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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Walton J. McLeod, IV, Circuit Court Judge

DAESHAUN ALEXANDER FORREST,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000860

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
State of South Carolina,	)	CASE NO. 2015-GS-10-6030
	)	2015-GS-10-6031
PLAINTIFF,	)	2015-GS-10-6032
	)	
	)	
VS.	)	TRANSCRIPT OF RECORD
	)	
Daeshaun Alexander Forrest,	)	
	)	ORIGINAL
DEFENDANT.	)	
	)	

October 13, 2017

Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis

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

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For the State

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Certified Transcript Provided For: S.C. Attorney General

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I N D E X

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- Plea	--	05

EXHIBITS - None Proffered

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If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 (WHEREUPON, bond revocation hearing begins 10/13/17, 10:59
2 a.m.:)

3 THE COURT: Okay. This is a bond/off-bond.

4 MS. GAY: Well, he also has another.

5 THE COURT: I am doing the bond/off first ---

6 MS. GAY: Okay.

7 THE COURT: --- is what we are here for.

8 You are Daeshaun Forrest?

9 DEFENDANT FORREST: Yes, sir.

10 THE COURT: And you are here -- what I am hearing right
11 now is a request to come off the bond. Do you understand
12 that, the bond -- the bonding company?

13 DEFENDANT FORREST: I don't.

14 THE COURT: Well, listen to what they say, okay, and I
15 will be back to you.

16 MR. BOLES: Thank you, Your Honor.

17 THE COURT: Mr. Boles.

18 MR. BOLES: Daniel Boles here for Sinkler Southeast
19 Bonding. They have made this application based on the
20 defendant getting arrested after they bonded him out. As I
21 have stated in previous motions, it is not a commentary on
22 guilt or innocence; they just represent to the Court that
23 there was an arrest that following the bonding and they would
24 ask that you relieve them as bail bondsmen in this matter.

25 THE COURT: Very well.

1 You were arrested after you were bonded out?

2 MS. GAY: Your Honor, today I have a motion to dismiss
3 for that charge and a motion to reconsider revocation of bond
4 about that charge. I don't believe there is any
5 prosecutorial merit to charge. I would ask you not grant his
6 motion until you at least hear the other motions that are set
7 for this morning.

8 I mean if you deny those motions then, you know,
9 certainly the charge is still pending and such. But he
10 believes that that charge was a fallacy, a fictitious -- you
11 know, the victim made it up.

12 THE COURT: Well, that's great; but how am I going to --
13 how am I going to resolve that today; ---

14 MS. GAY: Well ---

15 THE COURT: --- based on motion to dismiss, because he
16 says so?

17 MS. GAY: No, I have some I think objective things to
18 tell the Court about that. But that motion is what is going
19 to happen after you finish these. So if we could just maybe
20 hold off on the decision on this one.

21 THE COURT: I will pull this aside, Mr. Boles.

22 MR. BOLES: Yes, sir.

23 THE COURT: I have heard the basis for it. If I deny
24 it, I will grant the motion -- if I deny her motion, I will
25 grant it. If I -- if I grant the motion, then it will be

1 denied ---

2 MR. BOLES: Correct.

3 THE COURT: --- because there won't be any charge.

4 MR. BOLES: Correct. Yes, sir. Understood. Thank you.

5 THE COURT: Thank you very much.

6 (WHEREUPON, end of bond hearing 10/13/17, 11:01 p.m.)

7 (WHEREUPON, resume for plea hearing 10/13/17, 12:02 p.m.):

8 MS. GAY: You (addressing client) will not be
9 sentenced -- we would set up a time to be sentenced in the
10 presence ---

11 THE COURT: Ms. Gay, I appreciate that -- we don't need
12 you to say this. Talk to your client and then we will do it.
13 I don't -- we don't need to be doing all this.

14 MS. GAY: That is for Ted's ---

15 THE COURT: This isn't for my benefit. This is for your
16 benefit.

17 MS. GAY: I understand. All right.

18 You (addressing client) wouldn't be sentenced today
19 because he wants the victim to be present at the sentencing.
20 But you would enter a guilty plea today if you wanted to.
21 You haven't told me whether or not you want to or not.

22 DEFENDANT FORREST: (Inaudible response)

23 MS. GAY: Huh?

24 THE COURT: Well, let me ask a silly question. Why are
25 you bringing him -- I don't -- I'm not comfortable with this.

1 Sir, you don't need to answer that question. There is no --
2 you don't -- you brought him in to sign the sheet. Whether
3 or not he wants to plead guilty is a confidential matter
4 between you and your client.

5 You don't need to say a word, sir. No, sir.

6 You can talk to him in private and then you can bring
7 him in to accomplish what you want. I am not -- I don't want
8 him to make a statement right now.

9 MS. GAY: Okay, I will just ask him right here in the
10 court. He couldn't tell me -- I couldn't ---

11 THE COURT: Why couldn't he tell you?

12 DEFENDANT FORREST: I am decided.

13 MS. GAY: What?

14 DEFENDANT FORREST: I'll sign it.

15 THE COURT: All right. You are going to plead guilty?

16 DEFENDANT FORREST: Yes, sir.

17 THE COURT: Well, between now and when I start talking
18 to you you are going to have to get a different countenance;
19 because I just don't just accept guilty pleas to accommodate,
20 okay. You are going to have to convince me that is what you
21 want to do, okay?

22 DEFENDANT FORREST: Yes, sir.

23 THE COURT: All right. That is fine. As long as we
24 understand, ---

25 DEFENDANT FORREST: Yes, sir.

1 THE COURT: --- that is fine.

2 MS. GAY: Can he -- I don't know if he can reach -- with
3 Daeshaun -- it is really difficult. You might have to stand
4 up.

5 (WHEREUPON, pause for Ms. Gay to present documents to client.
6 Pause for Ms. Gay to confer with client.)

7 MS. GAY: Your Honor, may we approach or ---

8 (WHEREUPON, Ms. Gay presents documents to the Clerk)

9 MR. CORVEY: Your Honor, I discussed with Ms. Gay the
10 possibility of qualifying the plea today and possibly
11 sentencing next week so ---

12 THE COURT: That is fine.

13 MR. CORVEY: --- in case law enforcement may have
14 wanted ---

15 THE COURT: That is fine.

16 MR. CORVEY: --- to be a part of the court.

17 MS. GAY: The way it works, Your Honor, we started with
18 briefings and the solicitor is allowing the plea under
19 Alford ---

20 THE COURT: Ms. Gay, I appreciate that. You don't need
21 to have that recitation. I will do that when -- I appreciate
22 it.

23 MS. GAY: Okay.

24 THE COURT: Okay. I will take -- I can run this -- I
25 appreciate it.

1 You (addressing clerk) have got stamps ---

2 THE CLERK: Yes, sir.

3 THE COURT: --- that accepted the plea? Thank you.

4 (WHEREUPON, pause for documents to be presented by the Clerk
5 to the Court.)

6 THE COURT: You are Daeshaun Forrest?

7 DEFENDANT FORREST: Yes, sir.

8 THE COURT: Mr. Forrest, I have been handed three
9 indictments. And you are standing with your lawyer. Has she
10 explained these charges to you, sir?

11 DEFENDANT FORREST: Yes, sir.

12 THE COURT: And she has explained to you the possible
13 punishment in each case?

14 DEFENDANT FORREST: Yes, sir.

15 THE COURT: Indictment 2015-6032 charges you with
16 discharging firearms into a dwelling. Do you understand
17 that?

18 DEFENDANT FORREST: Yes, sir.

19 THE COURT: And your lawyer has explained that that
20 carries a potential sentence of up to five years in jail?

21 DEFENDANT FORREST: Yes, sir.

22 THE COURT: Understanding the nature of the offense what
23 is your plea?

24 DEFENDANT FORREST: I plead guilty, sir.

25 THE COURT: And you understand the possible punishment?

1 DEFENDANT FORREST: Yes, sir.

2 THE COURT: And you also understand that for each of
3 these we are -- there is a form -- this sentencing sheet has
4 a stamp. It says plea -- deferred sentence, plea accepted.
5 Do you understand what I am -- all I am going to do today is
6 accept your plea; do you understand that?

7 DEFENDANT FORREST: Yes, sir.

8 THE COURT: If you -- if you can get through the plea
9 colloquy; do you understand that?

10 DEFENDANT FORREST: Yes, sir.

11 THE COURT: Meaning that you convinced me that that is
12 what you want to do.

13 DEFENDANT FORREST: Yes, sir.

14 THE COURT: But you understand that there will be no
15 sentence imposed today?

16 DEFENDANT FORREST: Yes, sir, I do.

17 THE COURT: But once I accept your plea it can't be
18 rejected. Do you understand that?

19 DEFENDANT FORREST: Yes, sir.

20 THE COURT: Okay. And that is how you wish to proceed?

21 DEFENDANT FORREST: Yes, sir.

22 THE COURT: Okay. Indictment 2015-6031 charges you with
23 possession -- being in possession of a weapon during the
24 commission of a violent crime; do you understand that?

25 DEFENDANT FORREST: Yes, sir.

1 THE COURT: And your lawyer has explained that that
2 carries a potential sentence of up to five years in jail?

3 DEFENDANT FORREST: Yes, sir.

4 THE COURT: And that that's a day-for-day sentence, any
5 sentence imposed on that; do you understand that?

6 DEFENDANT FORREST: Yes, sir.

7 THE COURT: Understanding that, how do you plead?

8 DEFENDANT FORREST: Guilty.

9 THE COURT: Indictment 2015-6030 charges you with
10 attempted murder; do you understand that?

11 DEFENDANT FORREST: Yes, sir.

12 THE COURT: And that carries a potential sentence of up
13 to 30 years in jail; do you understand that?

14 DEFENDANT FORREST: Yes, sir.

15 THE COURT: It is also considered a violent offense; and
16 you understand the significance of that term?

17 DEFENDANT FORREST: Yes, sir.

18 THE COURT: It is also considered a most-serious
19 offense; do you understand that?

20 DEFENDANT FORREST: Yes, sir, well, I was advised that
21 it would be a no-contest plea.

22 THE COURT: Well, that may or may not be the case. I
23 don't know. You have got it -- under Alford.

24 But what is the benefit?

25 MR. CORVEY: Your Honor, he has a number of other

1 pending charges in Charleston County all of which I will be
2 dismissing.

