

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Nov 25 2024

S.C. SUPREME COURT

Certiorari to Greenville County

Honorable J. Derham Cole, Circuit Court Judge

JAKOBE GERMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001469

APPENDIX

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Appellate Defender

ALAN WILSON
Attorney General

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Division of Appellate Defense
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS

2015-GS-23-6101A

2015-GS-23-6106A

2015-GS-23-6107A

2015-GS-23-6111A

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

JAKOBE GERMAN,)

DEFENDANT.)

ORIGINAL

August 22 and 25, 2016
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

KATRYNA B. SALISBURY, ESQ.
Assistant Solicitor

ALEX KORNFELD, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE CLERK: Your Honor, this is 2015-GS-23-6107A,
Jakobe German indicted for armed robbery, pleading to the
same. And it is a true bill.

2015-GS-23-6111A, indicted for burglary first degree,
pleading to the same. And it is a true bill.

2015-GS-23-6106A, indicted for burglary first degree,
pleading to the same. And it is a true bill.

2015-GS-23-6101A, indicted for armed robbery,
pleading to the same. And it is a true bill.

Will you raise your right hand?
WHEREUPON,

JAKOBE GERMAN,
after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

THE COURT: Is it Jocobe or Jakobe?

DEFENDANT GERMAN: Jakobe.

THE COURT: You're Jakobe T. German?

DEFENDANT GERMAN: Yes, sir.

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

DEFENDANT GERMAN: Tenth grade.

THE COURT: And what kind of work have you done in
the past?

DEFENDANT GERMAN: None, Your Honor.

THE COURT: And you're 17 now?

1 DEFENDANT GERMAN: Yes, sir.

2 THE COURT: All right. Are you under the influence
3 of any alcohol, drugs, or medication today, sir?

4 DEFENDANT GERMAN: No, sir.

5 THE COURT: Have you had enough time to talk to
6 Mr. Kornfeld about your case?

7 DEFENDANT GERMAN: Yes, sir.

8 THE COURT: Are you satisfied with his services?

9 DEFENDANT GERMAN: Yes, sir.

10 THE COURT: Do you have any physical, mental, or
11 emotional condition that might keep you from understanding
12 what's happening here today?

13 DEFENDANT GERMAN: No, sir.

14 THE COURT: Are you pleading guilty because you are
15 guilty, Mr. German?

16 DEFENDANT GERMAN: Yes, sir.

17 THE COURT: Do you understand the maximum sentence
18 for these charges, and the elements of the crime the State
19 would have to prove beyond a reasonable doubt to convict
20 you at a trial?

21 DEFENDANT GERMAN: Yes, I do.

22 THE COURT: Has anyone threatened you or put any
23 pressure on you to get you to come to court today?

24 DEFENDANT GERMAN: No, sir.

25 THE COURT: Are you entering this plea of your own

1 free choice and will?

2 DEFENDANT GERMAN: Yes, sir.

3 THE COURT: Did you go over with your lawyer this
4 three-page acknowledgement of rights form, and did you
5 answer each question on it truthfully?

6 DEFENDANT GERMAN: Yes, sir.

7 THE COURT: Do you understand you have the right to a
8 jury trial on these charges?

9 DEFENDANT GERMAN: Yes, sir.

10 THE COURT: And, at a jury trial, you'd be presumed
11 innocent. You wouldn't have to prove you were not guilty,
12 or prove you were innocent. The burden of proof would be
13 entirely on the State.

14 DEFENDANT GERMAN: Yes, sir.

15 THE COURT: You could confront the evidence against
16 you, see and hear the witnesses, bring witnesses in using
17 the subpoena power of the Court. You could testify and
18 present any defenses you may have.

19 You could choose to remain silent and not testify.
20 No one could require you to testify or take the stand.
21 And if you chose to remain silent, the Court would tell
22 the jury you have the absolute right to remain silent
23 guaranteed by the Constitution, and they could not hold
24 that against you or take it into account whatsoever.

25 Do you understand that?

1 DEFENDANT GERMAN: Yes, sir.

2 THE COURT: You could present any defenses you might
3 have, as I said, and your right to challenge or contest
4 any of the evidence against you, including any searches or
5 seizures made by law enforcement, any statements you may
6 have made, any testing that was done or should have been
7 done. You could do that at your trial. But if you plead
8 guilty, you give up those rights.

9 Do you understand all that, sir?

10 DEFENDANT GERMAN: Yes, sir.

11 THE COURT: Do you have any questions of me about the
12 rights you give up by pleading guilty?

13 DEFENDANT GERMAN: No, sir.

14 THE COURT: Have you understood all of my questions,
15 sir?

16 DEFENDANT GERMAN: Yes, sir.

17 THE COURT: Do you have any questions of me?

18 DEFENDANT GERMAN: No, sir.

19 THE COURT: All right. Listen carefully.

20 Ms. Salisbury is going to summarize the facts. And I'm
21 going to ask you if you agree with her summary.

22 MS. SALISBURY: May it please the Court, Your Honor.

23 With respect to the first incident. On September 2nd
24 of 2014, just before 10:00 p.m., officers responded to a
25 robbery at a residence on Evelyn Drive in Greenville

1 County.

2 One of the victims described that she was on the
3 front porch of the home when four to six masked
4 individuals approached her and struck her in the head with
5 a handgun before dragging her into the home as they forced
6 their way inside. The intruders attacked three other
7 victims in the home before taking cash, purses, phones,
8 and keys to two cars, which they used to flee the scene.

9 At least, one co-defendant has given a statement to
10 police admitting their own involvement in the home
11 invasion. In statements not only from that co-defendant
12 but others, they described that this -- the robbery was
13 this Defendant's idea and that the group walked to the
14 victim's home. This Defendant struck the victim outside
15 on the front porch before he and others kicked open the
16 door and forced their way inside.

17 Then, Your Honor, the next day, on September 3rd of
18 2014, just before 9:00 p.m., officers with the sheriff's
19 office responded to a shooting at a residence on East
20 Parker Road. The shooting victim told police he was
21 outside with a second victim when the two observed, at
22 least, five masked individuals approach the home bearing
23 firearms.

24 The attackers demanded money from the victims and
25 struck each of the two victims with handguns several

1 times. One of the attackers then fired shots at the
2 victims and struck one of those victims several times in
3 the leg. Other gunmen fired shots into the door of the
4 home and forced their way inside. A third victim was
5 injured during that forced entry.

6 At least, two co-defendants have given statements to
7 police admitting their involvement in this robbery. The
8 co-defendants identified this Defendant as one of the
9 gunmen and described how the 10 involved defendants
10 planned and executed the robbery of what the defendants
11 believed was a ticket house where cash could be found.

12 The defendants further identified this Defendant as a
13 leader, or organizer, or, at least, some high ranking
14 member in each of -- in the Cross Tracks street gang,
15 which is involved in each of these incidents.

16 At -- the co-defendants testimony at -- testimony
17 presented at trial would be that this robbery was Lorenzo
18 Jackson's idea and that he enlisted the assistance of Mike
19 Smalls, Demetrius Smalls, Damon Young-Gains, Zykeia
20 Harper, Quancey Harper, Malik Adams-Young, and Joseph
21 Maldonado in committing the robbery.

22 Those are the facts as the State would have presented
23 them at trial.

24 THE COURT: All right. Is that what happened, sir?

25 DEFENDANT GERMAN: Yes, sir.

1 THE COURT: And, Mr. German, these offenses carry
2 mandatory and minimum -- mandatory minimum sentences.

3 And I'll just ask Ms. Salisbury to summarize what
4 those are.

5 MS. SALISBURY: Yes, sir, Your Honor.

6 Each of the two burglary first degree carry a
7 mandatory minimum of 15 years, a possible life sentence.

8 And each of the two armed robberies carry a mandatory
9 minimum of 10 years, up to 30 years.

10 THE COURT: And you told me you understood the
11 maximum sentences, but do you, specifically, understand
12 those mandatory minimum sentences and the maximum, sir?

13 DEFENDANT GERMAN: Yes, sir.

14 THE COURT: They're, also, classified as violent and
15 most serious, all four of these. Do you understand the
16 consequences of pleading to a violent and most serious
17 offense?

18 DEFENDANT GERMAN: Yes, sir.

19 THE COURT: Do you understand the two strikes law and
20 three strikes law?

21 DEFENDANT GERMAN: Yes, sir.

22 THE COURT: Do you understand if you're ever to be
23 convicted again of a serious or a most serious offense,
24 you'd be subject to a mandatory life sentence without any
25 possibility or hope of parole?

1 DEFENDANT GERMAN: Yes, sir.

2 THE COURT: Has anyone promised you or predicted when
3 you would be paroled or eligible for parole?

4 DEFENDANT GERMAN: No, sir.

5 THE COURT: All right. And the plea agreement is for
6 what?

7 MS. SALISBURY: The -- as part of the Defendant's
8 plea to these four offenses, the State's dismissing four
9 counts of kidnapping, four counts of assault and battery
10 in the first degree, two additional counts of burglary in
11 the first degree, burglary second degree, four counts of
12 attempted murder, and four counts of armed robbery.

13 The State is making no recommendation with respect to
14 sentence.

15 THE COURT: This is deferred, too?

16 MS. SALISBURY: Yes, sir, Your Honor.

17 THE COURT: All right. I find there's a factual
18 basis for the plea. It's been entered into freely and
19 voluntarily with the assistance of competent counsel.

20 MR. KORNFELD: I'll reserve any statements for
21 sentencing.

22 THE COURT: All right. Yes, sir.

23 Okay. Thank you.

24 (WHEREUPON, the proceedings were concluded and to be
25 reconvened on Thursday, August 25, 2016.)

1 THURSDAY, AUGUST 25, 2016

2 THE COURT: So we accepted his plea --

3 Go ahead.

4 THE CLERK: Oh, I'm sorry.

5 This is 2015-GS-23-6106A, Jakobe T. German indicted
6 for burglary first degree, pled to the same. It's a true
7 bill. And it's a deferred sentence.

8 2015-GS-23-6101A, indicted for armed robbery, pled to
9 the same. It's a true bill. And it's a deferred
10 sentence.

11 2015-GS-23-6107A, indicted for armed robbery, pled to
12 the same. It's a true bill. And it's a deferred
13 sentence.

14 And 2015-GS-23-6111A, indicted for burglary first
15 degree, pled to the same. And it's a true bill. And it's
16 a deferred sentence.

17 Will you raise your right hand?

18 WHEREUPON,

19 JAKOBE GERMAN,
20 after first having been duly sworn, testified as follows:

21 THE CLERK: Thank you.

22 THE COURT: All right. Good morning.

23 DEFENDANT GERMAN: Good morning.

24 THE COURT: Mr. Kornfeld, I'll be glad to hear
25 anything you'd like to say, sir.

1 MR. KORNFELD: Yes, Your Honor.

2 Jakobe was at -- as stated earlier -- or when we were
3 here on Monday, he was 15 years old when this occurred.
4 Unsuccessfully, we tried to stay in Family Court. He was
5 waived up after having a hearing here.

6 Your Honor, I've known Jakobe now for a couple years.
7 And whenever I speak to him, he has a lot of hope in his
8 eyes when we speak about different things, including
9 school. He's real interested in school.

10 He asked a lot of questions that were, quite frankly,
11 kind of sad to hear, but intelligent questions at that,
12 such as if I'm -- when I'm released, can these charges be
13 expunged? Could I enlist in the military? How can I go
14 about getting a GED, or a real diploma?

15 He's, also, shown a lot of remorse since I've spoken
16 to him about this, especially in the last coming days and
17 last week. One of the things he says is he has trouble
18 sleeping due to the fact of what he's done in the past.

19 And one of the most resonating things he's said was,
20 this has been a big learning experience for me. And I
21 feel like he has learned a lot of different things.

22 I want to talk about the actual -- his actual
23 involvement in the first case, the East Parker Road that
24 was before the Court in trial this week. To the fact that
25 it does matter to the Court, I don't believe that there

1 would have been any testimony that he, actually, went in
2 the house. I think he was in the vehicle -- in the CRV
3 when it went over there.

4 And I don't believe that there was any allegation
5 that he, actually, had a weapon himself. I think he was
6 the only one out of the people that I looked over when
7 getting ready for this case that was, actually, not
8 charged with possession of a weapon during the commission
9 of a violent crime.

10 Your Honor, his grandmother has raised him -- she's
11 here, Miss Willomeana [phonetic] -- most of his life. She
12 states, if she were to talk, that he was a good kid at
13 home, that she was surprised that he could be able to do
14 this, as I am as well, Your Honor.

15 Your Honor, he's -- he was 15 when this occurred.
16 I'm asking you to give him 15. And that would,
17 essentially, be a life sentence up to the point of his age
18 at the time this was committed. What I'm saying in that,
19 Judge, is 15 -- I'm asking for the 15 --

20 THE COURT: I got you. I understand.

21 MR. KORNFELD: All right. And, obviously, I'd ask
22 that you give him credit for the time that he's been in
23 there. He's been in there for over 700 days.

24 Judge, I -- my client has asked that the sentence be
25 suspended. I know that it can't, but I'm asking here

1 because he's asked me to ask you that anyway. So I am
2 asking that the sentence be suspended, if it can be.

3 Willomeana, do you want to speak at all?

4 MS. WILLOMEANA: (Ms. Willomeana nodded.)

5 MR. KORNFELD: Your Honor, his grandmother that
6 raised him would like to speak.

7 THE COURT: Yes, ma'am.

8 MS. WILLOMEANA: Yes. Jakobe, I know he fell down
9 doing all this stuff. And I know he hated it, too. But
10 he's a better person than he was in the first beginning.

11 And if you give him a chance, I guarantee you he's
12 going to make a change. And he's going to go to school
13 and do what he have to do and stay, you know, out of the
14 system.

15 Because I definitely need him. I need him bad.
16 Because he always be there to help me do stuff, and things
17 like that when I forget. See, I'm almost 67. And he
18 always be there trying to help me, pick me up if I fall a
19 lot or something like that. Because I am not a well
20 person, I know that.

21 So I don't have nobody to help me now. My kids, all
22 of them are, you know, locked up, most of them. So he's
23 the only one that can stand by me and be right there with
24 me. And I hope that you won't make too much time that he
25 have to be in there before I pass.

1 THE COURT: Thank you.

2 Mr. German, anything you'd like to say, sir?

3 DEFENDANT GERMAN: No, sir.

4 MS. SALISBURY: Could I just clear up one thing?

5 THE COURT: Yes, ma'am --

6 MS. SALISBURY: According to my notes from the plea
7 on Monday, I don't know that I, specifically, covered an
8 issue that will be relevant for purposes of the future
9 prosecution of some remaining co-defendants.

10 I just want to ask the Defendant on the record
11 whether he's willing to acknowledge that Tyler Hill
12 participated in the September 2nd home invasion where
13 several people were injured inside the home and they took
14 two cars from the home.

15 DEFENDANT GERMAN: No, ma'am.

16 MS. SALISBURY: Okay. I'd note for the Court that
17 that's inconsistent with what all of the other defendants
18 have acknowledged on the record.

19 THE COURT: Did he have any prior record?

20 MS. SALISBURY: A juvenile prior record, Your Honor.

21 THE COURT: You said over 700 days. How many
22 exactly --

23 MS. SALISBURY: I have 720.

24 MR. KORNFELD: I believe there was one other juvenile
25 involved in this case that stayed -- that I believed

1 stayed in Family Court.

