited caselaw addresses counsel's failure to present mitigation evidence where defendants were sentenced to death resulting from a jury trial. However, based on the circumstances in Applicant's case, namely that an active prison sentence would result in Applicant being removed from the kidney transplant list, and Plea Counsel's testimony that this was a mitigation case, the cases are relevant in assessing Plea Counsel's performance in representing Applicant at his guilty plea hearing.

This Court finds Applicant failed to establish Plea Counsel was deficient in failing to present relevant mitigation evidence prior to his sentencing, and Applicant failed to show resulting prejudice flowing from Plea Counsel's performance. The combination of the record and Plea Counsel's credible testimony establishes Plea Counsel conducted a thorough investigation of

Applicant's background, presented mitigation to the solicitor during plea negotiations, and presented extensive mitigation evidence to the plea court prior to a sentence being imposed. Plea Counsel presented the plea court with Applicant's extensive medical history, including the letter from Applicant's nephrologist stating Applicant would be taken off the kidney transplant list if given an active sentence. Additionally, Plea Counsel advised the plea court of Applicant's age, marital status, education, and employment.

Concerning Plea Counsel's failure to present evidence of Applicant's back surgery to the plea court, Plea Counsel credibly testified Applicant did not advise her of his back surgery when she questioned Applicant concerning what he would like her to present to the plea court the morning of his plea. Strickland, 466 U.S. at 691 ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions."). Plea Counsel cannot be deemed deficient for failing to present evidence Applicant failed to provide her with upon inquiry.

Further, Applicant cannot establish prejudice as it is clear from the record the plea court would not have imposed a lesser sentence had Plea Counsel advised the plea court of Applicant's back surgery. The most relevant mitigating evidence was the nephrologist's letter confirming Applicant would be removed from the kidney transplant list if given an active prison sentence. Upon reading the letter, the plea court advised Applicant that while even considering prison time constituted a death sentence to Applicant, the plea court would not consider giving Applicant no prison time. Clearly, presenting the plea court with evidence of Applicant's back surgery would not have altered the sentencing Applicant received. See Sears, 561 U.S. at 954. Considering all of this, Plea Counsel's performance was more than effective.

Therefore, this Court finds testimony of Plea Counsel credible and that Applicant failed to meet his burden, and finds no deficiency on the part of Plea Counsel nor prejudice therefrom in regard to this allegation. Accordingly, Applicant's request for relief by way of this allegation is denied and dismissed with prejudice.

ALLEGATIONS RAISED DURING THE EVIDENTIARY HEARING

Allegation: Failure to review discovery.

Applicant alleges Plea Counsel was ineffective for failing to review discovery with him prior to his plea. This Court finds this allegation is without merit.

Testimony Presented at Evidentiary Hearing

On cross-examination, Applicant testified Plea Counsel did not review discovery with him prior to this plea. (PCR Tr. p. 20).

On direct examination, Plea Counsel testified she reviewed discovery with Applicant several times. (PCR Tr. p. 26). Plea Counsel testified she reviewed the following evidence with Applicant:

He essentially, what the evidence was there was an elderly man that was in the neighborhood who was picking up some type of nuts off a tree on the ground. And he would testify that Mr. Wadford became upset and asked him to leave. And when he refused, his testimony now obviously this is different from Mr. Wadford's version just to be clear, his testimony would be that Mr. Wadford punched him in the face. And that was the basis for the original ABHAN charge to him. He called police. Mr. Wadford was back at his residence and the police officer arrived on scene and then attempted to arrest Mr. Wadford at which point Mr. Wadford was upset because of he has a familial, not familial; he has a familiar relationship with the officer and he was upset because the officer knew that he had some health conditions. But the officer was attempting to arrest him. Then the officer would testify he began to assault the officer. They ultimately ended up based on the officer's testimony in a situation where one was on top of the other. And at one point the officer drew his weapon and Mr. Wadford reached for the weapon and grabbed the

officer's weapon and then put his fingers inside the officer's eyeballs. And then eventually Mr. Wadford was just like okay, I'm done and then he kind of allowed himself to be arrested. And then the officer had to seek treatment through Lowcountry Eye Specialists I believe for the eye injury. And they provided medical records for the injury to the officer and that would be I believe the extent of what the testimony would be. I do believe there was another officer present as well that may have been a witness.

(PCR Tr. pp. 27, l. 13 -- 28, l. 23). Plea Counsel testified to the differences in Applicant's version of the events and the State's. (PCR Tr. pp. 28-29).