3 THE COURT: And those charges you are prepared to go
4 forward on if he doesn't plead?

5 MR. CORVEY: Well, not next week; but it is on my ---

6 THE COURT: At some point?

7 MR. CORVEY: At some point, yes, Your Honor.

8 THE COURT: And that is the benefit that you want to
9 receive?

10 MS. GAY: He also said that he could recommend
11 concurrent sentences.

12 MR. CORVEY: On these charges, yes, Your Honor. All of
13 those and ---

14 THE COURT: A recommendation is not a benefit, because I
15 am not bound by it. So unless it is negotiated, that is not
16 a benefit.

17 MR. CORVEY: I have no -- I have no problem doing that,
18 Your Honor.

19 THE COURT: Negotiated -- negotiated, and you consider
20 that to be a benefit?

21 DEFENDANT FORREST: Yes, sir.

22 THE COURT: Why?

23 DEFENDANT FORREST: Honestly, Your Honor, I feel
24 that ---

25 MS. GAY: Wait (addressing client), but he is asking ---

1 THE COURT: No, Ms. Gay, I appreciate it; don't you
2 interfere with my conversation right now. Because he has got
3 to convince me. And I am very very reluctant to do that,
4 because I rarely impose and most judges rarely impose
5 consecutive sentences.

6 In fact, the Department of Probation and Parole - and
7 I'm not making any assurance of anything, but it really -- I
8 have been informed - in the last five or six years it may
9 have changed - that you start earning good-time credits on
10 the consecutive sentences from day one; so it really doesn't
11 mean anything; and a concurrent sentence there's no big deal,
12 that that's a pretty much standard proposition.

13 So you're going to have to convince me why you think
14 that is a benefit.

15 DEFENDANT FORREST: Your Honor ---

16 THE COURT: Because -- because let me tell you why.
17 What you are saying is I am not guilty of attempted murder;
18 do you understand that; ---

19 DEFENDANT FORREST: Yes, sir.

20 THE COURT: --- but if I go to trial based on what the
21 State is prepared to present I believe a jury will find me
22 guilty; ---

23 DEFENDANT FORREST: Yes, sir.

24 THE COURT: --- in order to avoid a consequence I want
25 to enter a guilty plea. And the consequence to me the only

1 benefit I can foresee is that you would have other charges
2 that you may be prosecuted on.

3 DEFENDANT FORREST: Yes, sir.

4 THE COURT: Do you consider that a benefit?

5 DEFENDANT FORREST: Yes, sir.

6 THE COURT: Okay. Do you understand that you will have
7 a record for attempted murder?

8 DEFENDANT FORREST: Yes, sir.

9 THE COURT: Okay. And you understand a part of the
10 sentence -- a part of the process of a guilty plea is -- and
11 we all who practice law in a criminal court know that a
12 guilty plea most judges consider that and use that to reduce
13 what they would typically sentence or may sentence someone
14 to. Do you understand that?

15 DEFENDANT FORREST: Yes, sir.

16 THE COURT: But that is not a guilty plea for me.
17 Because you have already gotten a benefit, as far as I am
18 concerned. Do you understand that?

19 You need ---

20 DEFENDANT FORREST: Yes, sir.

21 THE COURT: --- to answer that.

22 DEFENDANT FORREST: Yes, sir.

23 THE COURT: Okay. It is important to me.

24 Are you totally satisfied with your lawyer?

25 DEFENDANT FORREST: Yes, sir.

1 THE COURT: Ms. Gay, you obviously have -- and by the
2 way, you understand that your lawyer has filed two motions
3 being considered today, a motion to dismiss - and I haven't
4 heard that motion yet. She is prepared to argue that because
5 she has asked -- we have a bond revocation or an off-bond
6 situation and she asked me to hold that in abeyance pending
7 the motions that she had today. And she has also had a
8 motion to reconsider the revocation of the bond. I think I
9 revoked the bond.

10 MS. GAY: Yes, sir. And the motion to dismiss was on
11 one of the other charges.

12 THE COURT: I understand. But you understand that those
13 won't be going forward today?

14 DEFENDANT FORREST: No, I didn't understand that.

15 THE COURT: Well, they are not going to be.

16 MS. GAY: (Addressing client:) Because he is going to
17 dismiss them as part of this plea offer.

18 THE COURT: Because there are no cases eventually. But
19 I'm going to revoke the bond -- I mean because obviously once
20 I take this there is no bond. You are going to be in jail
21 until we can reschedule the sentencing. Do you understand
22 that?

23 DEFENDANT FORREST: Yes, sir.

24 THE COURT: Okay. And, Solicitor, that is the full
25 extent of any agreement you have had is to dismiss those

1 charges and to negotiate a concurrent sentencing?

2 MR. CORVEY: Yes, Your Honor, that is correct.

3 THE COURT: And, Ms. Gay, is that your understanding as
4 well?

5 MS. GAY: It is, Your Honor. And, as we said, that
6 other matter would be moot because of plea arrangement ---

7 THE COURT: Correct.

8 MS. GAY: --- discussions.

9 THE COURT: No question about that.

10 You have investigated this matter fully on your client's
11 behalf?

12 MS. GAY: I have, Your Honor; yes.

13 THE COURT: And you have shared results with him?

14 MS. GAY: Yes, sir.

15 THE COURT: And you have explained to him an Alford
16 plea?

17 MS. GAY: I have, Your Honor; yes.

18 THE COURT: And the consequences of my accepting that?

19 MS. GAY: Yes.

20 THE COURT: Do you concur with his assessment of the
21 evidence the State has that if you went to trial a jury most
22 probably would find him guilty?

23 MS. GAY: Yes, sir.

24 THE COURT: Mr. Forrest, is that all correct, sir?

25 DEFENDANT FORREST: Yes, Your Honor.

1 THE COURT: Do you realize and understand, sir, that if
2 I accept your plea you won't have a jury trial in any of
3 these matters; do you understand that?

4 DEFENDANT FORREST: Yes, sir.

5 THE COURT: And you are also giving up the right to
6 confront the witnesses against you. That means to challenge
7 their testimony through cross-examination. Do you understand
8 that?

9 DEFENDANT FORREST: Yes, sir.

10 THE COURT: Do you realize also that by admitting your
11 guilt even under Alford you are giving up your right to
12 remain silent?

13 DEFENDANT FORREST: Yes, sir.

14 THE COURT: Have there been any threats made to you to
15 get you to plead guilty?

16 DEFENDANT FORREST: No, Your Honor.

17 THE COURT: No promises made to you on the indictments
18 with the 2015-6032 and 6031, being the weapons charge and the
19 discharging the firearm, there have been no promises about
20 that; is that correct?

21 DEFENDANT FORREST: No, sir.

22 THE COURT: And the only promise on the attempted murder
23 which is 2015-6030 is the promise that they will dismiss
24 these other charges against you so that basically your slate
25 will be clean once we impose a sentence here; is that

1 correct, and the concurrent sentencing?

2 DEFENDANT FORREST: Yes, sir.

3 THE COURT: That's the only promise that has been made
4 to you, correct?

5 DEFENDANT FORREST: Yeah, and ---

6 THE COURT: And what?

7 DEFENDANT FORREST: Yeah, that is -- that is.

8 THE COURT: No, you were about to say something. What?

9 DEFENDANT FORREST: I mean I am just making sure that it
10 is known that I am pleading to that template. Do you know
11 what I'm saying? I just want to make sure it's know that I
12 am pleading under non -- non consent. Do you know what I'm
13 saying? Non-consensual.

14 THE COURT: No, sir. I hate -- I understand what you
15 mean. It is consensual because you are pleading guilty
16 because you believe if you went to trial a jury would find
17 you guilty; that is what you're telling me; is that right?

18 DEFENDANT FORREST: Yes, sir.

19 THE COURT: Well, you hesitated. You are about to hear
20 something, and I'm going to ask you a question. Be -- I am
21 going to ask you not whether you agree with what the
22 solicitor is going to tell me about that charge but whether
23 or not you believe there are witnesses who will testify to
24 those facts. And those are -- and then we will talk about
25 that.

1 Are you under the influence of any alcohol or any
2 medication here today?

3 DEFENDANT FORREST: No, sir.

4 THE COURT: Have you consumed any alcohol or taken any
5 type of drugs in the last 24 hours?

6 DEFENDANT FORREST: No, sir.

7 THE COURT: Have you ever been treated for any emotional
8 problems, any mental illness?

9 DEFENDANT FORREST: Yeah, in the past.

10 THE COURT: How long ago?

11 DEFENDANT FORREST: Last year.

12 THE COURT: What was it for?

13 DEFENDANT FORREST: Depression.

14 THE COURT: Okay. Are you -- are you taking any
15 medication for that?

16 DEFENDANT FORREST: No, sir.

17 THE COURT: Are you suffering from any, any long-term
18 consequences of that depression?

19 DEFENDANT FORREST: No, sir.

20 THE COURT: Are you suffering from any depression today?

21 DEFENDANT FORREST: Just ready to get it over -- no,
22 sir, just ready to get it over with.

23 THE COURT: Well, I appreciate that. And I can't tell
24 you how many times in the last 24 years I have heard that.
25 That is not my -- that -- that doesn't do it for me. Because

1 the most important thing and probably one of the most
2 important things that I do as a judge is what we are doing
3 right now.

4 And sometimes when you do it -- I can do it 45 times in
5 a day and done it more than that. And it doesn't matter
6 whether I do it 70 times. It is probably the most important
7 thing for that particular person is to make sure that you
8 really want to plead guilty because you are guilty or under
9 this offer proposition you have got a benefit that you want
10 to take, you want to receive, and you are pleading guilty
11 because if you went to trial you'd be found guilty and you
12 have all of these other things that would have happened to
13 you too. That is the reason. It has nothing to do with you
14 wanting to get it over with. Okay?

15 DEFENDANT FORREST: Yes, sir.

16 THE COURT: And I understand you probably want it over
17 with. And I want to move cases too, as does the solicitor,
18 as does your lawyer. But that is not the driving force of
19 what we are doing here and what I'm going to do. Do you
20 understand that?

21 So I am asking you again, do you want to go forward with
22 this today - and I asked you whether you were suffering from
23 any problems; anything affecting your ability to think about
24 what you are doing here today?