2 Is that --

3 MS. SALISBURY: Yes. He agreed to testify, so waiver
4 was not sought in his case.

5 MR. KORNFELD: Right.

6 THE COURT: Well, now, Mr. Quancey Harper -- wasn't
7 that his --

8 MS. SALISBURY: Quancey, yes, sir.

9 THE COURT: Wasn't he like 16 when this occurred?

10 MS. SALISBURY: I believe so.

11 THE COURT: And Mr. Smalls?

12 MS. SALISBURY: I believe Mike Smalls --

13 THE COURT: Mike Smalls.

14 MS. SALISBURY: -- was either 16 or 17 at the time.

15 MR. KORNFELD: I thought he was 17 at this time.

16 THE COURT: Well, you're lucky someone wasn't killed
17 in this, or you weren't killed. But people were
18 traumatized, and seriously hurt, and had their lives
19 shattered. By the time you get out, you'll still have a
20 life you can put back together again. And I hope you'll
21 take the time in prison to do that and get your GED. And
22 I do wish you all the success in the future.

23 The sentence on the burglary first, case
24 2015-GS-23-6106A is 17 years. Credit for 720 days.
25 Obtain your GED.

1 On the burglary first, case 6111A, is 17 years.

2 On the armed robberies, they're both 10 years each
3 concurrent with credit for time served.

4 Good luck, Mr. German.

5 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

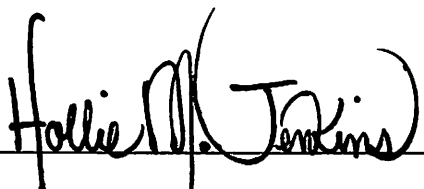
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 22nd and 25th days of August, 2016.

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

May 22, 2020

A handwritten signature in black ink, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

WITNESSES

D A Hoover

Greenville County Sheriffs Office

BM DOB: [REDACTED]/1999 SSN [REDACTED]

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL

Wayne H. Anderson

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-23-

KBS

006101A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2015

THE STATE

vs.

JAKOBE T. GERMAN

Indictment for

0139

ARMED ROBBERY

VIOLATION §16-11-0330

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

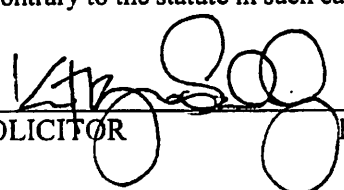
At a Court of General Sessions, convened on
County present upon their oath:

JUL 28 2015

the Grand Jurors of Greenville

That JAKOBE T. GERMAN did in Greenville County, on or about the 2nd day of September, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a cell phone, wallet, and keys from the person or presence of Heather Goodwin. This is in violation of §16-11-330 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.


SOLICITOR

BAR # 73989

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Jakobe German

AKA:

Race: BLACK Sex: M Age: 17DOB: 03-11-1999 SS#: ██████████Address: ██████████City, State, Zip: Travelers Rest, SC 29690DL#: ██████████ SID#: ██████████*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ARMED ROBBERY

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2306101AA/W#: 2015GS2306101ADate of Offense: 9/2/2014S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Salisbury, Katryna Bevis73989
SC Bar#Jakobe German
DefendantA. K. K. K.
Attorney for Defendant71046
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015GS2306106A
☒ 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. 1720 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: J. K. K.

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2138Sentence Date: 8/22/16Man li

WITNESSES

D A Hoover

Greenville County Sheriffs Office

BM DOB: [REDACTED]/1999 SSN: [REDACTED]

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL

Wayne Shephardson
 FOREMAN GRAND JURY
 Foreperson of Grand Jury

VERDICT

 Foreperson of Petit Jury
 Date:

DOCKET NO. 2015-GS-23-

KBS

006106A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July**TERM 2015**

THE STATE

vs.**JAKOBE T. GERMAN**

 Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

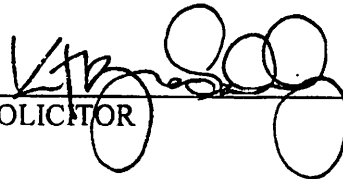
At a Court of General Sessions, convened on
County present upon their oath:

JUL 28 2015

the Grand Jurors of Greenville

That JAKOBE T. GERMAN did in Greenville County, on or about the 3rd day of September, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: US CURRENCY from the person or presence of Nathaniel Davis, Dean Suttles, and Bobby McLean. This is in violation of §16-11-0330 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.


SOLICITOR

BAR # 73989

STATE OF SOUTH CAROLINA

15 YRS - LIFE
IN THE COURT OF GENERAL SESSIONSCOUNTY OF Greenville
STATE VS.
Jakobe German

INDICTMENT/CASE#: 2015GS2306106A

AKA:

A/W#: 2015GS2306106A

Race: BLACK Sex: M Age: 17

Date of Offense: 9/2/2014

DOB: [REDACTED]-1999 SS#: [REDACTED]

S.C. Code §: 16-11-0311

Address: [REDACTED]

CDR Code #: 0079

City, State, Zip: Travelers Rest, SC 29690

DL#: SID#:

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐☐ CONVICTED OF or ☒ PLEADSIn disposition of the said indictment comes now the Defendant who was
TO: BURGLARY 1ST DEGREE

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
w/minor 1st or Lewd ActThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: 73989 Jakobe German Alex Kufeld 79046
Salisbury, Katryna Bevis SC Bar# Defendant Attorney for Defendant 608 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 720 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☒☐ Set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine:

Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5 %)

Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge)

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

§ 14-1-211(A)(2) (DUI Surcharge)

\$ _____ paid to Public Defender Fund

§ 56-5-2995 (DUI Assessment)

Other: _____

§ 56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/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

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk

Presiding Judge

Court Reporter:

Judge Code: 2138

SCCA/217 (07/2016)

Sentence Date: 3/24/16 + 8/24/16

Dated

WITNESSES

Matthew Owens

Greenville County Sheriffs Office

BM DOB: [REDACTED]/1999 SSN: [REDACTED]

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL

Wayne S. Richardson

FOREMAN GRAND JURY
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014⁵-GS-23-
KBS

006107A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2014

THE STATE

vs.

JAKOBE T. GERMAN

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-0330

BAR # 73989

STATE OF SOUTH CAROLINA

10-30-jrs
IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Jakobe German
AKA:
Race: BLACK Sex: M Age: 17
DOB: 1999 SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Travelers Rest, SC 29690
DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2015GS2306107A
A/W#: 2015GS2306107A
Date of Offense: 9/3/2014
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: ARMED ROBBERY

☐ CONVICTED OF or ☒ PLEADS

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

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

Attorney for Defendant: Salisbury, Katryna Bevis 73989 SC Bar# Jakobe German Defendant Attorney for Defendant 79046 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015GS2306106A
☒ 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. 6720 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Recipient:

*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 61.6 (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Paul B. Walters
Court Reporter: Jakobe
SCCA/217 (07/2016)

Presiding Judge Man Li
Judge Code: 2138
Sentence Date: 8/22/14 8/29/14

WITNESSES

Matthew Owens

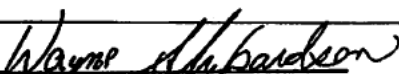
Greenville County Sheriffs Office

BM DOB: [REDACTED]/1999 SSN: [REDACTED]

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-23-

KBS

006111A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2015

THE STATE

vs.

JAKOBE T. GERMAN

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION §16-11-0311

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

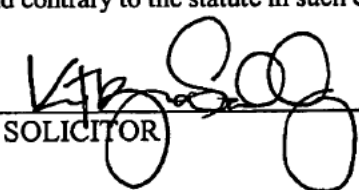
INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on
County present upon their oath:

JUL 28 2015 the Grand Jurors of Greenville

That JAKOBE T. GERMAN did in Greenville County, on or about the 3rd day of September 2014, willfully and unlawfully enter the dwelling of TONY GROVE located at [REDACTED], without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: armed with a deadly weapon and/or did cause physical injury to any person who is not a participant in the crime and/or use or threatens the use of a dangerous instrument and/or displays what is or appears to be a firearm and/or the entering and/or remaining did occur during the night time hours. This is in violation of §16-11-0311 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.


SOLICITOR

BAR # 73989

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Jakobe German

AKA:

Race: BLACK Sex: M Age: 17DOB: 03-12-1999 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Travelers Rest, SC 29690DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: BURGLARY 1ST DEGREE

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTORNEY:

Salisbury, Katryna Bevis73989
SC Bar#Jakobe German
Defendant[Signature]
Attorney for Defendant77046
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2015 GS 2306106A
☒ 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. 1720 days

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3.75

TOTAL

\$128.75

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (07/2016)

15 YRS-LIFE
 IN THE COURT OF GENERAL SESSIONS

1602755

INDICTMENT/CASE#: 2015GS2306111AA/W#: 2015GS2306111ADate of Offense: 9/3/2014S.C. Code § : 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code: 2138Sentence Date: 8/22/16 + 1/8/25/16

referred

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)Jakobe German)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2017-CP-23-05752

APPLICATION FOR
POST-CONVICTION RELIEF

2017 SEP - 6 PM 1:40

INSTRUCTIONS – READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
990 Wisacky Hwy., Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Greenville County Court
of General Session, 305 East North Street, Greenville, S.C. 29601
3. Name(s) of co-defendant(s) (if any) Mike Smalls, Tedrick Adams Young,
Quancey Harper, Zykeia Harper, Tyler Hill, Jamene Johnson, Damen Young
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Burglary 1st Degree: 15-GS-23-0611
 - (b) Burglary 1st Degree: 15-GS-23-06106

- (c) Arm Robbery 2nd degree: 15-GS-23-06101, 15-GS-23-06107
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Sept. Aug. 22, 2016
- (b) Aug. 22, 2016
- (c) Aug. 22, 2016
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Never had the chance too and I didn't know that I could.

- (b) My Attorney didn't advise me that I could appeal my plea.
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) The General Session Court does not have Jurisdiction of the Matter
 (b) Ineffective Assistance of Counsel
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) See Attachment
 (b) See Attachment
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. N/A
 ii. N/A
 iii. N/A
 iv. N/A
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. N/A
 iii. N/A
 iv. N/A

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

(a) The time to present it to the court had expired
 (b) " " " " " " " " " "
 (c) _____

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

(a) your arraignment and plea? yes
 (b) your trial, if any? N/A
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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

(a) the name and address of each attorney who represented you:
 i. Alex Kornfeld, Attorney at Law, L.L.C.
16 Whitsett St., Greenville, S.C. 29601
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Family Court
 ii. General Session
 iii. _____

Revised 3/2003

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

I want to seek justice and the dismissal of all charges !!!

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

No

STATE OF SOUTH CAROLINA)
County of Greenville)

VERIFICATION

I, Jakobe German, 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 at this time for vacating, setting aside or correcting the convictions and sentence attacked in this application; and that the matters and allegations therein set forth are true and correct.

x Jakobe German

SWORN to and subscribed before me this 15
day of Aug 2017

Debra Easterday (L.S.)
Notary Public

My Commission Expires: 3/3/2020

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

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

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

Jakobe German
Applicant

SWORN or affirmed to and subscribed before me this

15 day of Aug. 2017

Lee Corr., Inst.,
990 Wisacky Highway
Bishopville, SC 29010-1775

Debra East
Notary Public

My Commission Expires: 3/3/2021

ATTACHMENT

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

- (a) The General Session Court does not have Jurisdiction of the Matter
- (b) Ineffective Assistance of Counsel

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

(a)(1) The State's Motion to transfer jurisdiction does not meet the eight factors that must be Consider in order to transfer jurisdiction, upon the General Session court.

(a)(2) The family court did not provide a sufficient statement of the reasons for the transfer within its order.

(b)(1) My attorney failed to object to the State's Motion to transfer jurisdiction.

(b)(2) My attorney failed to argue in the best interest of the child (Jakobe German) that the transfer does not meet the requirement of S.C. Code Ann. § 20-7-7605 (Supp. 2005) (transfer Statute), Subsection (b) of the transfer Statute as provided.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JAKOBE GERMAN (#369515),
APPLICANT,

VS.

STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-23-05752

AMENDED APPLICATION FOR POST
CONVICTION RELIEF

This application is being brought pursuant to South Carolina Code of Laws Sec. 17-27-10 et seq. and should be considered along with the original application filed on September 27, 2018.

1. The applicant is presently being held as an inmate at Broad River Correctional Institute.
2. On or about September 8, 2014 Applicant pled guilty in the Greenville County Court of General Session to Armed Robbery (15GS2306101), Armed Robbery (15GS2306107), Burglary 1st Degree (15GS2306106), Burglary 1st Degree (15GS2306111). Applicant was sentenced on August 25, 2016 on the above charges.
3. He was sentenced to 17 years in prison, concurrent.
4. The applicant filed his original post conviction relief application in a timely manner.
5. The applicant has filed no action in federal court challenging his convictions.
6. Alex Kornfield represented the applicant on these charges.
7. In this application the applicant seeks an order setting aside his convictions and granting him a new family court waiver hearing and a new trial on all the above indictments.
8. The applicant is amending his post conviction relief petition to include the below allegations.
9. The applicant alleges that he was denied effective assistance of counsel on the above charges and submits the following facts to support his allegation:
 - a. Ineffective assistance of counsel and Involuntary Guilty Plea:

- i. Applicant did not knowingly and intelligently waive his right to an appeal.
- ii. Plea counsel failed to inform Applicant of his right to appeal the sentencing and conviction. The court also did not inform Applicant of his right to appeal the conviction.
- iii. Plea counsel nor the court inform Applicant that his right to appeal the family court waiver would not be preserved if Applicant pled guilty.
- iv. Plea counsel failed to discuss the potential appealable issues from the family court waiver hearing, or the process with Applicant.
- v. That the above actions by counsel do not meet the standard of effective assistance of counsel under current professional norms, and there is a reasonable probability that but-for the above listed errors by counsel the outcome of the proceeding would have been different.

Respectfully Submitted,



Sarah M. Henry

SC Bar #77907

406 Pettigru St.

Greenville, SC 29601

478-8324/232-9555 (fax)

sarah@sarahmhenrylaw.com

Attorney for Applicant

November 3, 2021

PROOF OF SERVICE

ON THIS DATE, a copy of this document, Amended Application for Post Conviction Relief, was served by email upon counsel for the State of South Carolina at the following address and fax number:

S.C. Attorney General's Office

Lillian L. Meadows

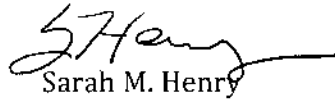
Rembert C. Dennis Building

Post Office Box 11549

Columbia, South Carolina 29211

Office: 803-734-0964

lillymeadows@scag.gov



Sarah M. Henry

Date: November 3, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Jakobe German, #369515,	)	Case No.: 2017-CP-23-05752
	)	
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL MOTION
	)	FOR SUMMARY DISMISSAL
State of South Carolina,	)	
	)	
Respondent.	)	

The State of South Carolina (“Respondent”), making its return to the application for post-conviction relief filed by Jakobe German (“Applicant”) on September 6, 2017, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. On September 8, 2014, the prosecution filed petitions in the Family Court, praying that the court would determine whether Applicant violated the provisions of South Carolina Code Section 16-1-80 (2014-JU-23-789), committed first-degree burglary (2014-JU-23-797), committed two counts of assault and battery (2014-JU-23-791; -792), and committed the crime of attempted murder (2014-JU-23-790). On October 15, 2014, the prosecution filed petitions for the determination of whether Applicant committed the crimes of attempting to enter a dwelling with the intent to steal (2014-JU-23-941), armed robbery (2014-JU-23-955), first-degree burglary (2014-JU-23-956), kidnapping (2014-JU-23-953), and two counts of attempted murder (2014-JU-23-942; -954). On October 21, 2014, the prosecution filed petitions for the determination of whether Applicant committed the crimes of three counts of kidnapping (2014-JU-23-968; -969; -980), four counts of armed robbery (2014-JU-23-977; -978; -979; -981), first-degree burglary (2014-JU-23-975),

attempted murder (2014-JU-23-976), second-degree burglary (2014-JU-23-983), and two counts of assault and battery (2014-JU-23-970; -971).