Findings

The Court finds Plea Counsel's testimony credible and Applicant's contrary testimony not credible as to this issue. The Court finds Plea Counsel adequately provided and explained the discovery materials to Applicant prior to his plea; therefore, Plea Counsel's performance was not deficient. In addition, to prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further review of the discovery. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

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

Allegation: Failure to discuss possible defenses.

Applicant alleges Plea Counsel was ineffective for failing to discuss possible defenses with him prior to his plea. This Court finds this allegation is without merit.

To prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Harris, 377 S.C. at 75–76, 659 S.E.2d at 145–46.

Testimony Presented at Evidentiary Hearing

On direct examination, Applicant testified that the assault with the officer resulted because the officer snatched him, and he blacked out and hurt the officer, but he did not mean to. (PCR Tr. pp 8-9).

On cross-examination, Applicant testified Plea Counsel did not discuss possible defenses to the charges against him prior to his plea. (PCR Tr. p. 20).

On direct examination, Plea Counsel testified Applicant advised her that he had not punched the elderly man, but had open hand slapped him. (PCR Tr. p. 29). Additionally, Plea Counsel testified Applicant advised her that he did not recall parts of the assault of the officer because he had blacked out, but he did not contest the officer's account. Id. Plea Counsel testified that Applicant understood that if a jury were to hear the officer's testimony, he would be facing significant time, and their conversations revolved around pleading and mitigation. (PCR Tr. p. 29).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Plea Counsel credibly testified to discussions with Applicant concerning his version of the facts, and that Applicant did not contest the officer's account. Plea Counsel credibly testified Applicant did not want to go to trial, but to plea, and that the focus was on mitigating his risk in negotiations. Applicant's testimony at the evidentiary hearing does not contest his guilt, but merely justifies his actions due to his back issues. Clearly, Applicant discussed this with Plea Counsel.

Additionally, Applicant did not desire to go to trial, but to plea, and cannot establish prejudice even where Plea Counsel had not discussed possible defenses. Applicant failed to present evidence to show what available defenses Plea Counsel could have advised him on and how it would have affected his decision to go to trial rather than plea.

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

Allegation: Involuntary Guilty plea because of Plea Counsel's failure to advise Applicant of his rights.

Applicant alleges Plea Counsel was ineffective for failing to discuss possible defenses with him prior to his plea. This Court finds this allegation is without merit.

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense, the maximum and minimum penalties, and the rights he is waiving

by accepting the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Roddy v. State, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." Gibson v. State, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. Hill, 474 U.S. at 59. Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. See Blackledge v. Allison, 431 U.S. 63, 74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. at 34, 528 S.E.2d at 421 (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at

the time of the entry of the guilty plea and the record of the post-conviction hearing.'" Dalton, 376 S.C. at 138, 654 S.E.2d at 874 (quoting Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including the claims of a violation of a constitutional right prior to the plea." Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Testimony Presented at Evidentiary Hearing

On cross-examination, Applicant testified Plea Counsel did not discuss possible defenses to the charges against him prior to his plea. (PCR Tr. p. 20). Applicant testified he recalled indicating to the plea court that he understood he was waiving his right by pleading guilty. (PCR Tr. p. 21).

On direct examination, Plea Counsel testified Applicant signed an acknowledgement of rights given up by entering a guilty plea, and the acknowledgement went over all of Applicant's rights. (PCR Tr. p. 32; State's Exhibit 1). Plea Counsel testified she and Applicant signed the form on January 23, 2019, before his plea. Id.

Findings

This Court finds Applicant has failed to establish how his plea was not freely and voluntarily entered. During Applicant's plea hearing, Plea Counsel advised the plea court that she had advised Applicant of his rights and the consequences of pleading guilty, and Applicant confirmed this as true. (Plea Tr. p. 8). Additionally, the plea court advised Applicant of the rights he was waiving in exchange for his plea, and Applicant indicated to the plea court he understood he was waiving those rights. Id. Moreover, Plea Counsel credibly testified that she advised Applicant of his rights the morning of his plea, and Applicant signed an acknowledgment of his rights that morning.

The combination of the record and Plea Counsel's credible testimony reveals Applicant's plea was freely, voluntarily, and intelligently entered into. Applicant has failed to show that, but for Plea Counsel's performance, he would have proceeded to trial. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel, or any prejudice flowing therefrom. Thus, this allegation must be denied and dismissed.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant the relief requested in his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

- 1. This application for post-conviction relief is denied and dismissed with prejudice; and
- 2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 9th day of July, 2024.

Sumter, South Carolina

Kristi F. Curtis
THE HONORABLE KRISTI F. CURTIS
Presiding Circuit Court Judge
Fourteenth Judicial Circuit