25 DEFENDANT FORREST: No.

1 THE COURT: Have you had sufficient time to think about
2 it?

3 DEFENDANT FORREST: Yeah -- yes, sir.

4 THE COURT: And this is what you choose to do?

5 DEFENDANT FORREST: Well, I think this is the best thing
6 for me ---

7 THE COURT: All right.

8 DEFENDANT FORREST: --- from what I ---

9 THE COURT: But that is your decision, ---

10 DEFENDANT FORREST: Yes, sir.

11 THE COURT: --- correct?

12 DEFENDANT FORREST: Yes, sir.

13 THE COURT: As based on your conversations with your
14 lawyers and anyone else you wanted to talk to; is that right?

15 DEFENDANT FORREST: Yes, sir.

16 THE COURT: But you fully understand what you're doing
17 here today?

18 DEFENDANT FORREST: Yes, sir.

19 THE COURT: Okay.

20 Solicitor, if you would be kind enough to tell me the
21 facts. And let's do it this way - I don't know what order
22 you would - so that I can deal with this attempted murder
23 fairly quickly if you could tell me the facts of that ---

24 MR. CORVEY: They are all part of the same incident.

25 THE COURT: I know, but -- well, that will be fine.

1 Okay.

2 MR. CORVEY: Sure. And, just briefly, Your Honor, this
3 took place on May 4th, 2015, in North Charleston at the
4 Stayover Lodge Hotel on 2070 McMillan Avenue.

5 The whole incident with regards to the shooting is
6 captured on video. Which is, briefly stepping backward, the
7 victim Shatario Copeland was staying in a room at that
8 address. Shortly there earlier in the day he received a
9 phone call from Daeshaun Forrest who was upset, and during
10 that conversation there appeared to be some dispute over
11 money.

12 In all candor to the Court, I haven't really been able
13 to uncover exactly what the nature of that dispute was; but
14 nonetheless something revolving around money and money owed.

15 The conversation ended about an hour-and-a-half to two
16 hours later and you can view Mr. Forrest passing through the
17 front door of the hotel in dark clothing, distinctive pants,
18 and tying a bandanna on his face with an attempt to conceal
19 himself from the surrounds-cameras that are there. He then
20 goes up in the direction of Mr. Copeland's room and then you
21 pick it up on another camera and there's obviously there's a
22 lookout who I have charged as a part of this case, Denzel
23 Moultrie, who is standing guard outside of Mr. Copeland's
24 room to make sure he is there.

25 Mr. Forrest runs up, pulls out a revolver, fires twice

1 through the window into the hotel room where Mr. Copeland is.
2 The gun jams. He then un-jams it and fires twice more and
3 then retreats off off-camera in the direction of the camera.

4 THE COURT: All right. The facts as it pertained to
5 your having the weapon and you being the person that is
6 firing the weapon, are those -- you have pled guilty to
7 those; those facts are correct, true?

8 DEFENDANT FORREST: Yes, sir.

9 THE COURT: The facts concerning the attempted murder,
10 those are facts that you believe there are people that are
11 going to testify to those facts?

12 DEFENDANT FORREST: Yes, sir.

13 THE COURT: And you believe once a jury hears that, they
14 will most probably find you guilty of attempted murder?

15 DEFENDANT FORREST: Yes, sir.

16 THE COURT: Okay. Have you truthfully responded to all
17 of my questions?

18 (WHEREUPON, pause by defendant.)

19 DEFENDANT FORREST: Yes, sir.

20 THE COURT: Why did you hesitate?

21 DEFENDANT FORREST: Because to be honest with you, I
22 don't know.

23 THE COURT: I didn't understand what you said.

24 DEFENDANT FORREST: I said to be honest with you, Your
25 Honor, I really don't feel like somebody will testify and say

1 that.

2 THE COURT: Thank you, sir. I am not accepting the
3 offer to plea. You've got to believe that. That is why I
4 kept telling you. So thank you for being truthful.

5 You want me to accept the pleas -- I -- we want me to go
6 ahead and accept the pleas to the charges, the other charges,
7 I will be happy to do that; but that means that all of these
8 other things you go forward with and there's no
9 recommendation of any concurrent sentencing. We can start
10 the process and of course we can bring him back and try him
11 on attempted murder.

12 MR. CORVEY: Well, we are first up on Monday so.

13 THE COURT: Okay. That is fine. So that is -- that
14 is -- that is where we are. You will be trying the case on
15 Monday, the attempted murder. And all of the offers about
16 all of these other things will be gone.

17 DEFENDANT FORREST: I will say -- I --

18 THE COURT: No, sir.

19 DEFENDANT FORREST: When I said ---

20 THE COURT: Let me tell you something. I just told you
21 when you came up here you don't just do that. I don't
22 believe that. I don't ever -- in fact I told somebody last
23 night, I said that is the one thing that probably that I've
24 tried to be consistent about in 24 years. And I think I have
25 been. I can't really think of one. But there is one part of

1 this that breaks it down every single time for me. I had it
2 earlier this week. I'll be honest -- I will tell you what it
3 was. A judge did what I am doing right now, accepted the
4 plea and went through all that I am going through. The only
5 thing I had left was the sentencing, just like what would
6 happen if I accepted your pleas on the attempted murder. He
7 came and he did just what you just did; no, I didn't really
8 do that. I said, well, guess what, that judge accepted a
9 plea but I am not going to do it because I am not going to
10 sentence somebody who is telling me they are not guilty.

11 And you -- in this case you said I'm not guilty. I
12 asked you -- asked you several times do you believe that
13 somebody is going to be able to testify and that you believe if
14 the jury hears it they will find you guilty. And then you
15 just tell me, no, I don't think anybody is going to testify
16 to that.

17 MS. GAY: Your Honor, ---

18 THE COURT: Ms. Gay ---

19 MS. GAY: --- I have one point that I want to just ask.

20 THE COURT: I don't care what your point is because this
21 is between me and your client. It has -- you can't resurrect
22 that for me, because he has just told me I don't believe
23 that. So I don't know why he said that. I just asked
24 him ---

25 DEFENDANT FORREST: Well, ---

1 THE COURT: Well, what?

2 DEFENDANT FORREST: I do feel -- I mean I do feel that
3 somebody will ---

4 THE COURT: Well, why did you tell me you didn't think
5 so? You can't have it both ways, sir. And you know what? I
6 want it clear -- there is something called post-conviction
7 relief, and if you are playing games with me I want the
8 record to reflect I am talking to you specifically about
9 that. You are telling me that any post-conviction relief,
10 anything that you have filed after this, you cannot and you
11 understand that would be a lie if you came into another
12 proceeding and said, oh, I didn't believe anybody was going
13 to testify to that. Do you understand that?

14 DEFENDANT FORREST: I understand that, sir.

15 THE COURT: That is true?

16 DEFENDANT FORREST: Yes, sir.

17 THE COURT: It would be a lie if you filed a subsequent
18 proceeding, correct?

19 DEFENDANT FORREST: Yes, sir.

20 THE COURT: Do you understand what you just said?

21 DEFENDANT FORREST: I understand, sir.

22 THE COURT: Okay. As -- well, obviously we are talking
23 about -- as you said, we are talking about a video that shows
24 him and he just admitted that he is shooting in a room. So I
25 think there is a sufficient basis there that probably would

1 lead to a conviction. So based on what he said I will accept
2 the plea.

3 I will be happy to -- anything you want to add ---

4 MS. GAY: Yes, sir.

5 THE COURT: --- about accepting the plea?

6 MS. GAY: Yes.

7 THE COURT: What?

8 MS. GAY: I do think there may have been confusion about
9 a witness from the hotel coming to substantiate the video.

10 THE COURT: Ms. Gay, I don't care what you think ---

11 MS. GAY: And that is all I am going to say.

12 THE COURT: Again, I appreciate that. I care about what
13 he thinks.

14 MS. GAY: Yes, sir.

15 THE COURT: And I don't care whether you think there may
16 have been some confusion. He has already said now that he
17 does. But I just want to be sure that this person -- because
18 you know what, I practiced law for 21 years. I understand
19 what happens, because I've had the pleasure of representing
20 people who were filing post-conviction relief applications.
21 And the first thing they tell me is, you know, I didn't -- my
22 lawyer forced me to do that, I didn't want to do that.

23 That is not the case here, is it?

24 DEFENDANT FORREST: No, sir.

25 THE COURT: This is what you want to do?

1 DEFENDANT FORREST: Yes, sir.

2 THE COURT: And you understand that that is a -- you
3 stand by that now and any future filing; is that correct?

4 DEFENDANT FORREST: Yes, sir, I do.

5 THE COURT: And that is the honest truth?

6 DEFENDANT FORREST: That is an honest truth, sir.

7 THE COURT: And you realize I am relying on the accuracy
8 and completeness of your response?

9 DEFENDANT FORREST: Yes, sir.

10 THE COURT: And it is your response?

11 DEFENDANT FORREST: That is my response, sir.

12 THE COURT: Very well. I will accept the plea. We will
13 defer sentencing. Thank you.

14 MR. CORVEY: Thank you, Your Honor.

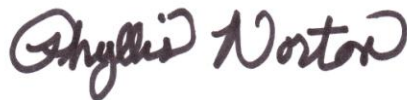
15 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on October 13, 2017.

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

A handwritten signature in dark ink, reading "Phyllis Norton". The signature is written in a cursive, flowing style.

PHYLLIS NORTON, CVR

Date: December 13, 2020

Certified Transcript Provided For: S.C. Atty General
Certification Reference #2020-1213 Original

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2015-GS-10-6030
	)	2015-GS-10-6031
	)	2015-GS-10-6032
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
	)	
DAESHAUN ALEXANDER FORREST	)	
	)	
Defendant	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD
		October 18, 2017
		Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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

EDWARD R. CORVEY, III, ESQ.
Attorney for the State

MELISA WHITE GAY, ESQ.
Attorney for the Defendant

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

[Certified Transcript Provided for: Attorney General]

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No exhibits were introduced

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PROCEEDINGS

[Whereupon, Mr. Forrest comes forward]

THE COURT: And thank you to the State for its memorandum pertaining to the sentencing. I appreciate that very much. It is incorporated as well but you're free to state any parts you want Mr. Corvey; that's fine.

THE COURT: Before we start may I approach?

THE COURT: Yes.

MR. CORVEY: This is an email from Detective Bailey. He was the investigating officer in this case. He wanted to be present but had some childcare issues.

THE COURT: Has Ms. Gay had a copy of this?

MR. CORVEY: I have ---

MS. GAY: --- I've seen a copy of it; yes, sir.

THE COURT: All right. That's fine.

[Whereupon, Mr. Corvey proffers documents to the Court]

THE COURT: I'll be happy to -- before I hear from you Ms. Gay concerning sentencing is there anything -- I'll be happy to hear from the State at this time.