On January 15, 2015, the Honorable Coreen B. Khoury issued an order requiring the South Carolina Department of Juvenile Justice to conduct a pre-waiver evaluation of Applicant within sixty days of the date of the order. On June 19, 2015, after presiding over a waiver hearing,¹ the Honorable Usha J. Bridges issued an order granting the prosecution's motion to waive Applicant to the Court of General Sessions for adjudication on the charges.

During its July of 2015 term, the Greenville County Grand Jury indicted Applicant for two counts of armed robbery (2015-GS-23-06101A; -06107A) and two counts of first-degree burglary (2015-GS-23-06106A; -06111A). On August 22, 2016, Applicant appeared before the Honorable D. Garrison Hill to plead guilty to two counts of armed robbery (2015-GS-23-06101A; -06107A) and two counts of first-degree burglary (2015-GS-23-06106A; -06111A). Alex Kornfeld ("plea counsel"), Esquire, represented Applicant. Assistant Solicitor Katryna Bevis Owens of the Thirteenth Circuit Solicitor's Office prosecuted the case. The assistant solicitor provided the following recitation of facts:

With respect to the first incident. On September 2nd of 2014, just before 10:00 p.m., officers responded to a robbery at a residence on Evelyn Drive in Greenville County.

One of the victims described that she was on the front porch of the home when four to six masked individuals approached her and struck her in the head with a handgun before dragging her into the home as they forced their way inside. The intruders attacked three other victims in the home before taking cash, purses, phones, and keys to the two cars, which they used to flee the scene.

¹ The waiver heard was held in the Family Court before Judge Bridges on June 18, 2015, but the transcript of that hearing is not available to Respondent and is not attached to this return. Respondent attempted to order the transcript from Court Administration on June 22, 2020, but the undersigned was told by a staff member of Court Administration by phone on a later date that the transcript was unavailable and that transcripts are shredded five years after the date of the corresponding hearing.

At least, one co-defendant has given a statement to police admitting their own involvement in the home invasion. In statements not only from that co-defendant but others, they described that this – the robbery was [Applicant's] idea and that the group walked to the victim's home. [Applicant] struck the victim outside on the front porch before he and others kicked open the door and forced their way inside.

Then, . . . the next day, on September 3rd of 2014, just before 9:00 p.m., officers with the sheriff's office responded to a shooting at a residence on East Parker Road. The shooting victim told police he was outside with a second victim when the two observed, at least, five masked individuals approach the home bearing firearms.

The attackers demanded money from the victims and struck each of the two victims with handguns several times. One of the attackers then fired shots at the victims and struck one of those victims several times in the leg. Other gunmen fired shots into the door of the home and forced their way inside. A third victim was injured during that forced entry.

At least, two co-defendants have given statements to police admitting their involvement in this robbery. The co-defendants identified [Applicant] as one of the gunmen and described how the 10 involved defendants planned and executed the robbery of what the defendants believed was a ticket house where cash could be found.

The defendants further identified [Applicant] as a leader, or organizer, or, at least, some high ranking member in each of – in the Cross Tracks street gang, which is involved in each of these indictments.

Tran. 6-8. Judge Hill found that there was a factual basis for the entry of the guilty pleas and accepted the entry of the pleas as free and voluntary, and deferred sentencing in accordance with the parties' request. Tran. 10.

On August 25, 2016, Applicant again appeared before Judge Hill. Judge Hill sentenced Applicant as follows: for both counts of first-degree burglary, to imprisonment for seventeen years; for both counts of armed robbery, to imprisonment for ten years; with all sentences running concurrently; and with credit for time served. In accordance with the plea agreement, the prosecution dismissed the remaining charges.

Applicant did not appeal his convictions and sentences.

II. Current Application

In his application for post-conviction relief, filed on September 6, 2017, Applicant argues he is entitled to relief based upon multiple claims, which Respondent interprets as follows: (1) Applicant did not knowingly and voluntarily waive his right to direct appellate review; (2) Judge Bridges erred in waiving Applicant's case to the Court of General Sessions from the Family Court; and (3) plea counsel was constitutionally ineffective for failing to object to the State's motion to transfer jurisdiction. Applicant prays that the Court would dismiss all the charges.

Attached to this return and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding Applicant's convictions and sentences; the records of the Greenville County Family Clerk of Court regarding the charges waived to the Court of General Sessions and dismissed in accordance with the plea agreement; Applicant's records from the South Carolina Department of Corrections; and the transcript from Applicant's guilty plea hearing and sentencing hearing. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Partial Motion to Dismiss

Applicant raises a claim that Judge Bridges erred in waiving Applicant's case to the Court of General Sessions from the Family Court. This claim should be dismissed summarily because it is not properly before this Court and because Applicant waived his right to challenge the Family Court's decision when he pleaded guilty.

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact" and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the face of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C.

500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

An applicant for post-conviction relief cannot assert a claim of trial court error if he could have challenged the alleged error on direct appeal. Post-conviction relief is not a substitute for any remedy incident to the direct review of the conviction or sentence. S.C. Code Ann. § 17-27-20(B). “An application for Post-Conviction Relief is not a substitute for an appeal and errors which could have been reviewed on appeal and may not be asserted for the first time, or reasserted in Post-Conviction proceedings.” Cummings v. State, 274 S.C. 26, 27-28, 260 S.E.2d 187, 188 (1979) (per curiam) (citations omitted). “Errors in a petitioner’s trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.” Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (citations omitted). The South Carolina Supreme Court recently instructed that a post-conviction relief applicant’s standalone constitutional claim *was* properly before the Supreme Court in the post-conviction relief appeal because the constitutional issue had not been preserved at trial for direct appellate review by that applicant’s defense lawyer. Fortune v. State, 428 S.C. 545, 558 (2019). By pleading guilty, Applicant waived his ability to challenge on appeal the Family Court’s waiver decision. See State v. Rice, 401 S.C. 330, 330-332, 737 S.E.2d 485, 485-86 (2013) (in a case in which Rice pleaded guilty in the Court of General Sessions following a contested waiver hearing in the Family Court, finding that Rice waived his right to assert a claim based upon Apprendi v. New Jersey, 530 U.S. 466 (2000), because South Carolina does not permit the entry of conditional guilty pleas and because Rice had not presented any jurisdictional claims on appeal). Applicant could have

proceeded to trial and then challenged the Family Court's ruling on appeal, but he instead decided to plead guilty in order to get the benefit of the bargain. As such, he should not now be allowed to allege that there was any error in the Family Court's ruling. This Court should dismiss the claim summarily.

IV. Response to Applicant's other claims

Applicant raises a claim that plea counsel was constitutionally ineffective for failing to object to the State's motion to transfer jurisdiction. Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he 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, at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel's performance was deficient. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting Strickland, 466 U.S. 668). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." Id. (citations omitted). The "preeminent authority for all"

courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting Strickland). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Hillerby v. State, 431 S.C. 323, 333, 847 S.E.2d 500, 505 (S.C. Ct. App. 2020) (quoting Strickland). With respect to 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 (1985). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was deficient and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on

the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, at 670. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

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

The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.

State v. Inman, 395 S.C. 539, 556, 720 S.E.2d 31, 40 (2011) (internal quotations and citations omitted). “[A] guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” Jamison, at 468, 765 S.E.2d at 129 (citations omitted).

“The family court has exclusive jurisdiction over children accused of crimes. However, the family court may transfer jurisdiction over a criminal matter to the court of general sessions.” State v. Jones, 392 S.C. 647, 652, 709 S.E.2d 696, 699 (S.C. Ct. App. 2011) (citations omitted). “Upon a motion to transfer jurisdiction, the family court must determine if it is in the best interest of both the child and the community before granting [a] transfer request.” State v. Pittman, 373 S.C. 527, 558, 647 S.E.2d 144, 160 (2007) (citing State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998)). The South Carolina Supreme Court has instructed that “[t]he family court must consider eight factors, as approved by the United States Supreme Court in [Kent] in making this determination. The factors are:

- (1) The seriousness of the alleged offense.
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
- (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
- (4) The prosecutive merit of the complaint.
- (5) The desirability of trial and disposition of the entire offense in one court.
- (6) The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
- (7) The record and previous history of the juvenile, including previous contacts with law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation, or prior commitments to juvenile institutions.
- (8) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available.”

Pittman, at 558-59, 647 S.E.2d at 160. The family court is required to provide a sufficient statement of the reasons for the transfer in its order, which “should be sufficient to demonstrate that the statutory requirement of full investigation has been met and that the question has received full and

careful consideration by the family court. The decision to transfer jurisdiction lies within the discretion of the family court.” Pittman, at 559, 647 S.E.2d at 160-61 (citing State v. Avery, 333 S.C. 284, 509 S.E.2d 476 (1998)). The family court’s order is reviewable by our appellate courts under the abuse of discretion standard. Pittman, at 559, 647 S.E.2d at 161 (citation omitted).

Applicant also raises a claim that he did not knowingly and voluntarily waive his right to direct appellate review of his convictions and sentences. In White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that, even though a post-conviction relief court may find that an applicant did not voluntarily and intelligently abandon his right to a direct appeal, the PCR court does not have jurisdiction to grant a belated appeal. However, when an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40. Although Applicant does not specifically request it, Respondent assumes that he seeks this relief.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, “Counsel performs in a professionally unreasonable manner only by failing to follow the defendant’s express instructions with respect to an appeal.” Id. at 478 (underlining added). In order to establish that he was prejudiced by counsel’s failure to file an appeal, an applicant must show he would have appealed absent counsel’s deficient performance. See Id. at 484. “Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver.” Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598

(1981).

Respondent asserts that Applicant likely cannot establish that he is entitled to post-conviction relief; however, because the application may raise questions of fact not conclusively refuted by the record, Respondent requests an evidentiary hearing to fully resolve the matter. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V. Denial of All Other Claims

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

VI. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 238-39, 834 S.E.2d 196, 199-200 (2019), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to S.C. Code Ann. § 17-27-150(a) (2008), an applicant in a non-capital post-conviction relief action may invoke discovery under the South Carolina Rules of Civil Procedure only if granted leave to do so by a court upon a showing of good cause. If Applicant attempts to invoke discovery powers without first obtaining leave to do so by a court upon a showing of good

cause, Respondent will oppose those attempts.

VII. Conclusion

WHEREFORE, Respondent requests that the Court summarily dismiss one of Applicant's claims and convene an evidentiary hearing regarding the remaining two claims.

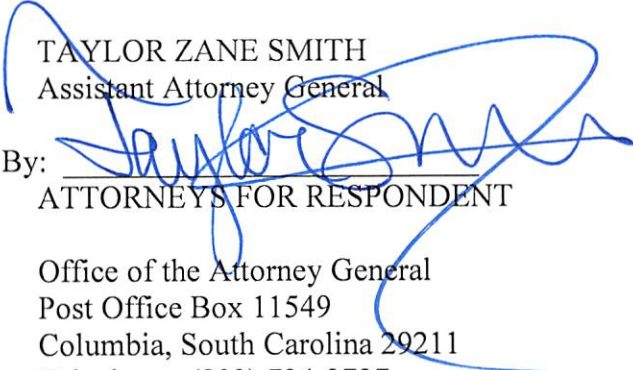
Respectfully submitted,

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By: 
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August 17, 2021

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JAKOBE GERMAN, #369515

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2017-CP-23-05752

CERTIFICATE OF SERVICE BY MAIL

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 and Partial Motion for Summary Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Sarah Morrison Henry
Sarah Henry Law
406 Pettigru Street
Greenville, SC 29601

DATED this 17th day of August, 2021.

Hannah M. Bradham, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

JAKOBE GERMAN,)

APPLICANT,)

-VS-)

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

2017-CP-23-05752

TRANSCRIPT OF RECORD

NOVEMBER 9, 2022
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. DERHAM COLE

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

ATTORNEY FOR APPLICANT:

SCARLET B. MOORE, ESQ.

ATTORNEY FOR RESPONDENT:

LILLY MEADOWS
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

OPENING STATEMENTS - MS. MEADOWS

4

1 **Wednesday, November 9, 2022:**

2 (Whereupon court convened at 11:36 am)

3 **THE COURT:** All right. Jakobe German v. State.

4 **MS. MEADOWS:** Yes, sir. May it please the Court? This
5 matter is Jakobe German versus the State of South Carolina,
6 docket number 2017-CP-23-5752.

7 On September 8th, 2014 Senior Assistant Solicitor Ashley
8 Case of the Thirteenth Circuit Solicitor's Office filed
9 juvenile petitions with the Greenville County Family Court
10 alleging Mr. German committed the following offenses; On March
11 14th, 2013, breach of peace, unlawful carrying of a pistol on
12 July 27th, 2014, on September 3rd, 2014, attempted armed
13 robbery, attempted murder, two counts of first degree assault
14 and battery, possession of a weapon during the commission of a
15 violent crime, conspiracy, unlawful carrying of a pistol and
16 first degree burglary.

17 On October 15th, 2014, Assistant Solicitor Case filed
18 juvenile petitions with the Family Court alleging he also
19 committed the following offenses; On August 23rd, 2014,
20 conspiracy, unlawful carrying of a pistol, petty larceny,
21 possession of a weapon during the commission of a violent
22 crime, kidnapping, attempted murder, armed robbery and first
23 degree burglary.

24 And on August 26th, 2014, attempted first degree
25 burglary, attempted murder, possession of a weapon during the

OPENING STATEMENTS - MS. MEADOWS

5

1 commission of a violent crime, unlawful carrying of a pistol,
2 conspiracy and discharging a firearm into a dwelling.

3 Finally, she filed juvenile petitions on October 21st,
4 2014, alleging he committed the following offenses; On
5 September 2nd, 2014, first degree burglary, attempted murder,
6 three counts of kidnapping, two counts of first degree assault
7 and battery and four counts of armed robbery. And Alex
8 Kornfeld represented Mr. German on all of these charges.

9 On June 18th, 2015, Judge Bridges convened a waiver
10 hearing in the Family Court following a pre-waiver evaluation.
11 On the following day she issued an order granting the State's
12 motion to waive Mr. German to the Court of General Sessions
13 for adjudication on these charges.

14 And then during its July 2015 term the Greenville County
15 Grand Jury indicted Mr. German for two counts of armed robbery
16 and two counts of first degree burglary. He pled guilty to
17 those charges before Judge Hill on August 22nd, 2016.

18 And as part of the plea agreement the State dismissed the
19 remaining charges, which included four counts of attempted
20 murder, four counts of kidnapping, four counts of first degree
21 assault and battery, three additional counts of armed robbery,
22 two additional counts of first degree burglary and one count
23 of second degree burglary. Judge Hill accepted his plea and
24 deferred sentencing.

25 He then appeared before Judge Hill on August 25th, 2016

OPENING STATEMENTS - MS. MEADOWS

6

1 and he received concurrent terms of ten years on each armed
2 robbery charge and 17 years on each first degree burglary
3 charge. And he did not appeal his plea or sentence.

4 And on September 6th, 2017 he filed a timely PCR
5 application. And it is the State's understanding that he is
6 proceeding on the following claims of ineffective assistance
7 of counsel and involuntary guilty plea.

8 First, said he did not knowingly and -- knowingly and
9 intelligently waive his right to appeal, that plea counsel
10 failed to inform him of his right to appeal, and that plea
11 counsel nor the court informed him that his right to appeal a
12 Family Court waiver would not be preserved if he pled guilty,
13 and that plea counsel failed to discuss the potential
14 appealable issues from the Family Court waiver hearing with
15 Applicant.

16 **THE COURT:** Ms. Moore, you represent the Applicant?

17 **MS. MOORE:** I do.

18 **THE COURT:** And this was initially filed as a pro se
19 application?

20 **MS. MOORE:** It was.

21 **THE COURT:** It appears that Ms. Sarah Henry was appointed
22 to represent the Applicant?

23 **MS. MOORE:** Yes, sir.

24 **THE COURT:** And you have assumed that representation from
25 her?

ALEXANDER KORNFELD - DIRECT EXAMINATION BY MS. MOORE

1 MS. MOORE: I have. It was -- yes, sir.

2 **THE COURT:** She filed an amended application for post-
3 conviction relief?

4 MS. MOORE: Yes, sir.

5 **THE COURT:** The attorney general just stated what her
6 view is as to what the allegations are that Mr. German is
7 making for the basis of his entitlement to relief. Did she
8 state them correctly? They appear to come from the amended
9 application.

10 MS. MOORE: Yes, sir.

11 **THE COURT:** Are there any other grounds that he wishes to
12 present other than those contained in the amended application?

13 MS. MOORE: No, not for the PCR.

14 **THE COURT:** Okay. All right. You ready to proceed?

15 MS. MOORE: I am.

16 **THE COURT:** All right.

17 **MS. MOORE:** Judge, I'll call Mr. Kornfeld.

18 **MADAM CLERK:** Mr. Kornfeld, please place your left hand
19 on the Bible and raise your right hand.

20 Alexander Kornfeld, being
21 duly sworn testified as follows;

22 **MADAM CLERK:** Thank you. You may be seated. And please
23 state your full name for the record.

24 MR. KORNFELD: Name is Alexander Kornfeld.

25 Direct Examination by Ms. Moore:

ALEXANDER KORNFELD - DIRECT EXAMINATION BY MS. MOORE

8

1 Q. Mr. Kornfeld, you represented Jakobe German regarding
2 these criminal charges that the AG has outlined for the Court
3 today, is that right?

4 A. That's correct.

5 Q. Were you retained or appointed?

6 A. I was appointed.

7 Q. Okay.

8 A. Two times, actually. For the juvenile charge, and then I
9 was reappointed on the General Sessions charges.

10 Q. Okay. So I want to -- I want to try to be as efficient
11 as I can and focus on the grounds because I know this is a
12 fairly long procedural history. At some point during the
13 course of your representation you received notice from the
14 State that they intended to waive Mr. German up to the Circuit
15 Court, is that true?

16 A. Yes.

17 Q. Okay. And once you received that waiver and notice did
18 you discuss that with Mr. German?

19 A. Yes.

20 Q. Okay. And did you -- did you discuss with him the
21 implications of if, in fact, he were waived up to the Circuit
22 Court?

23 A. Yes, I did.

24 Q. Okay. And so once you received that notice, the matter
25 was actually set for a hearing in front of Judge Bridges, is

ALEXANDER KORNFELD - DIRECT EXAMINATION BY MS. MOORE

9

1 that right?

2 A. That's correct. We did not consent to it.

3 Q. Okay. And so did you -- did you state that on the record
4 in the hearing before Judge Bridges that you certainly were
5 not consenting to the waiver?

6 A. I don't remember exactly, but that was the reason that we
7 had the hearing. Had we -- had we consented, we would have
8 probably just put it on the record. We had a full day
9 hearing.

10 Q. Okay. And you may not know this, but would it surprise
11 you to know that that transcript is apparently no longer
12 available through Court Administration, and we don't have a
13 copy of that?

14 A. I've heard that.

15 Q. Okay.

16 A. Yeah.

17 Q. Okay. Do you have a recollection of that waiver hearing
18 and the procedure that took place during the waiver hearing?

19 A. Yes.

20 Q. Okay. What's your recollection about it?

21 A. Well, we had the hearing. The -- I guess the State put
22 up their evidence, which included a detective in the case.
23 There were some other witnesses as well. It lasted a day.
24 And we were contesting -- we did not want Mr. German to be
25 waived up.

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10

1 Q. Okay. And did you -- did you put up any evidence?

2 A. No, I did not.

3 Q. Okay. And are you aware of whether or not any kind of --
4 the reports of psychological testing regarding Mr. German were
5 introduced at that waiver hearing?

6 A. I believe they were.

7 Q. Okay. And did you have an opportunity to review the
8 report that was conducted when he was in the custody of DJJ?

9 A. Yes. I -- yes. And I was there when he actually was
10 evaluated. I sat with him during ---

11 Q. Right. And then you actually reference it in the report
12 as well, correct?

13 A. Yes. Yes, I believe so. Yes.

14 Q. Okay. Now are you familiar with the Kent factors or the
15 factors that the court would have to consider and apply to
16 determine whether or not Mr. German would be waived up to ---

17 A. Yes.

18 Q. --- Circuit Court?

19 A. Yes.

20 Q. Okay. And did you have an opportunity to review the
21 order that was issued by Judge Bridges ---

22 A. I did review it.

23 Q. Okay. And that was on or about June of 2016. Does that
24 sound correct?

25 A. Correct.

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1 Q. That the -- that the order was clocked?

2 A. Correct. Yeah.

3 Q. Around that time? Okay. And did you have an opportunity
4 to review the order?

5 A. Yes, I reviewed it.

6 Q. Okay. And did it meet your satisfaction that the judge
7 had considered all the factors necessary to make a valid
8 waiver of Mr. German to General Sessions?

9 A. Yes. From a legal standpoint, yes. I felt -- it was a
10 sad day for us, but, yeah, I thought legally she went through
11 the factors in that order and evaluated and addressed each one
12 of them.

13 Q. All right. And did you have any -- did you have any
14 concern just in summary about the sufficiency of Judge
15 Bridges' order waiving Mr. German to General Sessions in any
16 way? Did you have any concern about that?

17 A. No.

18 Q. Okay. Obviously, you strongly disagreed with it? Goes
19 without saying.

20 A. I disagreed with it because I knew it was a monumental
21 time for Mr. German as a young -- as a young person and that
22 if he were to be tried as an adult, the penalties and the
23 severity were going to be much higher. And I -- it's probably
24 one of the most emotional hearings I've had. And Mr. German
25 and I talked about that. So, ---

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1 Q. Okay.

2 A. --- yeah, we knew. And we were adamantly opposed to it.

3 Q. Yes, sir. Yes, sir. And, obviously, it was a contested
4 hearing?

5 A. That's correct. Yeah.

6 Q. Okay. And after Judge Bridges' order was issued -- so I
7 think you've covered this, but just to be clear, you did, in
8 fact, discuss the waiver order with Mr. German at that point?

9 A. I did. And we knew that we were going to go to General
10 Sessions. And so at that time he was still in the juvenile
11 jail. I guess we still had a juvenile jail here. So, yeah, I
12 talked to him about that because I remember he asking
13 questions about whether or not he was going to be transferred
14 over to the adult jail and when that would happen as well.

15 Q. Okay. And so eventually, obviously, the case was
16 officially transferred to Circuit Court, correct?

17 A. That's correct.

18 Q. Okay. Now once you received the order waiving
19 jurisdiction to General Sessions did you do any research about
20 whether or not that would be an appealable order?

21 A. I did some, but I mostly talked to other older lawyers
22 that practiced in the Family Court juvenile system more than I
23 did. But, yes, I tried. And at that time I did not have an
24 order on point that -- that I thought would allow me to do so.

25 Q. All right. Right. So, I mean, you wouldn't have been --

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1 you wouldn't have been able to, in fact, appeal that waiver
2 order because it's what we call interlocutory. Did you ever
3 have any discussions with your mentors about that?

4 A. Yes. And there was no -- I thought it was interlocutory
5 as well. There's no way that I could -- could do so at that
6 time.

7 Q. Okay. Now once Mr. German was transferred to General
8 Sessions did you engage in plea negotiations with the State?

9 A. Yes.

10 Q. Okay. And did they approach you or did you approach them
11 as you recall?

12 A. Well, they approached us. But this was set on the trial
13 docket. And what happened was, other of his co-defendants
14 pled before us and were -- and part of that was that they were
15 going to testify as well on behalf of the State. Knowing
16 that, we -- our negotiations intensified. And then I would
17 have communications with Mr. German about those. And he
18 ultimately decided to plead guilty.

19 Q. Okay. And so did you -- you had an opportunity to
20 discuss all of the discovery with Mr. German prior to his
21 plea?

22 A. That's correct.

23 Q. Okay. And I believe that you point out that there were
24 two defendants, a Zykeia Harper and Malik Adams Young, who had
25 appeared during that trial week in General Sessions who were

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1 -- you were concerned were going to testify against Mr.

2 German, is that right?

3 A. That's correct.

4 Q. Okay. And had they testified against him, what could Mr.

5 -- in your opinion, in your experience, granted, I mean, you

6 don't have a crystal ball, but what were your concerns about

7 the possible outcome for Mr. German if those two individuals

8 did testify?

9 A. Well, one, I thought that it was very highly likely and

10 overwhelming if they were to testify that we would be -- that

11 Mr. German would be convicted.

12 Q. Okay.

13 A. And with the fact of their testimony and our lack of an

14 alibi -- and the video evidence, one specifically in the Citgo

15 when they're going in there, it matched the description where

16 there was some possible arguments otherwise, which would --

17 started to really erode when you have your co-defendants

18 testify against you. And I was -- I was concerned about that.

19 I told Mr. German about that and what I thought would

20 occur if we went to trial. We didn't have an alibi. And I

21 know that's just one of the -- other things, but that would

22 have been very helpful when you're watching the video and you

23 see the description, this person looks like it could possibly

24 be Jakobe.

25 But they had -- they did have a -- there were no

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1 fingerprints or anything like that. So there were -- it just
2 made our case -- it was already a difficult case, but made it
3 much more difficult once we had these co-defendants that are
4 now saying he was with them.

5 Q. Okay. And so -- so that was on or about the week of
6 August -- August 22nd of 2016 when you were called to trial
7 ---

8 A. That's ---

9 Q. --- during that week?

10 A. Yes.

11 Q. Okay. And do you recall -- and certainly the AG has
12 outlined the numerous charges that Mr. German was facing at
13 that point, correct? _

14 A. Correct.

15 Q. What had you actually been noticed for as far as a trial
16 at that point? Do you recall?

17 A. I don't -- I don't recall. I think they noticed us for
18 the Citgo, but I recall the Citgo charges. But I don't
19 remember.

20 Q. Okay. And do you recall which charges he would have been
21 facing at that point?

22 A. It would have been the armed robbery, I believe. It
23 might have been the possession of a weapon during the
24 commission of a violent crime.

25 Q. Okay. Now at some point prior to August 22nd, prior to

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1 receiving that trial notice did you receive a plea offer from
2 the State?

3 A. We -- I think -- yes, but they were conditional. And it
4 wasn't a concrete or written out for a plea offer. They
5 wanted him to testify. They wanted him to plead guilty and
6 also agree that he would testify and then defer sentencing.

7 Q. Okay. And what was his response to that?

8 A. He was unwilling to do that. And at that time I think he
9 was real concerned about any sort of testifying against
10 anybody else.

11 Q. Okay. So at some point during that week, the week of
12 August 22nd, 2016 Mr. German did actually enter a guilty plea,
13 correct?

14 A. That's correct.

15 Q. And that was for two counts of first degree burglary and
16 two counts of armed robbery, right?

17 A. That's right.

18 Q. Okay. And was that -- that plea, was it your
19 understanding that if he entered that plea that other charges
20 pending against him would be dismissed?

21 A. That's correct.

22 Q. Okay. So that was part of the plea negotiations with the
23 State?

24 A. It was, yes.

25 Q. Okay. So was it your understanding that if he took that

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1 plea of the two armed robberies, the two first degree
2 burglaries that he would not be facing any other charges and
3 everything else he had pending would be dismissed?

4 A. Correct.

5 Q. Okay. And, obviously, did you have sufficient
6 opportunity to speak with Mr. German about that?

7 A. Yes, he knew that.

8 Q. Okay.

9 A. Because we were trying to get off the armed robbery
10 because of the minimum on that.

11 Q. Okay. Now during your -- during your negotiations with
12 Mr. German, when you were discussing with him the possibility
13 that he would take the plea, did you talk with him about the
14 consequences if he pled as to whether or not he could raise
15 the issue of the propriety of the waiver hearing on appeal?

16 A. I don't think I did at that time, no.

17 Q. Okay. And did you do any research about that, that
18 issue?

19 A. No.

20 Q. Okay. And to your -- to your recollection and,
21 unfortunately, ---

22 A. Well, can I -- let me say this.

23 Q. Yes.

24 A. This is what I know. So I didn't do any additional
25 research to whether or not he could do that, but this is what

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1 I do know. In South Carolina we don't have conditional pleas
2 like some other states have where you can say, hey, we're
3 going to plead guilty, but we want to preserve this and let
4 this go to a higher court or an appellate court for review.
5 That -- I've known that for a long time. And I knew that at
6 that time.

7 Q. Okay. So it sounds like you did have some -- certainly
8 some knowledge that if you pled guilty, if Mr. German pled
9 guilty that that issue about -- in the propriety of the waiver
10 hearing and the issues that would have been raised on appeal
11 for the waiver hearing, those, in fact, would not be permitted
12 to be brought up in the Court of Appeals?

13 A. That's right. And we did go over that or I did go over
14 that with him in the acknowledgment of rights form, which
15 Judge Hill had his own form ---

16 Q. Okay.

17 A. --- that we went through.

18 Q. In your opinion, Mr. Kornfeld, and you've testified about
19 that previously that you -- and you had the opportunity,
20 obviously, to be in Judge Bridges' hearing, but also look at
21 her order waiving jurisdiction. Did you determine that you
22 believed that there were any legitimate appealable issues
23 arising out of that hearing or Judge Bridges' order?

24 A. In my opinion, there were not.

25 Q. Okay. Now at some point was it -- it was, obviously, Mr.

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1 German's decision to go ahead and accept the plea negotiation
2 and plead guilty to two counts of first degree burglary and
3 two counts of armed robbery, is that right?

4 A. That's correct.

5 Q. Okay. And when -- and when he was -- when you were
6 discussing the offer from the State, had the State made any
7 offers to recommend a certain sentence?

8 A. They did not. It was an open plea. And they -- you'll
9 see in the transcript, I know you know this, but they wanted
10 to defer sentencing because not everyone at that point had
11 pled. I think there was still one other person. So they --
12 they deferred sentencing even at that time.

13 Q. Okay. And did you have an opportunity to discuss with
14 Mr. German what a deferred sentence would look like or ...

15 A. Well, I told him that the judge would accept his plea
16 today and was very likely going to defer sentence, and then we
17 would be sentenced after the other cases were resolved.

18 Q. Okay.

19 A. Yeah.

20 Q. And did you -- did you describe to him that he was facing
21 a minimum of 15 years ---

22 A. Yes.

23 Q. --- based on the plea?

24 A. Yes.

25 Q. Okay.

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1 A. And I remember -- I do remember how sad this was. And it
2 was part of our, I guess, mitigation was -- I believe he was
3 17 at the time. And he was talking about it as, okay, you
4 know, -- and I'm thinking this is a huge amount of time. And
5 at the time he was trying to think and say, all right, I'll
6 get out when I'm around 30 or something like that. And he --
7 it was very sad.