MR. CORVEY: Just briefly, Your Honor. I think I've really kind of spelled out my opinions ---

THE COURT: --- you have ---

MR. CORVEY: --- in the brief but I did want to first touch, obviously I provided the email from

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1 Detective Bailey. I think his sentiments speak volumes
2 in this matter as well. Also, I spoke with the victim in
3 this case, Terry Copeland. He did not want to be present
4 today. He asked to be sent back to his location at SCDC
5 but did ask me to echo that all he ever really wanted out
6 of this was just an acceptance of responsibility. That
7 was his main interest in seeing this through.

8 But, and before I touch on this case as well I mean
9 obviously Mr. Forrest has some other troubles he has to
10 go deal with in other counties. And I think the crimes
11 he is charged with up there speak for themselves and
12 those aren't really for us to deal with so I won't really
13 go into them in any detail.

14 But as it pertains to this case there is an
15 overwhelming amount of evidence in this case; some of
16 which I tried to encapsulate as attachments in my brief.
17 But if the Court would allow me just briefly I have a
18 snip from the surveillance footage although I did provide
19 some screenshots from it.

20 I think actually watching it; it's very brief, it's
21 only about a minute, would shed some light on this action
22 and is pertinent to sentencing.

23 THE COURT: Okay.

24 [Whereupon, the video clips plays]

25 [Whereupon, the video clip ends]

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1 MR. CORVEY: And that basically is the entirety of
2 the incident as it pertains to the shooting, Your Honor.
3 And so I wanted to show this just to kind of highlight a
4 few things that I know -- it's easy to say but I think
5 when you actually have the opportunity to review them it
6 really highlights just how brazen this was.

7 This was about 2 o'clock in the afternoon at a hotel
8 in which other members of the community are staying,
9 children could have been staying. This was a planned
10 activity in which he stationed a lookout, had a paramour
11 of his at the time grab another female out of the room
12 prior to doing the shooting and then went up and fired
13 not once but four separate times even as the gun jammed.

14 We see so many attempted murder charges in which
15 there is some sort of dispute between two people that
16 escalates. And you know that is what it is. But to plan
17 something out to this effect I don't really think there
18 is any other reason that you do or pull the trigger at
19 any point other than to kill somebody. And that's a
20 choice that he made.

21 And while in all full candor I've never really
22 figured out exactly what the real nature of the dispute
23 was and what surrounded it with the exception that I
24 believe it was just over money. So with that Judge I
25 mention sort of the overwhelming amount of evidence and I

1 want to be careful in how I say this because I firmly
2 believe in everyone's right to a fair trial and their
3 right to exercise their right to a trial. We've been on
4 the eve of trial on three different occasions in this
5 case. And we've kept preparing, we kept devoting
6 resources to it in light of a lot of what I provided for
7 the Court.

8 And at some point I think there comes a time when
9 you just kind of have to take an honest account of what
10 is going on and make a decision. And he ultimately pled
11 guilty and you know I give him due credit for finally
12 accepting responsibility in this matter.

13 But, along with the brazenness and as much as he has
14 a right to a fair trial what is kind of most concerning
15 to me out of this whole circumstance is the State has a
16 right to a fair trial as well and the community has a
17 right to a fair trial.

18 And although I've dismissed his witness intimidation
19 charges his behavior as far as trying to cover up what
20 happened and try to get away with what happened which in
21 all fairness I understand is a very kind of human emotion
22 to try to evade trouble.

23 But the extra steps that he took to try to evade
24 responsibility in this matter really speak to his conduct
25 even after he's already been involved in violent crimes.

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1 And so I spelled out in my motion, Your Honor, the
2 State is asking for a sentence of 25 years. And we just
3 ask that you take all of this into account when
4 fashioning a sentence. Thank you, Judge.

5 THE COURT: Anything else from the State?

6 MR. CORVEY: No, Your Honor.

7 THE COURT: All right. I'll be happy to hear from
8 you Ms. Gay.

9 MS. GAY: Thank you, Your Honor. Mr. Forrest is
10 here, his family is here with him, several members of his
11 family; his mother, his girlfriend, and lots of other
12 members of his family are here.

13 A couple of things with regard to the memorandum
14 that was submitted to you, and I understand that it does
15 document; you know kind of goes through the progression.
16 It mentions several things that have been dismissed. One
17 in particular is this intimidation charge.

18 I spoke with and talked to; our office spoke with
19 and talked to a person who indicated that that particular
20 victim had initiated contact with my client after he got
21 out of jail. They all know each other; all these people
22 know each other. And he is the one who actually asked to
23 speak to my client. My client always denied that
24 anything happened of any type of assault with him. He --
25 I filed a motion at one point to dismiss the charge.

1 That charge was dismissed because I don't believe it
2 had any validity. So, I just want to let you know that
3 when the Solicitor says he did all these terrible things
4 after he got out on bond I don't believe that to be true.
5 It also mentions another case, an assault that has been
6 dismissed that he's not been convicted of.

7 You know certainly it does go through things
8 involving Sumter and there are some people in prison for
9 those offenses already. He has a public defender; he's
10 met with the public defender who came here to talk to him
11 about that charge. That is all going to be handled in a
12 different county.

13 And you know it is true that that happened but I'd
14 ask you to not take any of those charges into account at
15 this time because he hasn't been convicted of that; it is
16 still pending.

17 With regard to his letter that he wrote to the
18 victim that kind of goes into what I want to explain to
19 you Judge. The Solicitor says that he thinks that this
20 event had to do with money. As I said all these people
21 know each other.

22 The guy who is the victim in this case and I think
23 this is important to note, he is in prison for killing
24 somebody. He pled guilty and got sentenced. There was
25 some mitigation in that case but he got sentenced for

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1 killing somebody with a gun. My client tells me that
2 before this incident, before the cameras got turned on
3 before anything that they could -- it was all inside of a
4 room, that the victim in this case had threatened him
5 with a gun or you know, showed him a firearm. He was
6 aware that the guy carried a firearm and was involved
7 with guns. As I said he is now in jail for killing
8 somebody with a gun. There is some mitigation there but
9 it is true.

10 He tells me that during this period of time he was
11 significantly on drugs. He was high as a kite basically
12 when all this was going on. That certainly does not
13 change any of his responsibility for this.

14 But he does tell me that he was really high during
15 this period of time in his life and on this date. He had
16 seen the gun, he had been threatened by the guy and he
17 believed that somehow he needed to retaliate against this
18 person to maintain his own family safety and his own
19 safety.

20 When we did the plea, Your Honor -- he's pled
21 guilty. We've gotten through the plea colloquy. But --
22 and I guess this -- I didn't become involved in Mr.
23 Forrest's case until the summertime. He was charged last
24 year obviously with this and he was not my client until
25 like the middle of the summer. As you know I do

1 everything I possibly can to try to get clients to
2 thoroughly understand everything there is to understand
3 about their case so they can make informed decisions. We
4 have not only this video but some other videos in this
5 case that are on a disk. And I finally was able to
6 figure out how to show him the disk and basically he pled
7 guilty based on what he saw on that evidence.

8 His other attorney had never shown him the videos.
9 I have no idea why. I wasn't part of that so I don't
10 know why he never had seen not only the still pictures
11 but the videos. And this is not -- to me this is a good
12 video of what happened. But there is a different video
13 of him actually with his face putting the mask you know
14 the thing on. And that's a very critical piece of
15 evidence in this case for him to look at that and say
16 hey, you know this is identifying information.

17 So, he had never seen that video. There had been at
18 one point an offer in this case for him to plead to
19 shooting into a dwelling and he didn't accept that offer.
20 I think he regrets that day immensely and always will.
21 But he didn't accept it and he when I sat down with him
22 and went through all the evidence and explained to him
23 what intent to kill was; and I think that's the issue.
24 What is intent to kill? If you didn't mean to kill
25 somebody you know you can still get convicted of assault

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1 with intent to commit murder, attempted murder, because
2 of the intent to kill from the use of a deadly weapon and
3 for malice. We went through ad nauseam with his family
4 and him about what the elements of the offense were and
5 how if he went to trial what would be the evidence
6 presented. And that's when he looked at me and said
7 okay, I think I should plead guilty. And we worked this
8 out.

9 So, in my time of being representing him was about
10 three and a half months. I told him today when we met I
11 wish I had represented him last summer, not this summer,
12 because I'm sure we could have gotten this case worked
13 out a long time ago and it would not have been as
14 contentious to get to this point because I would have
15 just said this is the evidence, these are the elements,
16 this is what you have, this is what's going on.

17 The reason that this happened and his intoxication
18 of drug use at that time was something that he thought
19 was between him and the guy and it should be worked out
20 on the street. That is evidenced by the letter that he
21 sent the man.

22 He's always been basically saying hey, I'm sorry
23 man; you know can we just work this out on the street.
24 Obviously, that is not possible, it was never possible;
25 it was always going to be put in the court system. But

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1 when the Solicitor says to you the victim just wants him
2 to acknowledge that he did it and that that's what he
3 wanted is closure in the situation. That's very true.
4 All of these people know each other and he was just,
5 there was this problem that they had together and that he
6 believed that he would be at some point either a victim
7 of a shooting or some type of violence would occur to him
8 or his family based on what had happened before this
9 incident between him and the victim. And as I said the
10 victim went off to shoot somebody. So, he was aware that
11 the victim was somebody who could be dangerous.

12 And I know his family wants to talk with you, Your
13 Honor. We ask for your leniency and your mercy in this
14 situation. He did plead. I had explained to him what
15 would happen to him if he was convicted by a jury and
16 that we believed that you were fair and reasonable and
17 that you would understand the circumstances and be
18 lenient towards him as much as you could be.

19 And I know that his family would like to address
20 you, Your Honor. Would his mother or father like to
21 speak? You have to identify yourself for the record.

22 [Whereupon, an individual stands]

23 MR. FORREST: My name is Bruce Forrest.

24 THE COURT: Yes sir, Mr. Forrest. Did you say
25 Forrest? I'm sorry.

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1 MS. GAY: Yes.

2 THE COURT: Okay.

3 MR. FORREST: The day that this occurred if you look
4 at the screen there is a green Cadillac sedan at the
5 bottom in the corner.

6 THE COURT: Yes, sir.

7 MR. FORREST: That's my car; I was there. What
8 basically led up to this right here if y'all go back and
9 look at y'all video y'all will see a guy downstairs and
10 two guys up top. Guns were already pulled on Mr. Forrest
11 at that time.