8 Q. And did you have any question whether or not Mr. German
9 understood what was happening with this plea?

10 A. He understood -- he understood what was happening.

11 Q. Okay. Did you make him any promises during the course of
12 your prior conversations about the plea regarding a sentence?
13 Did you promise him if you plead guilty you're going to
14 definitely get 15 years? Anything like that?

15 A. No.

16 Q. Okay. Now the Court has an advisement of rights form
17 that I believe that you completed, which was actually
18 presented to Judge Hill on the day of the plea. Do you recall
19 that?

20 A. Yes.

21 Q. Okay. And the advisement -- the acknowledgment of rights
22 given up by entering a guilty plea, is that a -- that a form
23 that you typically use?

24 A. It is.

25 Q. Okay. And that -- did you -- so did you go over all

ALEXANDER KORNFELD - DIRECT EXAMINATION BY MS. MOORE

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1 three pages of that form, which is in the Judge's packet, with
2 Mr. German?

3 A. I did, yes.

4 Q. Okay. But isn't it true that there's nothing -- there
5 was no section on the acknowledgment of rights given up by
6 entering a guilty plea that advises Mr. German of his right to
7 appeal in ten days, is that right?

8 A. That's correct.

9 Q. Okay. And is that something that you -- that you
10 personally discussed with him in your private conversations
11 about his right to appeal?

12 A. No.

13 Q. Okay. Okay. Now -- and, also, I think we've been over
14 this, but there's certainly nothing in this acknowledgment of
15 rights given up by entering guilty plea form that also would
16 advise him about the fact that he would not be able to appeal
17 any waiver hearing issues if he pled guilty. I mean, there's
18 nothing like that on this form, correct?

19 A. There's nothing specific to a waiver form, I don't
20 believe, on that -- in that form. I would agree with that,
21 yes.

22 Q. Okay. And you've already testified that wasn't part of
23 your discussions with Mr. German?

24 A. Not at the plea that he'd be giving up any reason for a
25 waiver. In that it says, you know, you give up your right to

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1 a trial, contest any issues. I believe it says those sorts of
2 things. But if you're asking me if there was anything about,
3 you know, specific in the waiver, no, there was not. And I
4 didn't talk to him on the day of the plea about him giving up
5 that right to a waiver specifically.

6 Q. Okay. Now have you had an opportunity to review the
7 transcript of the guilty plea, not only the guilty plea, but
8 then also subsequently the sentencing by Judge Hill?

9 A. I did review it.

10 Q. Okay.

11 A. Yes.

12 Q. And it's true that the judge also did not inform Mr.
13 German of his right to appeal?

14 A. If you look at that transcript, according to that, no,
15 ---

16 Q. Okay.

17 A. --- he did not. And I don't remember that, but it has
18 been some time. That's correct.

19 Q. Okay. And were you aware, Mr. Kornfeld, that if you did
20 appeal a guilty plea that you would have to, with the initial
21 notice of appeal, give the Court of Appeals the grounds for
22 the appeal of the guilty plea and note in the record how those
23 issues that you would be raising were, in fact, preserved for
24 the record? Were you aware of that?

25 A. I am aware of that.

ALEXANDER KORNFELD - DIRECT EXAMINATION BY MS. MOORE

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1 Q. Okay. And so given that, in your opinion, not only being
2 there back in 2016, but also having an opportunity to review
3 the transcript, did you believe that there were any legitimate
4 appealable issues that arose from the guilty plea?

5 A. I did not.

6 Q. Okay. And did Mr. German just independently bring to you
7 the question of whether or not he could appeal?

8 A. He did not.

9 Q. Okay.

10 A. No.

11 Q. Okay. And subsequent -- subsequent to Mr. German being
12 committed to the Department of Corrections, did you provide to
13 him all of the discovery in this case?

14 A. Yes.

15 Q. But you -- but you reviewed that with him prior to the
16 guilty plea?

17 A. I reviewed discovery with him. I've actually -- I
18 provided him discovery several times. And I wish that he
19 would make sure that he keeps it, but it sounds like he is
20 either not being able to keep it or being moved. But, yes,
21 I've provided it more than once.

22 Q. Okay. And did you agree with Mr. German's decision to
23 plead guilty?

24 A. I thought it was the right decision under the
25 circumstances with the amount of facts and the amount of time

ALEXANDER KORNFELD - CROSS-EXAMINATION BY MS. MEADOWS

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1 he would likely get would we go to trial and be convicted.

2 Q. Right. And so -- and so he would -- it sounds like from
3 your testimony that Mr. German was only noticed for one set of
4 his charges, is that right?

5 A. I believe that's correct, yes.

6 Q. Okay. So had he gone to trial, you still would have had
7 other sets of charges that you were facing to potentially
8 defend, is that -- is that correct?

9 A. Correct. We'd have to beat those charges, and then we'd
10 get ready to try and beat some more charges.

11 Q. Okay.

12 MS. MOORE: Judge, I beg your brief indulgence.

13 (Pause)

14 MS. MOORE: Judge, I don't have any further questions of
15 Mr. Kornfeld. Thank you.

16 MS. MEADOWS: Just briefly, Judge.

17 **Cross-examination by Ms. Meadows:**

18 Q. So, Mr. Kornfeld, I know you testified earlier that you,
19 you know, couldn't remember any major details about the waiver
20 hearing, but do you recall what your general argument is as to
21 why he should stay in Family Court?

22 A. My argument was that he could be rehabilitated within the
23 Family Court. I think that was my -- that was the main progue
24 whether he could be rehabilitated within -- within the Family
25 Court.

ALEXANDER KORNFELD - CROSS-EXAMINATION BY MS. MEADOWS

25

1 Q. Okay. And then you said you spoke with him at the
2 juvenile jail after Judge Bridges did issue her order waiving
3 his case to General Sessions?

4 A. That's correct.

5 Q. Okay.

6 A. I spoke -- I spoke to him multiple times.

7 Q. Okay.

8 A. I actually saw Mr. German a good bit.

9 Q. Okay. So what did you discuss with him during those
10 meetings after ...

11 A. I discussed the, you know, the amount of evidence, the
12 weight of the evidence, whether or not he had an alibi. When
13 it came to the waiver hearing, I just told him that we could
14 possibly make arguments to that, but they would be
15 unsuccessful.

16 Q. Okay. So even though you may have not talked
17 specifically about an appeal, you did discuss the possibility
18 of challenging that ---

19 A. Yes.

20 Q. Okay.

21 A. But -- yes. And I -- when we went to plea later on when
22 he gave up those rights, I didn't say -- we didn't talk about
23 the waiver hearing at the time of the plea.

24 Q. Okay.

25 A. I mean, this was quite a long period of time from

ALEXANDER KORNFELD - CROSS-EXAMINATION BY MS. MEADOWS

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1 juvenile up to here. But we did not talk about the waiver
2 hearing on the day of his plea.

3 Q. Okay. And then when you -- when you, you know, told him
4 that you could challenge it, but it probably wouldn't be
5 successful, do you recall, you know, what he said or if he
6 expressed interest in challenging the transfer order?

7 A. No. He was 15, 16 at this time. So he -- I think he
8 would ask questions about his case. He would ask questions
9 about going forward, a lot of procedural things. But, no, he
10 didn't say -- he didn't say anything like that at that time.

11 Q. Okay. And then as far as the appeal of the guilty plea,
12 is it, you know, your general practice to advise your clients
13 of their right to appeal following a guilty plea?

14 A. Yes. And some judges do it on the record. But I -- now
15 I'm trying to do that, but back then when -- with Mr. German,
16 in this particular case, when someone pleads guilty, at that
17 time, I did not tell them, hey, you can appeal this guilty
18 plea.

19 Q. Okay.

20 A. And I didn't see, at that time, any credible reason to --
21 that there would be to appeal it.

22 Q. Okay. So there was nothing that occurred at the hearing
23 or any, you know, other type of basis that you saw to appeal?

24 A. That's correct. That's correct.

25 Q. Okay.

JAKOBE GERMAN - DIRECT EXAMINATION BY MS. MOORE

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1 A. I can't think of anything even now ---

2 Q. Okay.

3 A. --- that would be appealable pursuant to that plea.

4 Q. Okay. And then you also just testified you felt it was
5 in his best interest to plead guilty?

6 A. I do.

7 Q. Okay.

8 A. Yeah.

9 Q. All right.

10 **MS. MEADOWS:** Nothing further, Judge.

11 **MS. MOORE:** Nothing further.

12 **THE COURT:** Thank you. You may step down.

13 A. Thank you.

14 **THE COURT:** You can also be excused.

15 A. Thank you, Judge.

16 **MS. MOORE:** May it please the Court?

17 **THE COURT:** Yes, ma'am.

18 **MS. MOORE:** I call Jakobe German.

19 **MADAM CLERK:** Mr. German, please place your left hand on
20 the Bible and raise your right hand.

21 **Jakobe German,** being duly
22 sworn testified as follows;

23 **MADAM CLERK:** Thank you. You may be seated. Please
24 state your full name for the record.

25 **MR. GERMAN:** Jakobe T. German.

JAKOBE GERMAN - DIRECT EXAMINATION BY MS. MOORE

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1 Direct Examination by Ms. Moore:

2 Q. Mr. German, how old are you?

3 A. I am 23 years old.

4 Q. Okay. And you, obviously, remember Mr. Kornfeld
5 representing you on the criminal charges, correct?

6 A. Yes, ma'am.

7 Q. Okay. And you've had an opportunity to speak with me
8 about the allegations that you've made on your post-conviction
9 relief application, is that right?

10 A. Yes, ma'am.

11 Q. Okay. And so, obviously, a majority of the issues that
12 you raise are regarding the issue of appeal. And you just
13 heard Mr. Kornfeld testify that he did not tell you about your
14 right to appeal your guilty plea.

15 A. Yes, ma'am.

16 Q. Okay. And is that your recollection as well?

17 A. Yes, ma'am.

18 Q. Okay. And had Mr. Kornfeld advised you of your right to
19 appeal, do a direct appeal, would you have directed him to
20 file a direct appeal?

21 A. If I would have known that I could have appealed, I
22 probably would have never even took a plea arrangement. Like
23 I didn't -- I thought once you go to court, you never have a
24 chance to go back and argue it again. I never knew that until
25 I was already sentenced and in prison.

JAKOBE GERMAN - DIRECT EXAMINATION BY MS. MOORE

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1 Q. Okay. But you understand, I mean, even if there was an
2 appeal filed, you can only raise the issues that happened at
3 your appeal, excuse me, your guilty plea hearing? You
4 understand that?

5 A. Yes, ma'am.

6 Q. Okay. Now, we also had testimony from Mr. Kornfeld
7 regarding the waiver hearing. And I'll ask you, did Mr.
8 Kornfeld ever inform you that if you pled guilty in General
9 Sessions that you would not be able to raise any issues
10 regarding the waiver hearing?

11 A. No, ma'am.

12 Q. Okay. And you understand that? That by pleading guilty
13 you would not have been able to raise any waiver hearing
14 issues on appeal? You understand that?

15 A. Now I understand that.

16 Q. Okay. And now -- and as you say, now you understand
17 that, if you had known that, would that have impacted your
18 decision to plead guilty?

19 A. Yes, ma'am.

20 Q. Okay. Now, isn't it true that you certainly were facing
21 a lot of charges back in August of 2016, is that right?

22 A. Yes, ma'am.

23 Q. Okay. And Mr. Kornfeld brought the guilty plea to you
24 and had a discussion with you about the proposed guilty plea,
25 correct?

JAKOBE GERMAN - DIRECT EXAMINATION BY MS. MOORE

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1 A. Yes, ma'am.

2 Q. Okay. And he informed you that it would be a minimum of
3 15 years that you would be facing pursuant to the guilty plea,
4 ---

5 A. Yes, ma'am.

6 Q. --- is that right?

7 A. Yes, ma'am.

8 Q. Okay. And ultimately you were sentenced to 17 years?

9 A. (Affirmative nod).

10 Q. Is that correct? You have to say yes or no.

11 A. That's correct.

12 Q. Okay. Now you also -- you also raised the issue in your
13 -- in your post-conviction relief application that you are
14 concerned about the sufficiency of Judge Bridges' order.
15 Basically you say that you don't believe that Judge Bridges
16 made -- made sufficient rulings or findings to support your
17 waiver, is that right?

18 A. Yes, ma'am.

19 Q. Okay. And you understand that that's a legal issue that
20 the Judge will have to determine?

21 A. Yes, ma'am, I do.

22 Q. Okay. All right. And you also allege that Mr. Kornfeld
23 failed to object to the State's motion to transfer
24 jurisdiction, but isn't it true that you had a full-blown
25 contested hearing where you did not consent, is that right?

JAKOBE GERMAN - CROSS-EXAMINATION BY MS. MEADOWS

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1 A. Yes, ma'am.

2 Q. So you -- you and Mr. Kornfeld appeared at that waiver
3 hearing and you certainly did not agree with the relief that
4 the State was requesting, right?

5 A. Yes, ma'am.

6 Q. Okay. Did you discuss with Mr. Kornfeld the possible
7 consequences to you if you had gone to trial back in August of
8 2016?

9 A. Yes, ma'am, I did.

10 Q. And what was your understanding of the possible
11 consequence if you had actually gone to trial that week?

12 A. That it could have been a lot more severe than the actual
13 plea that I was given.

14 Q. Okay. And so did you have -- did you at that point have
15 concerns about going forward with your trial?

16 A. At the time because I didn't know I'd have a chance
17 again. So at the time, yes.

18 Q. Okay. Okay.

19 MS. MOORE: Judge, I have no further questions of this
20 witness.

21 MS. MEADOWS: Briefly, Your Honor.

22 **Cross-examination by Ms. Meadows:**

23 Q. And when you say you didn't know you'd have -- you would
24 have the chance again, what do you mean by that?

25 A. I would have the chance to even be able to explain my

JAKOBE GERMAN - CROSS-EXAMINATION BY MS. MEADOWS

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1 side in court again after I was -- went through that process.

2 Q. Okay. You mean if you pled guilty or if you had gone to
3 trial?

4 A. If I pled guilty or going to trial, I didn't know
5 anything about a appeal. I was never told by my attorney.

6 Q. Okay. Well, do you realize that an appeal is just a
7 higher court reviewing what happened? It's not like something
8 where you would go back and tell the court anything else. It
9 would just be an appeal of the lower court's decision.

10 A. Yes, ma'am.

11 Q. Okay. Now how many times did you meet with your attorney
12 before the waiver hearing before Judge Bridges?

13 A. It's been so long, I don't know exactly.

14 Q. Okay. Do you -- do you remember what -- what you
15 discussed with him?

16 A. Overall, no, ma'am.

17 Q. Okay. And then Mr. Kornfeld testified earlier that you
18 -- he met with you after Judge Bridges did decide to waive
19 your case to General Sessions. Do you recall speaking to him
20 at that point or what you guys talked about going forward from
21 there?

22 A. I remember after I got sentenced I spoke with him, but it
23 was -- I don't remember it in detail what exactly all we spoke
24 about.

25 Q. Okay. Well, I'm just talking about, you know, before

JAKOBE GERMAN - CROSS-EXAMINATION BY MS. MEADOWS

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1 your plea or anything, just after the Family Court decided to
2 transfer you up to General Sessions, ---

3 A. Okay.

4 Q. --- do you recall meeting with him, you know, at that
5 point?

6 A. Yes, ma'am.

7 Q. Okay. And what did he tell you about, you know, your
8 case being transferred and everything?

9 A. Basically that we was going to the adult courts now, and
10 you've got to try a different fight within the adult court.

11 Q. Okay.

12 A. That's basically it.

13 Q. Okay. Did you talk to him or did he talk to you about
14 possibly challenging the Family Court's decision?

15 A. In the fact about the -- the decision, no, ma'am.

16 Q. Okay. So he didn't tell you that there was any way that
17 you could challenge the Family Court's waiver to General
18 Sessions?

19 A. No, ma'am. He was just saying he don't think it's really
20 anymore arguments he can give them ---

21 Q. Okay.

22 A. --- at the time.

23 Q. Okay. And then once your cases transferred to General
24 Sessions you decided to plead guilty. And did -- did y'all
25 talk about -- anything about the waiver after that or before

ASHLEY CASE - DIRECT EXAMINATION BY MS. MEADOWS

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1 that, before -- I'm sorry, about the Family Court's decision
2 to waive to General Sessions, did y'all discuss that again?

3 A. No, ma'am.

4 Q. Okay. And then when -- you say you didn't learn you had
5 a right to appeal until after, you know, you'd got into
6 prison. Do you know when you -- when you learned about the
7 right to appeal?

8 A. I think it was like around -- around 2017 or a little
9 before I was told that I had a certain amount of time to file
10 the post-conviction relief form.

11 Q. Okay. Okay. So when you entered your guilty plea did
12 you think that you would be able to go back and challenge the
13 Family Court's decision or did you -- was it your
14 understanding that this was a final adjudication on these
15 charges and that that would be ---

16 A. I thought that was final, that was all.

17 Q. Okay. All right.

18 **MS. MEADOWS:** Nothing further, Judge.

19 **MS. MOORE:** Nothing further.

20 **THE COURT:** You may step down.

21 **MS. MOORE:** Judge, we have no further witnesses.

22 **MS. MEADOWS:** All right. Your Honor, the State calls
23 Ashley Case.

24 **MADAM CLERK:** Ms. Case, please place your left hand on
25 the Bible and raise your right hand.

ASHLEY CASE - DIRECT EXAMINATION BY MS. MEADOWS

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1 **Ashley Case**, being duly
2 sworn testified as follows;

3 **MADAM CLERK:** Thank you. You may be seated. And please
4 state your full name for the record.

5 **MS. CASE:** Ashley Phillips Case.

6 **Direct Examination by Ms. Meadows:**

7 Q. All right. Ms. Case, do you recall Mr. German's case?

8 A. I do.

9 Q. Okay. And were you at the time a solicitor prosecuting
10 juvenile cases?

11 A. Yes, ma'am.

12 Q. Okay. And how long did you do that?

13 A. Thirty years.

14 Q. Okay. Now could you just briefly summarize kind of the
15 process of initiating these juvenile delinquency proceedings
16 in Family Court?

17 A. Yes. We -- the solicitor's office or my office would
18 receive incident reports and make a decision on filing
19 petitions, which is the equivalent, I guess, of an indictment.

20 Q. Okay.

21 A. We'd file petitions in Family Court. And then depending
22 on the status of the juvenile, if it's a -- if they're in
23 detention, we'd, you know, have detention hearings.
24 Otherwise, we'd just set it for court.

25 Q. Okay. And so that's based on information, reports that

ASHLEY CASE - DIRECT EXAMINATION BY MS. MEADOWS

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1 you received from law enforcement?

2 A. Yes, ma'am.

3 Q. Okay. And do you recall initiating those proceedings for
4 Jakobe German?

5 A. I do.

6 Q. Okay. And then I believe you filed three sets of
7 petitions alleging that he had committed a number of violent
8 offenses. This was in September and October of 2014.

9 A. Yes, ma'am.

10 Q. Okay. And would you mind giving the Court just a brief
11 summarization of the facts of each of these sets of charges
12 and how, you know, how they came -- came to your desk from law
13 enforcement?

14 A. I can -- I can try. May I look at my notes?

15 **THE COURT:** Sure.

16 A. These -- I don't believe Jakobe -- he wasn't arrested
17 immediately after the first set of charges. He -- they began
18 to rack up. And then law enforcement was able to put together
19 enough to arrest him.

20 Q. Okay.

21 A. There were several incidents. I think August 23rd may
22 have been the first one. Robert Belcher was the victim in
23 that case. I believe he was charged with kidnapping,
24 attempted murder, armed robbery, and burglary, first.

25 He and the co-defendants -- and there were about four co-

ASHLEY CASE - DIRECT EXAMINATION BY MS. MEADOWS

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1 defendants in each of these incidents. And just for the
2 record, all of them were adults. And when I say adults, 17,
3 18, 19 years old except for Jakobe and one other.

4 But they went into the home of Mr. Belcher. Kicked in
5 the door. Went straight in demanding money. Mr. Belcher --
6 and this is according to his statements along with some of the
7 co-defendants' statements.

8 He gave them what he had, which was about a hundred and
9 twenty-five dollars (\$125.00) and some marijuana. And Jakobe
10 shot him anyway and left.

11 Q. Okay.

12 A. Then August 26, 2014 LaSonya Simpson was the victim. Was
13 charged with attempted burg, first, attempted murder.
14 According to the facts we had, the witness statements and the
15 victim statements along with the co-defendants' statements,
16 they attempted to kick in the door to her home. And she and
17 her son were home.

18 And she'd had a prior burglary, but this time she was
19 home. So she went after them. They left the home after they
20 realized, I guess, people were there. She went after them.
21 And they were -- they were shooting at her. And the
22 statements from some of the co-defendants identified Jakobe as
23 the shooter.

24 Then on September the 2nd, 2014, this was the Evelyn
25 Drive incident. This one was particularly violent. I believe

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1 he was charged with three counts of kidnapping, attempted
2 murder, four counts of armed robbery, assault and battery,
3 first, times two, and a burglary, first.

4 And they had identified some cars. And, again, this
5 comes from co-defendants' statements that were at this
6 location that they liked the cars. So they were going to rob
7 or try to steal the cars.

8 There were some people out on the porch. There were
9 several people at this home. I'm not sure how many lived
10 there, but there were some people out on the porch.

11 And co-defendants' statements identified Jakobe as the
12 one who went on the porch and hit, rushed one of the female
13 victims, Heather Goodwin, rushed her, struck her several
14 times. I think the actual statement was he kept beating her.
15 She fell out of the chair and he kept beating her.

16 Then they -- he tried to get in the house. They didn't
17 open the door, but they busted open the door with a shotgun,
18 gained access. Another individual in there, David Burnette,
19 he was telling somebody to go call 911.

20 And when they came into the house Mr. Burnette was pistol
21 whipped, beat and then kicked. I think he lost all control of
22 his faculties. He -- a pool of blood is where they found him,
23 lost consciousness. And, again, Jakobe was identified as one
24 of the aggressors in that incident.

25 And then they went back and found another female victim

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1 in the bathroom. She was in the bathtub. She was pregnant.
2 And, again, this is coming from her statement and co-defendant
3 statements that she begged them not to -- not to do anything
4 to her, she was pregnant.

5 And with some language the statements indicated that
6 Jakobe told her that he didn't care that she was pregnant.
7 He'd kill her right then. Pushed her down in the bathtub.
8 She had some injuries, but he -- other than pushing her in the
9 bathtub, that was it.

10 Then on September the 3rd, 2014, it was an attempted
11 armed robbery, attempted murder, assault and battery, first,
12 times two, and burglary, first. There were some gentlemen
13 that was sitting outside the house where they lived, and they
14 were drinking a beer.

15 They were approached or rushed by about five subjects
16 carrying guns and wearing masks. They demanded money. But
17 before the money could even be provided, they started
18 shooting. And one of those victims was struck in the head.
19 And then another one was shot in the leg at least once.

20 Then they went inside where another individual was. And
21 this man was a little, I think, mentally deficient. And he
22 was beaten as well. And, again, co-defendants' statements put
23 Jakobe there, that they had met at the Citgo and were going to
24 -- to hit a lick. So they had him there at that incident.

25 Then there was another incident on July the 28th, another

ASHLEY CASE - DIRECT EXAMINATION BY MS. MEADOWS

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1 burglary. The victim came home after being gone for about --
2 she was gone from 11:00 in the morning to 6:00 and her door
3 had been forced open, bedrooms ransacked, guns taken, TV
4 taken. I believe some of that was recovered from Mr. German.

5 Q. Okay. And so after you filed these petitions you filed a
6 motion to waive or transfer Mr. German's case to General
7 Sessions, ---

8 A. Yes.

9 Q. --- correct?

10 A. Um-hum (affirmative).

11 Q. Okay. And why did you choose to do so in this case?

12 A. Well, the number of offenses -- these were very, very
13 aggressive and violent offenses and there were so many of
14 them.

15 And, unfortunately, at that time Jakobe had had a lot of
16 Department of Juvenile Justice intervention. And there was --
17 based on the seriousness of the charges and the fact that
18 there was nothing left to do for him ---

19 Q. Okay.

20 A. --- in Family Court, we filed this petition, I mean, that
21 waiver motion.

22 Q. Okay. And just in your experience as a solicitor
23 prosecuting these cases is it common for your office to seek
24 to transfer these juvenile cases to General Sessions?

25 A. It's very common for murder charges, less common for

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1 something -- and I'm speaking of Greenville and Spartanburg
2 because that's where I've been an assistant solicitor. But
3 it's not as common for other things.

4 The other counties that I have worked in, we don't
5 generally do it for, you know, drug charges or anything like
6 that. But the seriousness of these charges, the number of
7 armed robberies, the number of kidnappings, the number of
8 burglaries, yes.

9 Q. Okay. And then could you just kind of summarize the
10 waiver process and what takes place at a waiver hearing?

11 A. Yes. We filed the motion. And there are eight Kent
12 factors from Kent versus U.S. that the Family Court has to
13 consider. In the number of waivers that I've done the people
14 who are called to testify are the DJJ psychologists, who does
15 the pre-waiver evaluation, and then the officer or officers
16 involved. Rarely do I have anyone else unless it's a DJJ
17 community counselor ---

18 Q. Okay.

19 A. --- to testify.

20 The -- there's a pre-waiver evaluation that's done.
21 There's an order in the file ordering that that be done. The
22 Family Court's charged with conducting a full investigation of
23 the facts ---

24 Q. Okay.

25 A. --- before they can make a determination. And the waiver

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1 evaluation is part of that investigation. So that's performed
2 by a DJJ psychologist.

3 Q. Okay. So did that DJJ psychologist testify in Mr.
4 German's hearing?

5 A. Yes. Joseph Harris testified and so did Chris Hammett
6 and David Weiner with the Greenville County Sheriff's Office
7 along with Sam Crosby, who was his -- Jakobe's probation
8 officer, his intensive probation officer.

9 Q. Okay. And then after you present your testimony from
10 those witnesses does each party give a closing argument?

11 A. Yes, they're entitled to. Yes, ma'am.

12 Q. Okay. And do you recall what your closing argument was
13 as to each of those factors you mentioned before in this case?

14 A. Yes. What I would do is just go through the different
15 Kent factors and point out how we did or did not fall into
16 those. And I was able to recover my notes with regard to
17 this. But, yes.

18 So my closing argument was I addressed each Kent factor.
19 So the first Kent factor is the seriousness of the alleged
20 offense and whether or not protection of the community
21 requires the waiver and the crimes that Jakobe was charged
22 with were very serious, very violent, kidnapping, armed
23 robbery, attempted murder, assault and battery, first,
24 burglary, first. And there were multiple counts of that.

25 My -- I made the point because the DJJ psychologist made

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1 the point that those -- seriousness of those charges indicates
2 a lack of concern for others or for the public. And it makes
3 it more difficult to rehabilitate someone when they have that
4 serious of a lack of concern for others.

5 Another factor was whether the alleged offenses were
6 committed in an aggressive, violent, premeditated or wilful
7 manner. And, again, very violent, very aggressive.

8 And the evidence that was presented by the law
9 enforcement officers to include co-defendant statements were
10 that these incidents were planned out. They would identify
11 targets and they would plan, you know, when, and how, and what
12 they were going to do. And he was charged with shooting nine
13 victims in four separate incidents.

14 Then the third factor, Kent factor was whether the
15 offenses were against persons or property. And most of these
16 offenses were against property [sic]. I think 19 out of the
17 23 charges he had were against persons as opposed to property.

18 The prosecuted merit of the complaint was -- is simply,
19 and the case law is pretty clear, that it's simply enough for
20 a grand jury to return a true billed indictment. The case --
21 this case was very sound evidentially with victims and co-
22 defendants and witness statements.

23 Jakobe was identified by several as a leader of this
24 group even though he was one of the younger ones. He was
25 identified as the planner and leader of this group.

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1 The desirability of the trial and disposition of the case
2 in one court, in this situation all but one co-defendant was
3 an adult. You know, it's not a very important factor in my
4 opinion, but it's -- judicial economy is basically what it's
5 talking about.

6 And then the two that address, I think, what Mr. Kornfeld
7 testified about with regard to rehabilitation, there's a
8 sophistication of maturity of the juvenile and then the
9 prospects of adequate rehabilitation in Family Court. Jakobe,
10 the sophistication of maturity was a little -- was a little
11 tricky in that you could kind of look at it both ways. The
12 psychologist determined that he had sufficient intelligence
13 and reasoning to have learned from interventions in the past
14 so that he would not continue to commit these offenses to be
15 delinquent.

16 But then on the other hand, he was, you know, his
17 criminal sophistication with regard to planning and acting
18 these things out was also high. Even though he possessed the
19 sufficient intelligence and reasoning, it had not deterred him
20 from continuing to do these things.

21 Another factor was -- is his previous history. And this
22 was, I think, very important in that Jakobe had several guilty
23 pleas or was adjudicated delinquent on numerous charges in
24 Family Court beginning at like age 12. He, over the course, I
25 guess, between 2011 and 2014 when these charges came in, he

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1 had had two secure evaluations.

2 And I don't know how much I need to get into this, but a
3 Family Court sentence, you can get probation or you can get an
4 evaluation. And this evaluation can either be secure or it
5 can be a local evaluation.

6 And he had had two secure evaluations in those -- in
7 those few years. He had had, I think, three or four probation
8 violations. He had been given two determinate sentences. And
9 he had been in four different placements and had disrupted
10 several of those placements.

11 So, you know, he'd been given a determinate sentence of,
12 say, 90 days, release into alternative placement when they
13 could secure that and then hopefully he'd be transitioned into
14 that alternative placement and do better. So that all
15 happened within those, I think, three years.

16 And then as far as -- the last one is the prospects of
17 adequate protection of the public and likelihood of
18 rehabilitation of the juvenile in the Family Court system.
19 And it really -- it boils down to time because a juvenile
20 who's waived to General Sessions is going to be held in the
21 same facility as a juvenile who's not waived to General
22 Sessions until they turn a certain age, which would be 17. So
23 -- and the services they get would have been the same.

24 And so the -- I think the biggest factor here is is there
25 enough time available if he would have been kept in the Family

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1 Court system to effectively rehabilitate him? The
2 psychologist in the evaluation -- and the psychologist
3 testified and was questioned by Mr. Kornfeld and Judge
4 Bridges. But, again, the seriousness and violent offenses
5 shows a lack of concern. And those people are more difficult
6 to rehabilitate.

7 The fact that his charges were rapidly behind one another
8 in succession that he was doing this so close together, re-
9 offending multiple times in a short period of time, they are
10 more difficult to rehabilitate. And these are the
11 psychologist's words in the report.

12 The fact that he had had multiple treatment programs and
13 was still defiant, uncooperative, disruptive, again, more
14 difficult to rehabilitate. Jakobe also had disruptions when
15 he was in detention or when he was in these alternative
16 placements. And you can kind of get it when he's not in a
17 secure facility, but if you're in a secure facility and you're
18 still disrupting shows a harder time to rehabilitate.