12 THE COURT: Yeah.

13 MR. FORREST: He was afraid that he was going to be
14 killed. This was over drugs and money.

15 THE COURT: Yeah.

16 MR. FORREST: Mr. Copeland tried to make this seem
17 like this was all about a female but it was not. The guy
18 that was killed by Mr. Copeland he was also with us that
19 day. So I mean basically what he's trying to do is this
20 really isn't about Daeshaun. This is really about
21 Kadarius Cummings [phonetic].

22 THE COURT: Okay.

23 MR. FORREST: This is all about sentencing him
24 because Kadarius Cummings [phonetic] is already in jail.
25 That's what this is all about.

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1 THE COURT: Yes, sir.

2 MS. GAY: Well, Your Honor, the one thing I forgot
3 to tell you is ---

4 THE COURT: --- Ms. Gay, listen. Y'all ---

5 MS. GAY: --- go ahead ---

6 THE COURT: --- I appreciate all of this. This,
7 first of all let's go back for everybody so that we
8 explain what we're doing here today. Everything you just
9 said that's why you have a trial. That's why if you want
10 to have the whole thing, and the same goes true with the
11 Solicitor; that's why you have a trial.

12 If you are plaintiff's lawyer I would agree with
13 your statement, but you're a Solicitor. You're not
14 entitled to a trial unless it's necessary and then you
15 try it. You're entitled to a fair trial then.

16 The people aren't, the victims aren't entitled to
17 have their case heard necessarily unless you have to
18 prove them guilty. So, I appreciate that but you're
19 entitled to a fair trial and I understand that. But the
20 whole premise about pleading guilty you know what? This
21 started in 1973.

22 That's when I started practicing law. And it hasn't
23 changed. And I've been doing this since 1973; a few
24 years, probably longer than many of you have lived. And
25 the one thing I've found is true; guilty pleas are a

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1 summary, it's a synopsis; it's not a complete picture.
2 And I agree with you Solicitor. I've had plenty of cases
3 that clarified why as a lawyer you were told by older
4 lawyers, told by judges the best deal you can hope for in
5 a criminal case if you're guilty is to own up to it and
6 take your medicine. That's the best shot you've got.

7 It doesn't guarantee it but it's the best chance you
8 get. And a number of factors that go into it and I'm not
9 going to deal with all of them, one of which everybody
10 has acknowledged and I think your victim has
11 acknowledged. You're acknowledging I did something wrong
12 and I'm sorry. And that's fine.

13 The other part is you don't get to hear it all. And
14 there are tons of cases that I've heard that if I had had
15 a guilty plea I probably wouldn't have sentenced in the
16 fashion I did. It wasn't punishment for exercising a
17 right to trial; had nothing to do with that. It was an
18 education for me as to what this case was really about.
19 And I saw a bigger picture.

20 I wasn't there. I don't know. I don't know what
21 all the motivations were. I can assure you of one thing
22 just by what you said Mr. Forrest under our law what you
23 could have done is gotten in that car and left. Nobody
24 gets shot, nobody is tried for anything. People
25 shouldn't be threatening each other but that's what you

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1 do as a responsible person; you get the devil out of
2 there and you call the police and say that guy pulled a
3 gun on me and threatened me. And that's how you handle
4 it. You don't take it upon yourself to resolve it.

5 And that's the problem we have today; not just here
6 but everywhere. And we read it in the paper every single
7 day. People say I'll take care of this. And frankly I
8 live in Berkeley County; I practiced law in Berkeley
9 County. I lived for a long time, most of my life in a
10 rural part of Berkeley County. And so you know we all --
11 Charleston was like a long way away. There was nothing
12 but woods between Moncks Corner and Charleston.

13 And I guarantee you I got into my share of
14 disagreements with people and went out on dirt roads and
15 watched people engage in a fight. Generally the first
16 person that got punched and it hurt they stopped and they
17 went and they made up and that was it. Nobody ever shot
18 anybody. Nobody pulled guns on anybody.

19 But Justice Pleicones who was then a trial judge
20 tried a case in Berkeley County and the headlines of the
21 Berkeley Independent, I don't think it exists anymore,
22 judge says problem with Berkeley County there is too much
23 testosterone. That's a male problem; it is. It gets in
24 the way. I wish we could be -- I've heard a song why
25 can't a woman be more like a man well maybe sometimes men

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1 we need to be more like women and not think we have to
2 fight everybody to prove that we are a man. And that's
3 the problem that gets in the way.

4 And so I understand all of that but what we're doing
5 today is a guilty plea where Mr. Forrest said twice, at
6 least on two occasions, and that's what is somewhat
7 perplexing to me but I'll deal with that in a moment, I'm
8 guilty of discharging a firearm no question about that; I
9 admit that. I'm guilty of having in my possession a
10 weapon for the commission of a violent crime.
11 Interestingly enough discharging a firearm is not a
12 violent crime.

13 In order to be guilty of possession of a weapon
14 while committing a violent crime he has to have committed
15 a violent crime. To that charge the attempted murder,
16 which is a violent crime he pled guilty under Alford
17 which says I didn't do it. I didn't commit it but I
18 understand I'm pleading guilty so I can get a benefit.
19 And the benefit as I understand was concurrent sentences
20 and dismissal of other charges. And I think we talked
21 about that Mr. Forrest is that true?

22 MR. FORREST: Yes, sir.

23 THE COURT: And that's the benefit that you wanted
24 to achieve. And that was a strategy on your part. I
25 don't know, I don't need to know, I've been in that

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1 strategy session; not yours but in my career. For 21
2 years I was in strategy sessions with clients a lot of
3 times where we talked about you know what's the
4 probabilities; what are we looking at.

5 And my clients would ask me, and I don't know
6 whether you asked Ms. Gay this or your other lawyer, what
7 do you think the judge would do if I'm convicted? What
8 you think the sentence is going to be? I mean that's
9 generally what they wanted to know.

10 And we as lawyers make the best guess we can but
11 it's a pure guess. I don't know. I'll be honest with
12 you if somebody asked me what do you do in such and such
13 crime and I said I don't have any idea until I hear it,
14 until I know what the circumstances are.

15 How can I make a determination because there is no
16 such thing as a pat answer for that? I know that just
17 what we just said and I think it's still true there is a
18 benefit that flows to you by entering a guilty plea, by
19 admitting your guilt.

20 But I've got this little problem over here. It's
21 not a problem, I understand the mechanics of it, and it's
22 a strategy, it's a legal strategy and it works you know.
23 I got a deal and I'm going to get sentenced on this one
24 but I'm not admitting to anything; I didn't do anything.
25 That's what you said by an Alford plea; I didn't do

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1 anything. Well, I think the picture shows and I think we
2 all know you did. But anyway, be that as it may. So
3 all of this we really and truly this was done when we had
4 an Alford plea. You got the benefits then. Now, I've
5 got to fashion what is an appropriate sentence.

6 But having said that I'll certainly be happy to hear
7 from anyone. I know what you want. I assure you. I've
8 been doing this for 24 years and I've heard from both
9 sides. It's a tragic situation when family members have
10 to come and watch what's going on today. And I will
11 promise you this, and I'm going to be honest, I can think
12 of two occasions, really one when I was glad to impose a
13 sentence taking somebody's freedom. In fact I said it.

14 It's only one time I've ever said it in 24 years.
15 And I sentenced somebody to life imprisonment. And I
16 fought tooth and nail with the Solicitor before that
17 trial and that one -- this is an example of what I was
18 telling you what you see when you try a case. He was
19 charged with homicide by child abuse. And there is a
20 second part of that that carries 25 to life I think.

21 There is a lower that says zero to 20 years. And it
22 was a question of what involvement, it was his
23 girlfriend's child, and there was some discussion. He
24 said he wasn't aware and he wasn't there at the time.
25 That proved to not be so much correct. But I fought the

State v Daeshaun Forrest
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1 Solicitor and said why don't you let him plead to 20
2 years or plead to the lower one and I'll fashion an
3 appropriate sentence. And I honestly was thinking ten to
4 15 years maybe; I don't know, somewhere in that range.

5 You know what they did? He kept hitting this child
6 who was three because his five year old niece with he
7 wasn't being a man so he'd slap him, hitting him. You
8 know what a doctor talked about? It reminded me of a
9 prize fighter. You know flyweights, they don't hit -- if
10 heavyweights hit you you might go down. Flyweights? It
11 might hurt you a little bit but it doesn't knock you out.
12 But the accumulation does. And we're seeing that with
13 football players today of what is happening with that.

14 And that's exactly what happened in this one. And
15 there was a pop and the kid had a convulsion and he died.
16 You know what he did? He put him in a trash can and
17 poured cement on him and tried to go dump him off the
18 battery and took him and dumped him in a rural area of
19 Bowman.

20 Well, I'm going to tell you what. I gave him life
21 and I was proud to do it; I guarantee it. So that's the
22 only time. Other than that I don't derive any pleasure
23 at all of taking somebody's freedom. It's important to
24 me, it's important to you, it's important to him but I
25 have to do what I have to do. But thank you very much

State v Daeshaun Forrest
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October 18, 2017

1 for you being here. I appreciate it. I'll be happy to
2 hear from anybody.

3 MS. GAY: Well, Mr. Forrest has an eight year old
4 child, Your Honor. He did make bond. He had intended to
5 do some things with his life and spend some time with his
6 child. And unfortunately, that didn't get to happen for
7 very long. He would like to speak to you Your Honor.

8 THE COURT: Oh, I'm going to speak to him. But
9 before I hear from you Mr. Forrest, and please I want to
10 hear fully from you. But I need to -- we need to revisit
11 something because we were last talking on Friday, October
12 13th and I asked you certain questions and you gave me
13 answers. And you still stand by all of those answers,
14 sir?

15 MR. FORREST: Yes, sir.

16 THE COURT: And those are truthful answers are they
17 not?

18 MR. FORREST: Yes, sir.

19 THE COURT: And you want me to rely on the
20 completeness of those answers.

21 MR. FORREST: Yes, sir.

22 THE COURT: Very good. And now I'll be happy to
23 hear from you. I find the plea is still freely,
24 voluntarily, knowingly and intelligently made and I'll
25 accept it. Now, I'll be happy to hear from you, sir.

State v Daeshaun Forrest
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1 MR. FORREST: Your Honor, I want to apologize to
2 the courtroom first for me being here. And Your Honor I
3 would like to apologize to my family second for me taking
4 them through the things that I'm taking them through once
5 again.

6 I would like to apologize to my victim, which I
7 actually did this morning when he was going to prison.
8 And I told him I was apologizing. And I regret it each
9 and every day that the situation happened because
10 actually he's my uncle; he's my uncle-in-law. That's my
11 uncle's brother-in-law. And it hurted [sic] me that I
12 went that far; that we even went that far.