19 He had been offered mental health treatment and
20 medications in the past. And he did not want to comply with
21 that. And that, again, makes it more difficult to
22 rehabilitate if you can identify things and still not be able
23 to take advantage of those factors.

24 Q. Okay. And how did his age factor into your argument?

25 A. Well, being charged with the offenses he was charged

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1 with, the waiver statute, he could have been 14 or 15 and
2 charged with these, and we could have moved to have him
3 waived. He was six months shy of 16. And the law at that
4 time was if he had been 16 when he was charged with these, he
5 would have automatically been charged as an adult. There
6 would have been no choice. Law enforcement would have had to
7 have charged him.

8 So he was ---

9 Q. Okay. So there wouldn't have been any Family Court
10 proceedings?

11 A. Right.

12 Q. Okay. And that age has since changed to 17, correct?

13 A. Yes.

14 Q. Okay. And then did you -- have you reviewed Judge
15 Bridges' order or did you -- did you believe it was
16 sufficient, essentially addressed those factors that you just
17 laid out?

18 A. It did. It -- I got it here somewhere. But it addressed
19 every -- every single Kent factor and why it supported her
20 decision to waive Jakobe's case to General Sessions.

21 It also listed the witnesses and the report that was
22 entered into evidence. So the evaluation was entered into
23 evidence and Mr. Harris testified along with Investigator
24 Hammett and Investigator Weiner.

25 Q. Okay. And then after his case was waived to General

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1 Sessions did that end your involvement in the case?

2 A. Yes, ma'am.

3 Q. Okay.

4 **MS. MEADOWS:** Nothing further, Judge.

5 **MS. MOORE:** Just briefly, Judge.

6 **Cross-examination by Ms. Moore:**

7 Q. I know this was a long time -- time ago, Ms. Case, but
8 isn't it true that a lot of the evidence against Mr. German
9 was based on co-defendants' statements? Is that right?

10 A. Co-defendants and witness statements.

11 Q. Okay.

12 A. I mean, victims' statements.

13 Q. Right. Okay.

14 A. He was identified by the victims.

15 Q. Okay. Thank you.

16 **MS. MOORE:** No further questions.

17 **THE COURT:** Thank you. You may step down.

18 **MS. MEADOWS:** The State rests, Your Honor.

19 **THE COURT:** All right. Anything further?

20 **MS. MOORE:** Nothing further.

21 **MS. MEADOWS:** I just have a brief argument about the
22 appeal issue. So under our case law, Jones v. State says that
23 the fair assertion that a defendant was not advised of his
24 appellate rights is insufficient.

25 And under Roe v. Flores-Ortega, that's a United States

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1 Supreme Court case. It states that counsel has a
2 constitutional duty to consult with the defendant about an
3 appeal if either extraordinary exists -- extraordinary
4 circumstances exist such that a rational defendant would want
5 to appeal or whether the particular defendant demonstrated to
6 counsel that he was interested in appealing. And I believe
7 that Mr. Kornfeld's testimony demonstrates that there was --
8 there was nothing that happened at the plea proceeding that
9 would trigger his duty to advise Mr. German of appealing his
10 guilty plea.

11 **THE COURT:** And the U.S. Supreme Court decision was what?

12 **MS. MEADOWS:** It's Roe v. Flores-Ortega.

13 **THE COURT:** Spell the last name.

14 **MS. MEADOWS:** I'm sorry, Judge?

15 **THE COURT:** Spell the defendant's name.

16 **MS. MEADOWS:** F-l-o-r-e-s-O-r-t-e-g-a. And that's 528
17 U.S. 470.

18 **THE COURT:** Ms. Moore, would you like to reply to that
19 argument?

20 **MS. MOORE:** No, Judge. I mean, I just -- I think that's
21 certainly a judgment call by counsel based on the
22 circumstances. Judge, I do think it's significant that we had
23 a 15 and a half year old with a waiver hearing. I do think
24 that he should have been advised of his -- the fact that he
25 was giving up his challenge to that on appeal by pleading

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1 guilty. That seems to be the settled law of our case.

2 So I think the question is a rational defendant would
3 want to appeal. Judge, I think those -- I think that would
4 have been a judgment call, and I don't think it's just a
5 foregone conclusion that he would not have wanted to appeal
6 under the Flores case. So that's all I would say in reply.
7 Thank you.

8 **MS. MEADOWS:** Your Honor, all I would have to respond to
9 that is as Mr. Kornfeld testified and as Ms. Case just
10 testified, there was really no legal basis to challenge the
11 waiver. They both believed that the order was sufficient.

12 And as to -- Ms. Case just testified as to the Kent
13 factors that the court considered. So it's our position that
14 the Family Court order was certainly sufficient and within its
15 bounds to transfer the case to General Sessions.

16 **THE COURT:** All right. If nothing further, that would be
17 it. I'll issue an order.

18 **MS. MOORE:** Thank you, Judge.

19 **MS. MEADOWS:** Thank you, Judge.

20 (Hearing Ended at 12:41 pm)

21 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 9th day of November 2022.

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

March 25, 2023

s/Susan W. Hudgins

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	The THIRTEENTH JUDICIAL CIRCUIT
Jakobe GERMAN, SCDC #369515,	)	
	)	
Applicant,	)	
v.	)	
	)	ORDER OF DISMISSAL
The STATE of South Carolina,	)	
	)	Civil Action No.: 2017-CP-23-05752
Respondent.	)	
	)	

24 AUG 9 AM 9:24
Brice Garrett CDC 6UL SC

This matter was before the Court on November 9, 2022 for an evidentiary hearing on an application for post-conviction relief filed by Applicant on September 6, 2017, and amended on November 3, 2021. Applicant was present and represented by counsel, Scarlett B. Moore, Esq.¹ Assistant Attorney General Lilly Meadows represented Respondent, the State. At the close of the hearing the decision was taken under advisement. By a civil action Form 4 order issued on November 29, 2022, this Court denied relief and directed Respondent's counsel to prepare and submit a proposed order.²

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections, McCormick Correctional Institution. Applicant was 15 years old at the time he participated in multiple crimes with his co-defendants. Initial proceedings began in Family Court. Alexander Kornfeld, Esq., represented Applicant.³ On June 19, 2015, after presiding over a contested waiver

¹ Sara M. Henry, Esq., was previously appointed to represent Applicant. Ms. Henry filed the amended application during the time of her representation. On March 17, 2022, Ms. Henry moved to be relieved from appointment, which the Honorable Eugene C. Griffith, Jr., granted by Order dated March 25, 2022. Ms. Moore was subsequently appointed and appeared at the hearing.

² The proposed order was circulated among counsel prior to this Court's acceptance. *See Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019) (providing a "proposed order should be transmitted to opposing counsel" for review and that counsel "should ... alert preparing counsel and the PCR court as to any deficiencies in the proposed order.").

³ The crimes referenced in the Family Court proceedings included: "Attempted Burglary First Degree (2014 JU 23 941), 4 Counts of Attempted Murder (2014 JU 23 790,942,954, 976), Attempted Armed Robbery (2014 JU 23 789), 4 Counts of Assault & Battery First Degree during the commission of an Armed Robbery (2014 JU 23 791,792,970,971), 3 Counts of Burglary First Degree (2014 JU 23 797, 956, 975), 5 Counts of Armed Robbery (2014 JU 23 955, 977, 978, 979, 981), 4 Counts of Kidnapping (2014 JU 23 953, 968, 969, 980) and Burglary Second Degree Violent (2014 JU 23 983)." (Waiver Order, at 1). The Family Court noted all "[t]he alleged offenses occurred in

[Signature] 1

hearing, the Honorable Usha J. Bridges issued an order granting the prosecution's motion to waive Applicant to the Court of General Sessions.⁴ Judge Bridges concluded "that there is little likelihood that Jakobe T. German, can be rehabilitated in the Juvenile Justice System," and that "[i]t is in the best interest of Jakobe T. German, and the public, that he be waived to the Court of General Sessions for proceedings on the charges alleged in Petitions...." (Waiver Order, p. 2). Mr. Kornfeld was again appointed as counsel for the General Sessions proceedings and continued representation. (PCR Tr. at 8).

Among other charges, the Greenville County grand jury indicted Applicant for two counts of armed robbery (2015-GS-23-06101A and 06107A) and two counts of first-degree burglary (2015-GS-23-06106A and 06111A) in July 2015. On August 22, 2016 Applicant appeared before Circuit Judge D. Garrison Hill to plead guilty to these four charges.

Prior to accepting Applicant's plea, Judge Hill ensured that Applicant was satisfied with his counsel's representation and had been afforded sufficient time to discuss his case with counsel; that he was pleading because he was factually guilty; that he understood the minimum and maximum sentencing possibilities; that he was not threatened or coerced and was of sufficient mind to understand the proceedings; that he understood that he was waiving his trial rights, including the right to cross-examine witnesses and require the State to prove its case beyond a reasonable doubt; and also, that he understood that he was foregoing any defenses he may have to the charges. (Plea Tr. at 3-6 and 9).

The State provided the following recitation in support of a factual basis for the charges:

With respect to the first incident. On September 2nd of 2014, just before 10:00 p.m., officers responded to a robbery at a residence on Evelyn Drive in Greenville County.

One of the victims described that she was on the front porch of the home when four to six masked individuals approached her and struck her in the head with a handgun before dragging her into the home as they forced their way inside. The intruders attacked

Greenville County on or about July 28, 2014, August 23, 2014, August 26, 2014, September 2, 2014 and September 3, 2014, when the defendant was fifteen (15) years and 6 (six) months old." (Waiver Order, p. 1).

⁴ The record shows that the State and counsel for Applicant made efforts to obtain the transcript; however, it was determined that a transcript was not available. (See PCR Tr. at 9; see also Motion for Production of Transcript). The basis of the State's case was submitted in summary fashion at the PCR. (PCR Tr. 35-48).

*2

three other victims in the home before taking cash, purses, phones, and keys to the two cars, which they used to flee the scene.

At least, one co-defendant has given a statement to police admitting their own involvement in the home invasion. In statements not only from that co-defendant but others, they described that this – the robbery was [Applicant's] idea and that the group walked to the victim's home. [Applicant] struck the victim outside on the front porch before he and others kicked open the door and forced their way inside.

Then, . . . the next day, on September 3rd of 2014, just before 9:00 p.m., officers with the sheriff's office responded to a shooting at a residence on East Parker Road. The shooting victim told police he was outside with a second victim when the two observed, at least, five masked individuals approach the home bearing firearms.

The attackers demanded money from the victims and struck each of the two victims with handguns several times. One of the attackers then fired shots at the victims and struck one of those victims several times in the leg. Other gunmen fired shots into the door of the home and forced their way inside. A third victim was injured during that forced entry.

At least, two co-defendants have given statements to police admitting their involvement in this robbery. The co-defendants identified [Applicant] as one of the gunmen and described how the 10 involved defendants planned and executed the robbery of what the defendants believed was a ticket house where cash could be found.

The defendants further identified [Applicant] as a leader, or organizer, or, at least, some high-ranking member in each of – in the Cross Tracks street gang, which is involved in each of these indictments.

Judge Hill asked Applicant, "Is that what happened," to which Applicant replied, "Yes, sir." (Plea Tr. at 8).

Judge Hill also reviewed that, if Applicant was convicted again of a serious or most serious crime, the convictions would "subject [him] to a mandatory life sentence without any possibility or hope of parole." (Plea Tr. at 9-10). Further, Judge Hill ensured that Applicant had not been given any assurances about parole eligibility, nor had anyone "predicted" parole or parole eligibility. (Plea Tr. at 10).

The State placed on the record that in exchange for the plea, the State would be "dismissing four counts of kidnapping, four counts of assault and battery in the first degree, two additional counts of burglary in the first degree, burglary second degree, four counts of attempted murder, and four counts of armed robbery," but would not be making a recommendation on the sentence. (Plea Tr. at 10).

Judge Hill found that there was a factual basis for the entry of the guilty pleas, and accepted the pleas as free and voluntary and given "with the assistance of competent counsel." (Plea Tr. at 10). He deferred sentencing until August 25, 2016. (Plea Tr. at 10). When the hearing was reconvened on that date, the defense made its presentation that included Applicant's grandmother requesting leniency. (Plea Tr. at 14). Applicant was given the opportunity to admit involvement of Tyler Hill in the September home invasion resulting in injuries and stealing of two cars; however, contrary to "all the other defendants" he declined to do so. (Plea Tr. at 15). Judge Hill noted the severity of the crimes, telling Applicant "you're lucky someone wasn't killed in this, or you weren't killed. But people were traumatized, and seriously hurt, and had their lives shattered." (Plea Tr. at 16). Judge Hill then fashioned a sentence recognizing the significant harm inflicted by Applicant, but also allowing Applicant the potential opportunity to "still have a life you can put back together again." (Plea Tr. at 16). Judge Hill sentenced Applicant to 17 years on each burglary and 10 on each armed robbery, concurrent, with 720 days of time served. (Plea Tr. at 16-17). Applicant did not appeal.

Post-Conviction Relief Allegations

In his amended application filed November 3, 2021, Applicant made the following allegations of error:

- a. Ineffective assistance of counsel and Involuntary Guilty Plea:
 - i. Applicant did not knowingly and intelligently waive

- his right to an appeal;
- ii. Plea counsel failed to inform Applicant of his right to appeal the sentence and conviction. The court also did not inform Applicant of his right to appeal the conviction.
 - iii. Plea counsel nor the court informed Applicant of his right to appeal the family court waiver would not be preserved if Applicant pled guilty.
 - iv. Plea counsel failed to discuss the potential appealable issues from the family court waiver hearing, or the process with Applicant.
 - v. That the above actions by counsel do not meet the standard of effective assistance of counsel under current professional norms, and there is a reasonable probability that but-for the above listed errors by counsel the outcome of the proceeding would have been different.

(See also PCR Tr. at 6-7).

Applicant's PCR counsel confirmed to this Court at the beginning of the PCR hearing that these allegations were the allegations Applicant would go forward on. (PCR Tr. at 7).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Applicable Law

For claims that trial counsel provided ineffective assistance, this Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there

is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). It is the applicant’s burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRCF. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”). Because Applicant’s claims center on advice regarding appeal, consideration of the ineffective assistance claims will be guided by specialized inquiry, and that inquiry differs slightly depending on the nature of the proceedings.

The Supreme Court has recognized “that counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000). The normal requirement of showing prejudice, however, does not attach. Rather, the prejudice showing required is that the applicant “must demonstrate that there is a reasonable probability that, but for counsel’s deficient failure to consult with him about an appeal, he would have timely appealed.” *Id.*, at 484.

Regarding the duty to advise, our Supreme Court has instructed that “[f]ollowing a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal.” *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (*Turner I*). However, our Court has found that “absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.” *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995); see also *Simuel v. State*, 390 S.C. 267, 270, 701 S.E.2d 738, 739 n. 1 (2010) (“*Turner I* is the standard attorneys shall meet for trials and *Weathers* is the standard for pleas”); *Turner v. State*, 384 S.C. 451, 456, 682 S.E.2d 792, 795 (2009) (*Turner II*) (“Although decided prior to *Flores–Ortega*, the *Weathers* analysis is compatible with the *Flores–Ortega* analysis and remains good law.”). Thus, where a guilty plea was entered, “[t]he bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief.” *Weathers*, at 61, 459 S.E.2d at 839. Instead, the burden is on the applicant to show “extraordinary circumstances.” *Id.*

Discussion

At the PCR hearing, plea counsel testified that the waiver was keenly contested, but he saw no basis for a challenge to the family court’s conclusion on waiver. (PCR Tr. 10-11). Plea counsel

testified that he confirmed with "other older lawyers" practicing in the family court area, that his initial thought that an appeal would be interlocutory and improper was correct; thus, there was nothing that could be appealed at that time. (PCR Tr. at 12-13). He recalled that he discussed the waiver with Applicant and advised that "we could possibly make arguments to that, but they would be unsuccessful." (PCR Tr. at 25). However, counsel did not discuss "the waiver hearing at the time of the plea." (PCR Tr. at 25-26). Counsel testified that Applicant's case "was set on the trial docket," and:

... [another] of his co-defendants pled before us and were - - and part of that was that they were going to testify as well on behalf of the State. Knowing that, we - - our negotiations intensified. And then I would have communications with Mr. German about those. And he ultimately decided to plead guilty.