13 Like two years ago, Your Honor I was 25 years old
14 just getting out of prison and I was still angry, still
15 young minded you know what I'm saying filled with a lot
16 of drugs and still trying to cope with society. And to
17 be honest with you I was selfish. I didn't care about
18 nobody else. I didn't even know what it means to be a
19 father. I didn't even know what it means to be a
20 brother. My sisters they don't even know me. My mother
21 she don't even know me, you know what I'm saying.

22 And right now these two years that I've been here,
23 Your Honor I've been through hell. And the reason why --
24 and I'm glad I been through hell. I'm glad I even went
25 through the situation because now I stand before you a

State v Daeshaun Forrest
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October 18, 2017

1 man. I stand before you a man and I'm willing to prove
2 to the world and prove to everybody that I can be a
3 better productive citizen.

4 I'm willing to do anything, Your Honor. I'm willing
5 to do drug classes. I'm willing to do anger management.
6 I'm willing to be on ankle monitor. I'm willing to do
7 anything just to prove myself. My main thing I want to
8 be a father to my daughter because yeah I had a step
9 father but it's not the same. It will never be the same
10 for your father being there.

11 I got an eight year old daughter and I got a six
12 year old God daughter that her father is not there and I
13 want to be there for her. I just need a chance, Your
14 Honor; just one chance. I just need one more chance.

15 And Your Honor if you ever see me in here again or
16 if you hear of me being in here again I deserve for my
17 whole life to get took away from me. That's all I got to
18 say, Your Honor.

19 THE COURT: Okay. Well, thank you sir. I
20 appreciate that. And I'm sure you're sincere in what
21 you're saying.

22 [Whereupon, and individual stands]

23 THE COURT: And I'll be happy, yes ma'am you want
24 to give me your name.

25 MS. BROWN: Veronica Brown.

State v Daeshaun Forrest
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October 18, 2017

1 THE COURT: Yes, Ms. Brown?

2 MS. BROWN: Daeshaun is my son. He's my only son.
3 And right before all this happened we just had lost, I
4 lost two nephews that was killed to gun violence. One
5 was Donald Brown and the other one was Travis Brown.

6 And at the point in time when this stuff was
7 happening and I think my son was really scared for his
8 life because of all the things that was going on
9 throughout the family; we had just lost two family
10 members within six months.

11 But I stand before you to tell you that when my son
12 came home, when we bailed him out and he came home and he
13 was home for that two months my son started going to
14 church faithfully. He was helping in the church.

15 He was working two jobs. He had a job on the
16 Patriot's Point on the boat. He was working at Poogan's
17 Porch and helping me with my business. And this is
18 something that I never had. Like this was a whole
19 different son from the son that was in jail before you
20 know. I saw a true change in my son. He was more loving
21 and you know trying to do everything that was right you
22 know.

23 He said Momma I promise this time I'm going to do
24 what is right; I'm not going back to jail you know. And
25 he told me, he expressed to me how sorry he was because

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1 that's my brother, you know the guy that he shot at
2 that's my brother you know. And I love my brother, and
3 he loves his uncle. They've always been very, very
4 close, very close.

5 THE COURT: Okay. Thank you, Ms. Brown. I
6 appreciate that. Anything else?

7 MS. GAY: No, Your Honor.

8 THE COURT: Anything else Solicitor?

9 MR. CORVEY: No, Your Honor.

10 THE COURT: What's his record? I know you've told
11 me that but refresh my mind.

12 MR. CORVEY: In 2008 he was convicted of criminal
13 conspiracy and breaking and entering a motor vehicle. He
14 did two years probation. And then in 2011 he pled to a
15 strong arm robbery, possession of a stolen motor vehicle
16 and a forgery. The first two were from the string of
17 North Charleston incidents ---

18 THE COURT: --- right ---

19 MR. CORVEY: --- and then the forgery is a separate
20 incident.

21 THE COURT: And that's the one that he actually
22 served time for.

23 MR. CORVEY: Yes. He got a seven year sentence on
24 the strong arm, which was the controlling one. He was
25 released in July 1st, 2014.

State v Daeshaun Forrest
Sentencing Hearing
October 18, 2017

1 THE COURT: Right. Well, there's a lot been said
2 and a lot of people here. And sometimes when we have
3 problems they seem to be overwhelming and so great that
4 we say you know there's nothing I can do.

5 In fact I heard something in a program one time
6 about changing the world. And the first one said you
7 know I'm going to change the world. And he started
8 thinking about it and said you know that's a large place.
9 What in the world can I do? Well, that may be too big.
10 I'm going to change my state. Wait a minute, I only live
11 in a small portion. How in the world can I do anything?

12 I'm going to change my community. Wow, how in the
13 world am I going to control that? He finally said you
14 know what I've got to do? I've got to change me. And
15 once I change me maybe I can influence another person.
16 And that's how you do it. You do it one by one.

17 I'm looking at a lot of people. If each of us can
18 go out and make sure that somebody doesn't make the same
19 mistake that doesn't resort to taking matters into their
20 own hands. I hear you. I understand you were scared.
21 That's what law enforcement is for. That's what you call
22 them for. You don't say I'll fix this.

23 And that's what we've got to stop folks. And it's
24 not going to stop until we change it. And I'm not
25 talking about this courtroom. I'm talking about us

State v Daeshaun Forrest
Sentencing Hearing
October 18, 2017

1 living in communities. We've got to get that message
2 across to change minds. And until we start we're going
3 to see more and more of this. And it's not going to get
4 better; it's going to get worse. So I'm looking at some
5 people. I hope you are change agents with me and let's
6 do something to change the world, please. We can start
7 today.

8 Insofar as Mr. Forrest, Mr. Forrest you have -- my
9 dilemma is you have a benefit. And the benefit is to
10 plead guilty to a 30 year sentence. That's the benefit,
11 and avoid all these other things, which is significant.
12 They aren't minimal. That was a significant offer. You
13 said so that you thought it was significant.

14 But what I'm going to do is this, and I don't
15 quarrel with your 25 years. That's punishment. I
16 understand your thought and I understand the victim's
17 feelings about that and anybody else and the North
18 Charleston Police Department Sergeant Bailey.

19 But, what I want to do is find out if this man is
20 true to his statement. Now the discharge is that five
21 years is that the max for the discharge into a dwelling?

22 MR. CORVEY: I believe its zero to ten, Your Honor.

23 THE COURT: Is it? Okay.

24 MS. GAY: I thought it was zero to ten as well.

25 THE COURT: Okay. That's fine. You're right it

State v Daeshaun Forrest
Sentencing Hearing
October 18, 2017

1 is. You're right. I've actually sentenced somebody to
2 that. All right. Sentence of the Court on the -- and
3 how much time has he served Ms. Gay?

4 MS. GAY: He served from the date of his arrest
5 until earlier this year. They'll give him credit for
6 that at the Department of Corrections.

7 [Whereupon, Ms. Gay confers with her client]

8 MS. GAY: Two and a half years.

9 THE COURT: Two and a half years. I'm going to put
10 down two and half years, okay. That way you'll get two
11 and half years.

12 MS. GAY: Thank you, Your Honor.

13 THE COURT: The sentence of the Court on indictment
14 2015-6031 possession of a weapon during the commission of
15 a violent crime is five years. I'll give you credit for
16 two and half years of jail time and that sentence is
17 concurrent with the other sentences.

18 The sentence of the Court on 2015-6030 is -- excuse
19 me, let me save that one for last; that's the attempted
20 murder, 2015-6032 discharging a firearm that's ten years
21 concurrent, credit for two and a half years.

22 The sentence of the Court on indictment 2015-6030 I
23 sentence you to the Department of Corrections for a term
24 of 30 years provided upon the service of 18 years. And
25 you know what that means? That's a 15 year sentence

State v Daeshaun Forrest
Sentencing Hearing
October 18, 2017

1 approximately. I think that's appropriate. That's half
2 the charge and so that's the sentence you'll serve.
3 That's the actual time that you will have to serve. It's
4 a few months over that. You get credit for two and half
5 years.

6 And let me tell you why I'm doing that. It's for
7 this reason. When you get out I hope by the time you're
8 there we will have started doing something that we need
9 to do and address the drug issues and the drug addictions
10 and further counseling, which I hope you'll take
11 advantage of.

12 But when you get out the significance of this
13 sentence is this: You have to do a two year community
14 supervision program which is basically two years of
15 probation. If you're straight you won't have any
16 problems. You'll walk through that two years and it will
17 be over.

18 If you don't what's there now is 15 years of
19 potential supervision. All you've got to do is do your
20 two years and you're finished. But if you don't a judge
21 could sentence you back to jail for one year at a time
22 until you've satisfied either through service of time or
23 supervision the remaining 15 years, okay. Good luck to
24 you, sir.

25 MS. GAY: Thank you, Your Honor.

State v Daeshaun Forrest
Sentencing Hearing
October 18, 2017

1 THE COURT: Thank you. Thank you, Solicitor.

2 MR. CORVEY: Thank you.

3 MS. GAY: Thank you, Your Honor.

4 THE COURT: Yes, ma'am.

5 *****END OF TRANSCRIPT OF RECORD*****
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State v Daeshaun Forrest
Certificate of the Court Reporter
October 18, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 18th day of October, 2017.

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

December 14, 2020

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

DAESHAUN ALEXANDER FORREST

AKA:

Race: Black/African American

Sex: M

DOB: 1/1989

SS#: [REDACTED]

Address: Booker Street

City, State, Zip: North Charleston, SC 29405-9367

DL# [REDACTED]

SID# SC01782181

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Attempted Murder

In violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory OPS ☐ § 17-25-45
(CSC w/minor 1st or Lewd Act)
The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Edward R. Corvey, III, Assistant Solicitor SC Bar # 101454

Defendant

Attorney for Defendant

SC Bar # 63773

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 18 days/months/years and or payment of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 2 1/2 year☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Recipient: _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: DEFERRED SENTENCE: (Plea Accepted)

Judge: [Signature] 2060Date: 10/18/17
☐ Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>200.00</u>
§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/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea.	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>
TOTAL	\$	\$ <u>128.75</u>

Clerk of Court/Deputy Clerk: C. DAVEY
Court Reporter: Phyllis NortonPresiding Judge: [Signature]Judge Code: 2060Sentence Date: 10/18/17

ERC/0306041
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-014123

ARREST WARRANT NUMBER
2015A1021000377

DATE OF ARREST

06/17/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

NOV - 3 2015

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-06030

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
NOVEMBER TERM 2015

THE STATE

VS.

DAESHAUN ALEXANDER
FORREST
B/M DOB: [REDACTED]-1989

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029
CDR Code: 3410

FILED

11/17/2015 11:22:40 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

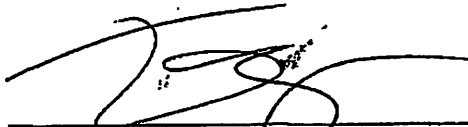
INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about May 4, 2015, the Defendant, Daeshaun Alexander Forrest, did, with intent to kill and malice aforethought, attempt to kill Shaterio Copeland. This is in violation of Section 16-3-29 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.


EDWARD R. CORVEY, III
ASSISTANT SOLICITOR

ARREST WARRANT

2015A1021000377

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

2015004123 THE STATE
against

Daeshaun Alexander Forrest

Address: ☒ Booker Street
North Charleston, SC 29405-Phone: ☐ SSN: ☐

Sex: M Race: B Height: 5 6 Weight: 150

DL State: SC DL #: ☐DOB: 7/1989 Agency ORI #: ☐

Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: Robert Bailey # 111

Offense: Attempted Murder 16-3-29

Offense Code: 03410

Code/Ordinance Sec: 16-3-29

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on Daeshaun Alexander Forrest
05-04-2015

Signature of Constable/Police Officer

RETURN WARRANT TO:

North Charleston Municipal Court
2500 City Hall Lane
North Charleston, SC 29406

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 348Personally appeared before me the affiant Robert Bailey # 111 who
being duly sworn deposes and says that defendant Daeshaun Alexander Forrest
did within this county and state on 05/04/2015 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of North Charleston)

DESCRIPTION OF OFFENSE:

Attempted Murder 16-3-29

I further state that there is probable cause to believe that the defendant
the crime set forth and that probable cause is based on the following facts:

OCA 2015014123

SEE ATTACHED AFFIDAVIT

DEH/CHARLESTON CO

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

Affiant's Address 2500 City Hall LaneNorth Charleston, SC 29405-Affiant's Telephone (843)554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/04/2015 defendant Daeshaun Alexander Forrest

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of North Charleston) as set forth below:

DESCRIPTION OF OFFENSE:

Attempted Murder 16-3-29

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Sworn to and subscribed before me

on 05/04/2015 (L.S.)

Signature of Judge

Judge's Address 2500 City Hall LaneJudge's Telephone (843)740-2601Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

John L. Duffy III

Priscilla B. Baldwin

John F. Dowd III

WITNESSES

Judge
on 6/18/2015
Type and Amount 100,000
Name of Surety:

Name:
Address:
Telephone:

Name:
Address:

Telephone:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

Name:
Address:

Telephone:

Name:
Address:

Telephone:

DISPOSITION before

Judge

on

by (Indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition:

Sentence:

Name:
Address:

Telephone:

Name:

Address:

Telephone:

Name:
Address:

Telephone:

Name:
Address:

Telephone:

JURORS

CODEFENDANTS

FILED
2015 JUN 29 PM 3:30
JULIE J ARMSTRONG
CLERK OF COURT

MCIC #
OBR
MCIC
OBR
SICC IN

ORIGINAL

ORIGINAL**STATE OF SOUTH CAROLINA****COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON****AFFIDAVIT****OCA# 2015014123
Inv.: Det. R. F. Bailey**

Personally appeared before me, a magistrate of this County, one Det. R.F. Bailey, who first being duly sworn, deposes and says that

Daeshaun Alexand Forrest

Did within this City, County, and State on the 4th day of May, 2015, violate the criminal laws of the State of South Carolina in the following particulars:

**DESCRIPTION OF OFFENSE
ATTEMPTED MURDER
16-3-29**

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

On May 4th, 2015 at approximately 3:23 PM while at 2070 McMillan Ave. (Stay Over Lodge), which is located in the City of North Charleston, County of Charleston, and State of South Carolina, the defendant, **Daeshaun Alexand Forrest** did commit the offense of **ATTEMPTED MURDER**, in violation of South Carolina 16-3-29. In that the defendant did willfully, unlawfully, and feloniously while armed with a handgun, attempt to shoot the victim (to be named in court) with malice aforethought by standing outside of room #243 at the aforementioned location yelling at the victim and shooting several times through the window into the room.

Facts to establish the aforesaid are that on May 4th, 2015 at approximately 2:00 PM, the defendant and victim were involved in a verbal altercation over the phone in reference to money. Once the victim arrived back at the hotel around 3:00 PM he went to his room which is #243. The victim stated that the defendants girlfriend who also had a room near his came and asked his girlfriend to come out of his room to hers. Very shortly thereafter the victim stated that as he was sitting in his room when he heard the defendants voice outside yelling through the door. He stated that he then heard shots being fired through the window at which time he sought refuge in the bathroom. The victim was very clear that he knew that it was the defendant outside his room yelling because the defendant is his nephew, and has known him for several years. Upon reviewing video surveillance of the incident location it shows only one person dressed in all black standing outside the room, and appear to be firing a gun into it. A still photo of the surveillance was shown to the victim and he positively identified without hesitation it to be the listed defendant due to his cloting and hair style.

These facts are based on the statement of the victim, witnesses, and through the investigation of Detective R.F. Bailey of the North Charleston Police Department who are witnesses to prove the same. All done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 4 day of May
2015

Signature of Judge

John L. Duffy III

(AFFIANT)

Address: 2500 City Hall Ln.
N. Charleston, SC 29406
Phone: (843) 554-5700

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.

DAESHAUN ALEXANDER FORREST

AKA:

Race: Black/African American Sex: M

DOB: 1289 SS#: [REDACTED]

Address: Booker Street

City, State, Zip: North Charleston, SC 29405-9367

DL# [REDACTED] SID# SC01782181

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or☒ PLEADS

TO: Possession Of A Weapon During The Commission Of A Violent Crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

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

ATTEST:

Edward R. Corvey III, Assistant Solicitor SC Bar # 101454

Defendant

Attorney for Defendant

63773
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 2 1/2 years☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

DEFERRED SENTENCE: (Plea Accepted)

Judge: [Signature]Date: 10/18/17☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 200.00

§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/Prob) \$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 \$ 128.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: DAVEYCourt Reporter: [Signature]Presiding Judge: [Signature]Judge Code: 2068Sentence Date: 10/18/17

ERC/0306041
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-014123

ARREST WARRANT NUMBER

2015A1021000378

DATE OF ARREST

06/17/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

NOV - 3 2015

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-06031

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

DAESHAUN ALEXANDER
FORREST

B/M DOB: [REDACTED]-1989

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490
CDR Code: 0549

FILED

11/17/2015 11:22:40 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about May 4, 2015, the Defendant, Daeshaun Alexander Forrest, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Attempted Murder ; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

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



EDWARD R. CORVEY, III
ASSISTANT SOLICITOR

ARREST WARRANT

2015A1021000378

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

2016004123 THE STATE
against

Daeshaun Alexander Forrest

Address: Booker Street
Charleston, SC 29405Phone: SSN: Sex: M Race: B Height: 5 Weight: 150DL State: SC DL #: 102162507DOB: 1/19/89 Agency ORI #: Prosecuting Agency: North Charleston Police DepartmentProsecuting Officer: Robert Bailey # 111Offense: Possession of Firearm during the Commission of aOffense Code: 00549Code/Ordinance Sec: 16-23-490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on Daeshaun Alexander Forrest
on 5/10/15

Signature of Constable/Clerk or Agent of Court

RETURN WARRANT TO:

North Charleston Municipal Court
2500 City Hall Lane
North Charleston, SC 29406

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

Personally appeared before me the affiant Robert Bailey # 111 whobeing duly sworn deposes and says that defendant Daeshaun Alexander Forrestdid within this county and state on 05/04/2015 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE:

Possession of Firearm during the Commission of a Violent Crime 16-23-490

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

PLEASE SEE THE ATTACHED AFFIDAVIT.

OCA: 2015014123

CHARLESTON COUNTY

DKB

RECEIVED
MAY 06 2015
ORIGINAL

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

Affiant's Address 2500 City Hall LaneNorth Charleston, SC 29405-Affiant's Telephone (843)554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/04/2015 defendant Daeshaun Alexander Forrest

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of North Charleston) as set forth below:

DESCRIPTION OF OFFENSE:

Possession of Firearm during the Commission of a Violent Crime 16-23-490

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.Sworn to and subscribed before me
on 05/05/2015Signature of Judge John C. Oakes III (L.S.)Judge's Address 2500 City Hall LaneJudge's Telephone (843)740-2601Judge's Address 2500 City Hall LaneNorth Charleston, SC 29406-Judge's Telephone (843)740-2601Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

BAIL set by
Priscilla B. Baldwin

Judge _____
 on 6/18/2015
 Type and Amount: 100,000
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____

Defendant Attorney: _____

Declarant: JAMES ARMSTRONG

DISPOSITION before

Judge _____

on _____

by _____

(Indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CO-DEFENDANT: John J. Davis

2015 JUN 29 PM 3:30
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

AFFIDAVIT

OCA# 20150/4123
Inv.: Det. R. F. Bailey

ORIGINAL

Personally appeared before me, a magistrate of this County, one Det. R.F. Bailey, who first being duly sworn, deposes and says that

Daeshaun Alexand Forrest

Did within this City, County, and State on the 4th day of May, 2015, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

Possession of a Firearm during the Commission of a Violent Crime

16-23-490

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

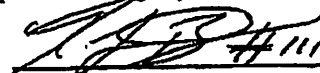
On May 4th, 2015 at approximately 3:23 PM while at 2070 McMillan Ave. (Stay Over Lodge), which is located in the City of North Charleston, County of Charleston, and State of South Carolina, the defendant, Daeshaun Alexand Forrest did commit the offense of Possession of a Firearm during the Commission of a Violent Crime, in violation of South Carolina 16-23-490. In that the defendant did willfully, unlawfully, and feloniously while armed with a handgun, attempt to shoot the victim (to be named in court) with malice aforethought by standing outside of room #243 at the aforementioned location yelling at the victim and shooting several times through the window into the room.