(PCR Tr. 13).

Applicant testified that counsel did not tell him about the right to an appeal after the guilty plea. (PCR Tr. at 28). He also testified that he understood the finality of the plea, and that he could not continue to present facts and defenses. (PCR Tr. at 28, ("I thought once you go to court, you never have a chance to go back and argue it again"; and 34, "I thought that was final, that was all.")). He also recalled counsel's advice that had he gone to trial, "it could have been a lot more severe than the actual plea that I was given." (PCR Tr. at 31).

As an initial matter, this Court finds that plea counsel was not ineffective for failing to immediately appeal the transfer order to General Sessions. A transfer order is interlocutory and not immediately appealable. *See Sanders v. State*, 281 S.C. 53, 314 S.E.2d 319 (1984) (citing *State v. Lockhart*, 267 S.E.2d 720 (S.C. 1980)). Therefore, the Court considers Applicant's claim as to whether counsel was ineffective in failing to advise of the right to appeal following the guilty plea. This leads to the question of whether counsel was deficient in advising of the right to appeal after the guilty plea, which is controlled by *Weathers, supra*. Applicant has failed to carry his burden of showing *Strickland* deficiency.

Applicant admittedly did not ask about an appeal, and the guilty plea itself waived the ability to appeal the family court finding. *Rivers v. Strickland*, 264 S.C. 121, 213 S.E.2d 97, 98 (1975) ("The general rule is that a plea of guilty, voluntarily and understandingly made, constitutes



a waiver of nonjurisdictional defects and defenses...."); *State v. Rice*, 401 S.C. 330, 333, 737 S.E.2d 485, 486 (2013) ("an erroneous order transferring a juvenile to general sessions court would be a judicial error—not a jurisdictional error"). After an examination of the record, and viewing the circumstances in its totality, this Court finds that based on the multitude of charges, the seriousness and violent nature of the charges, and the known evidence against Applicant, Applicant would have no rational desire to appeal his guilty plea and sentence.

Again, Applicant was facing multiple, serious criminal charges. When he pled guilty to two counts of first-degree burglary, and two counts of armed robbery, he received an aggregate sentence of 17 years, and the prosecution dismissed the remaining charges. Further, plea counsel credibly testified the evidence against Applicant was overwhelming. Plea counsel testified that he expected two of Applicant's co-defendants would testify against Applicant at trial; noted that Applicant did not have an alibi; and also noted that there was video evidence matching Applicant's description in addition to the victims identifying Applicant.⁵ (PCR Tr. at 14-15). Considering the totality of the circumstances, this Court finds that plea counsel was not ineffective for failing to inform Applicant of his right to a direct appeal following the plea. Applicant has failed to show an "extraordinary circumstance" that would warrant a finding of deficiency. *Weathers, supra*.

Consequently, Applicant has failed to show "a rational defendant would want to appeal" such as knowledge of "nonfrivolous grounds for appeal" as suggested in *Roe v. Flores-Ortega, supra*. Critically, the appeal possible would be an appeal of the guilty plea itself, not the family court waiver.⁶ Applicant neither attempted to, nor could he legally, condition his plea on the ability to appeal the waiver. On this point, this Court credits counsel's testimony that he was well-aware that South Carolina does not allow conditional guilty pleas. (PCR Tr. at 17-18). See, e.g., *State v. Truesdale*, 278 S.C. 368, 370, 296 S.E.2d 528, 529 (1982) ("expressly disapprov[ing]" attempts to place a "condition or qualification" finding if such qualification is offered, the plea must be rejected). Attempting to attach a condition to the plea would result in the plea either falling apart

⁵ The overwhelming evidence of guilt has not been called into question. And, as the record reflects, Applicant admitted to the factual basis for the pleas without qualification.

⁶ This Court also credits plea counsel's testimony at the PCR hearing that he had discussed the waiver order with Applicant and counsel's opinion that the waiver order would likely be upheld if challenged. (See PCR Tr. at 25). Thus, plea counsel discussed the viability of arguments, though counsel underscored he did not do so at or after entry of the plea. (PCR Tr. at 25). This Court finds counsel's credible testimony establishes that Applicant was aware of that opinion prior to considering the plea.

or being reversed on appeal. *Id.* See also *State v. Peppers*, 346 S.C. 502, 505, 552 S.E.2d 288, 290 (2001) (vacating a plea accepted with assurances that a motion to quash the indictment was preserved). In short, it would be contrary to his client's interest in securing the plea bargain had plea counsel tried to preserve the issue.⁷

Lastly, this Court has carefully considered the sentence imposed in light of the multitude of charges and overwhelming evidence of guilt. The 17-year sentence, though certainly a significant term of years, was concurrent and only slightly beyond the minimums possible (15 and 10), that Applicant confirmed he understood. (See Plea Tr. at 9). The maximum on the burglary first degree charge alone was life imprisonment, which Applicant also told Judge Hill at the plea that he understood. (Plea Tr. and 9). Again, the 17-year sentence is not by any means short, but in light of the potential for multiple life sentences, its acceptance is eminently reasonable. The favorable terms secured with the assistance of counsel, combined with Applicant's unqualified admission of guilt and unqualified admission of the specific facts offered as a basis for the charges,

⁷ While Applicant's claims do not directly attack the voluntariness of the plea based on counsel's advice on any issue regarding the waiver process and viability of an appeal on same, even so, the record convinces this Court that counsel did not give incorrect advice; thus, to the extent Applicant would challenge the voluntariness of the plea on this point, such a claim would be wholly without merit. See generally *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) ("In the context of a guilty plea, the court must determine whether 1) counsel's advice was within the range of competence demanded of attorneys in criminal cases—i.e. was counsel's performance deficient, and 2) if there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty." (citing *Hill v. Lockhart*, 474 U.S. 52, 56–58 (1985)).

Regarding Applicant's understanding or expectation, this Court credits Applicant's testimony that he understood that his plea was final. There was no reliance on an incorrect understanding that he could appeal the family court waiver. Further, that understanding of finality was precisely the point of the extensive and detailed colloquy with Judge Hill. (See generally Plea Tr. 6, [Applicant affirmatively represented the understanding that he was waiving defenses, if any, by entering plea]). Clearly, Applicant had no expectation of any other result. See generally *State v. Patterson*, 278 S.C. 319, 322, 295 S.E.2d 264, 265 (1982) ("A plea of guilty is more than an admission of conduct; it is a conviction which leaves only the punishment to be determined.").

[cont.]

Lastly, to the extent Applicant testified that if he had known he could appeal he "probably would have never even took a plea arrangement," (PCR Tr. at 28), that testimony is patently speculative and insufficient to carry his burden of showing he would not have pled guilty. In fact, the totality of his PCR testimony appears to demonstrate his desire to have another opportunity to argue his "side in court." (PCR Tr. at 31-32). That does not bear on the decision to plead at the time under the circumstances in question. See *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009) (finding that "*Hill* makes clear that this prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial"). See also *Lee v. United States*, 582 U.S. 357, 367 (2017) ("A defendant without any viable defense will be highly likely to lose at trial. And a defendant facing such long odds will rarely be able to show prejudice from accepting a guilty plea that offers him a better resolution than would be likely after trial."). Applicant's testimony demonstrates a misunderstanding of the relief available, but, critically, it does not support any incorrect advice by counsel or by the plea court that mislead him to his detriment. Again, Applicant fails to carry his burden of proof.

demonstrate that the plea was a voluntary and knowing choice. See *Hill*, 474 U.S. at 56 (“The longstanding test for determining the validity of a guilty plea is ‘whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.’”) (quoting *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)). Simply, there were no arguable, available issues that would even prompt consideration of appeal. Counsel was not deficient.

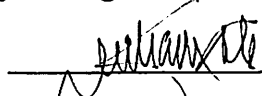
CONCLUSION

Based upon the foregoing, this Court finds that Applicant failed to carry his burden of proof. The applicant has failed to establish; any deficient performance on the part of counsel under prevailing professional norms; and/or any prejudice resulting from counsel's performance as there is no reasonable probability that, but for counsel's performance, the result of the proceeding would have been different, *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989), and/or any other cognizable claim.

The applicant's request for **POST-CONVICTION** relief should be and **IS** therefore **DENIED** and the **APPLICATION DISMISSED WITH PREJUDICE** and the applicant remanded to custody for completion of the sentence imposed.

In order to secure appellate review, Applicant must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

AND IT IS SO ORDERED this the 2nd day of August, 2024.


J. DERHAM COLE

Presiding Judge, 13th Judicial Circuit

Spartanburg, South Carolina.



Copy mailed to Attorney General / <u>Starlett Moore</u> on <u>8</u> / <u>9</u> / <u>2024</u>
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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
IN THE INTEREST OF)

FILED CLERK OF COURT)
GREENVILLE, S.C.)

IN THE FAMILY COURT
THIRTEENTH JUDICIAL CIRCUIT

Order Waiving Jurisdiction to General Sessions

2015 JUN 20 14 11 23 789, 790, 791, 792, 797, 941, 942, 953, 954, 955,
956, 968, 969, 970, 971, 975, 976, 977, 978, 979, 980, 981, 983
FAMILY COURT

Jakobe T. German

Greenville SC 29609

DOB: [REDACTED] 1999 AGE: 15

Hearing Date: June 18, 2015
Judge: Usha Bridges
Court Reporter: Maria Smith

Assistant Solicitor: Ashley Case
Attorney for Juvenile: Alex Kornfeld
Guardian for Juvenile: Wilhemina German

ENTERED

This matter was before the Court on June 18, 2015, for a waiver hearing. Present were Ashley P. Case, Assistant Solicitor, Jakobe T. German, the defendant, Wilhemina German, the Defendant's legal Guardian, and the defendant's attorney, Alex Kornfeld, Esquire.

Based on testimony presented by Chris Hammett and David Weiner, Investigators with the Greenville County Sheriff's Office, Sam Crosby, DJJ Intensive Supervision Officer, and Dr. Joseph Harris, DJJ psychologist, the pre-waiver evaluation conducted by the Department of juvenile Justice, as well as other evidence, the Court finds and concludes:

1. The Defendant, Jakobe T. German, was born on [REDACTED], 1999, and is sixteen (16) years old.
2. The Defendant has been charged with Attempted Burglary First Degree (2014 JU 23 941), 4 Counts of Attempted Murder (2014 JU 23 790, 942, 954, 976), Attempted Armed Robbery (2014 JU 23 789), 4 Counts of Assault & Battery First Degree during the commission of an Armed Robbery (2014 JU 23 791, 792, 970, 971), 3 Counts of Burglary First Degree (2014 JU 23 797, 956, 975), 5 Counts of Armed Robbery (2014 JU 23 955, 977, 978, 979, 981), 4 Counts of Kidnapping (2014 JU 23 953, 968, 969, 980) and Burglary Second Degree Violent (2014 JU 23 983).
3. The alleged offenses occurred in Greenville County on or about July 28, 2014, August 23, 2014, August 26, 2014, September 2, 2014 and September 3, 2014, when the defendant was fifteen (15) years and 6 (six) months old.
4. There is probable cause to believe the Defendant committed the crimes for which he is charged.
5. The crimes with which this Defendant is charged are of a serious nature and the majority of the crimes with which this Defendant is charged are against persons rather than property and if found guilty, would suggest he is capable of acting without regard for others.
6. The alleged offenses are of a violent, aggressive, willful and premeditated nature.
7. There is sufficient merit to warrant the grand jury returning a true bill on the charges.
8. The Defendant has adult co-defendants who are under the jurisdiction of General Sessions Court.
9. The pre-waiver evaluation reported and testimony indicated that the Defendant has average cognitive reasoning and intellectual functioning.
10. The Defendant has been involved with the Department of Juvenile Justice since 2011 and had been afforded multiple services and treatments to include prior secure psychological

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evaluations, determinate sentences and residential treatment programs.

11. The time available in which to attempt rehabilitation in the juvenile justice system is at most four and a half (4 ½) years.
12. The adequate protection of the public and rehabilitation of this Defendant are not likely during the time frame allowed by Family Court jurisdiction.

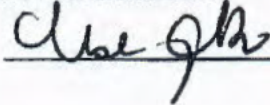
Conclusions of Law

1. The Court has jurisdiction over this matter pursuant to South Carolina Code of Laws 63-19-1210, 1976 as amended.
2. Based upon the factors outlined above, the Court concludes that there is little likelihood that Jakobe T. German, can be rehabilitated in the Juvenile Justice System.
3. It is in the best interest of Jakobe T. German, and the public, that he be waived to the Court of General Sessions for proceedings on the charges alleged in Petitions 2014 JU 23 789, 790, 791, 792, 797, 941, 942, 953, 954, 955, 956, 968, 969, 970, 971, 975, 976, 977, 978, 979, 980, 981, 983.

IT IS THERE FORE ORDERED THAT jurisdiction of these matters shall be transferred to the Court of General Sessions.

IT IS FURTHER ORDERED THAT bail be denied at this time, and that bail may be reconsidered by a Circuit Court Judge upon motion of the Defendant.

AND IT IS SO ORDERED



FAMILY COURT JUDGE

Dated: June 19, 2015
Greenville, S.C.

A Certified Copy
Paul D. Wilkerson
Clerk of Court C.P. & G.S. & Family Court
Greenville County, SC
Dated 06/19/2015

(21)

ACKNOWLEDGEMENT OF RIGHTS GIVEN UP BY ENTERING GUILTY PLEA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF <u>GREENVILLE</u>	)	INDICTMENT NO(S):
The State of South Carolina,	)	
Plaintiff,	)	<u>2015 GS23 6101A</u>
v.	)	<u>2015 GS23 6166A</u>
<u>JAKOBE GERMAN</u>	)	<u>2015 GS23 6107A</u>
Defendant.	)	<u>2015 GS23 6111A</u>
	)	
	)	

The Defendant desires to plead guilty to Armed Robbery x2 + Burg 1st x2 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 10 to 30 for each Armed Robbery + Life for the Burg 1st.
2. Has the State agreed to recommend a sentence to the Judge? No
 - (1) If so, what is that recommendation? _____
 - (2) If so, has anyone promised you anything else to get you to plead guilty or assured you as to a particular sentence? No, but my attorney is going to ask for the minimum.
3. Has anyone promised you anything else, threatened you or put any pressure on you to get you to plead guilty?
No
If so, who and what? _____
4. Are you under the influence of any medications, drugs or alcohol? No
If yes, explain. _____
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?
If yes, explain: No
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
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 about 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 ✓ *BUT I'M NOT ON PAROLE OR PROBATION* 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? Do you understand that if you are not a U.S. citizen, your guilty plea may result in your being deported?
YES ✓ NO _____
20. Are you pleading guilty of your own free choice and will?
YES ✓ NO _____

DATE: 8-22-16

Justin Weiner
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.

DATE: August 22, 2016

Alex Kornfeld
Signature of Attorney for the Defendant

Attorney's Name Printed: Alex Kornfeld