Facts to establish the aforesaid are that on May 4th, 2015 at approximately 2:00 PM, the defendant and victim were involved in a verbal altercation over the phone in reference to money. Once the victim arrived back at the hotel around 3:00 PM he went to his room which is #243. The victim stated that the defendants girlfriend who also had a room near his came and asked his girlfriend to come out of his room to hers. Very shortly thereafter the victim stated that as he was sitting in his room when he heard the defendants voice outside yelling through the door. He stated that he then heard shots being fired through the window at which time he sought refuge in the bathroom. The victim was very clear that he knew that it was the defendant outside his room yelling because the defendant is his nephew, and has known him for several years. Upon reviewing video surveillance of the incident location it shows only one person dressed in all black standing outside the room, and appear to be firing a gun into it. A still photo of the surveillance was shown to the victim and he positively identified without hesitation it to be the listed defendant due to his clothing and hair style.

These facts are based on the statement of the victim, witnesses, and through the investigation of Detective R.F. Bailey of the North Charleston Police Department who are witnesses to prove the same. All done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this _____ day of May
2015

Signature of Judge


(AFFIANT)

Address: 2500 City Hall Ln.
N. Charleston, SC 29406
Phone: (843) 554-5700

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

DAESHAUN ALEXANDER FORREST

AKA:

Race: Black/African AmericanSex: MDOB: 1/1989SS#: [REDACTED]Address: Booker StreetCity, State, Zip: North Charleston, SC 29405-9367DL# [REDACTED] SID# SC01782181*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Discharging Firearms into a DwellingIn violation of § 16-23-0440(A) of the S.C. Code of Laws, bearing CDR Code # 0052☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Edward R. Corvey, III, Assistant Solicitor 101454
SC Bar # [REDACTED][Signature]
Defendant[Signature] 63773
Attorney for Defendant 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 2 1/2 years☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

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/Prob) \$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) \$ \$ 3.75TOTAL \$ 128.75☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other DEFERRED SENTENCE: (Plea Accepted)

Judge: [Signature] 2060Date: 10/13/17

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation

Clerk of Court/Deputy Clerk: C. DAVEYCourt Reporter: [Signature] [Signature]Presiding Judge: [Signature]Judge Code: 2060Sentence Date: 10/13/17

ERC/0306041
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-014123

ARREST WARRANT NUMBER
2015A1021000379

DATE OF ARREST

06/17/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

NOV - 3 2015

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-06032

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
NOVEMBER TERM 2015

THE STATE

VS.

DAESHAUN ALEXANDER
FORREST
B/M DOB: [REDACTED]-1989

Indictment for

DISCHARGING FIREARMS INTO A
DWELLING

SC Code: § 16-23-0440(A)
CDR Code: 0052

FILED

11/17/2015 11:22:41 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

DISCHARGING FIREARMS INTO A DWELLING

That in Charleston County, South Carolina on or about May 4, 2015, the Defendant, Daeshaun Alexander Forrest, unlawfully did discharge, or cause to be discharged, a firearm into a dwelling, building, structure or enclosure regularly occupied by persons in violation of Section 16-23-440(A), Code of Laws of South Carolina, (1976, as amended).

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



EDWARD R. CORVEY, III
ASSISTANT SOLICITOR

ARREST WARRANT

2015A1021000379

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

2015004123 THE STATE
against

Daeshawn Alexander Forrest

Address: Booker Street

North Charleston, SC 29405-

Phone: [REDACTED] SSN: [REDACTED]Sex: M Race: B Height: 5 6 Weight: 150DL State: SC DL #: 102162507DOB: 1/1989 Agency ORI #: [REDACTED]Prosecuting Agency: North Charleston Police DepartmentProsecuting Officer: Robert Bailey # 111Offense: Discharging Firearms into a Dwelling 16-Offense Code: 00052Code/Ordinance Sec: 16-23-0440

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on Daeshawn Alexander Forrest

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

North Charleston Municipal Court
2500 City Hall Lane
North Charleston, SC 29406

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 818Personally appeared before me this day of May 2015 Robert Bailey # 111 who
being duly sworn deposes and says that defendant Daeshawn Alexander Forrest
did within this county and state on 05/04/2015 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of North Charleston)
in the following particulars:

DESCRIPTION OF OFFENSE:

Discharging Firearms into a Dwelling 16-

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

OCA 2015014123

SEE ATTACHED AFFIDAVIT

DEH/CHARLESTON CO

BY:

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

Affiant's Address 2500 City Hall LaneNorth Charleston, SC 29405-Affiant's Telephone (843)554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/04/2015defendant Daeshawn Alexander Forrest

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality ofNorth Charleston

) as set forth below:

DESCRIPTION OF OFFENSE:

Discharging Firearms into a Dwelling 16-

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Sworn to and subscribed before me

on 05/04/2015

(L.S.)

Judge's Address 2500 City Hall LaneNorth Charleston, SC 29406-Judge's Telephone (843)740-2601Judge Code: 01

John L. Duffy III

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

Priscilla B. Barwin

WITNESSES

Judge _____
 on 12/18/2015
 Type and Amount 50,000
 Name of Surety (Signature)

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
 Sentence: _____

JURORS

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS

OBICIMVT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

STATE OF SOUTH CAROLINA
ORIGINAL

AFFIDAVIT

OCA# 201504123
Inv.: Det. R. F. Bailey

Personally appeared before me, a magistrate of this County, one Det. R.F. Bailey, who first being duly sworn, deposes and says that

Daeshaun Alexand Forrest

Did within this City, County, and State on the 4th day of May, 2015, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
Discharging a Firearm into a Dwelling
16-23-440

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

On May 4th, 2015 at approximately 3:23 PM while at 2070 McMillan Ave. (Stay Over Lodge), which is located in the City of North Charleston, County of Charleston, and State of South Carolina, the defendant, **Daeshaun Alexand Forrest** did commit the offense of **Discharging a Firearm into a Dwelling**, in violation of South Carolina 16-23-440. In that the defendant did willfully, unlawfully, and feloniously while armed with a handgun, attempt to shoot the victim (to be named in court) with malice aforethought by standing outside of room #243 at the aforementioned location yelling at the victim and shooting several times through the window into the room.

Facts to establish the aforesaid are that on May 4th, 2015 at approximately 2:00 PM, the defendant and victim were involved in a verbal altercation over the phone in reference to money. Once the victim arrived back at the hotel around 3:00 PM he went to his room which is #243. The victim stated that the defendants girlfriend who also had a room near his came and asked his girlfriend to come out of his room to hers. Very shortly thereafter the victim stated that as he was sitting in his room when he heard the defendants voice outside yelling through the door. He stated that he then heard shots being fired through the window at which time he sought refuge in the bathroom. The victim was very clear that he knew that it was the defendant outside his room yelling because the defendant is his nephew, and has known him for several years. Upon reviewing video surveillance of the incident location it shows only one person dressed in all black standing outside the room, and appear to be firing a gun into it. A still photo of the surveillance was shown to the victim and he positively identified without hesitation it to be the listed defendant due to his clothing and hair style.

These facts are based on the statement of the victim, witnesses, and through the investigation of Detective R.F. Bailey of the North Charleston Police Department who are witnesses to prove the same. All done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 6 day of May
2015

Signature of Judge

(AFFIANT)

Address: 2500 City Hall Ln.
N. Charleston, SC 29406
Phone: (843) 554-5700

2015A 1021000379

COUNTY OF CHARLESTONDAESHAUN FORREST #346850

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: Tommy A. ThomasAddress: P.O. Box 88, Irmo, SC 29063

IN THE COURT OF COMMON PLEAS

2020-CP-10-5001

CIVIL ACTION COVERSHEET

-CP-

JULIE J. ARISTON
CLERK OF COURT
2020 NOV 13 PM 1:41

FILED

SC Bar #: 5536Telephone #: 803-732-5507Fax #: 803-781-4226

Other:

E-mail: jackie@paroleme.com

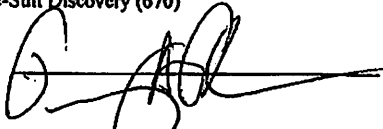
NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Conversion (310) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Motor Vehicle Accident (320) | ☐ Condemnation (410) |
| ☐ General (130) | ☐ Medical Malpractice (220) | ☐ Premises Liability (330) | ☐ Foreclosure (420) |
| ☐ Breach of Contract (140) | Previous Notice of Intent Case # | ☐ Products Liability (340) | ☐ Mechanic's Lien (430) |
| ☐ Fraud/Bad Faith (150) | 20 ____-NI-____ | ☐ Personal Injury (350) | ☐ Partition (440) |
| ☐ Failure to Deliver/
Warranty (160) | ☐ Notice/ File Med Mal (230) | ☐ Wrongful Death (360) | ☐ Possession (450) |
| ☐ Employment Discrim (170) | ☐ Other (299) _____ | ☐ Assault/Battery (370) | ☐ Building Code Violation (460) |
| ☐ Employment (180) | | ☐ Slander/Libel (380) | ☐ Other (499) _____ |
| ☐ Other (199) _____ | | ☐ Other (399) _____ | |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☒ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) _____ | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) _____ | ☐ Transfer of Structured
Settlement Payment Rights
Application (760) | ☐ Worker's Comp (960) |
| Special/Complex /Other | | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | ☐ Petition for Workers
Compensation Settlement
Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | ☐ Other (799) _____ | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | |
| ☐ Other (699) _____ | ☐ Motion to Quash Subpoena in
an Out-of-County Action (660) | | |
| ☐ Sexual Predator (510) | ☐ Pre-Suit Discovery (670) | | |
| ☐ Permanent Restraining Order (680) | | | |

Submitting Party Signature: Date: November 9, 2020

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

DAESHAUN FORREST #346850)

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

v.)

State of South Carolina)

2020-CP-10-5001
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2020 NOV 13 PM 1:41
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Inst., 430 Oaklawn Road, Pelzer, SC 29669
2. Name and location of Court which imposed sentence Charleston County Court of General Sessions, 100 Broad Street, Charleston, South Carolina 29401, Sumter County Court of General Sessions, 215 N Harvin St Ste 309, Sumter, SC 29150 and Clarendon County Court of General Sessions, 3 W Keitt St, Manning, SC 29102
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 15-GS-10-6030 - Attempted Murder - Charleston
 - (b) 15-GS-10-6031 - Firearms Provision - Charleston
 - (c) 15-GS-10-6032 - Disch Firearm in Dwelling - Charleston

- (d) 17-GS-43-1105 - Armed Robbery - Sumter
- (e) 17-GS-43-1106 - Armed Robbery - Sumter
- (f) 15-GS-14-0212 - Fail to stop for Officer - Clarendon
- (g) 16-GS-14-0111 - Acc after Felony A,B, C Murder - Clarendon
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 18, 2017 - Charleston 18 years
- (b) October 18, 2017 - Charleston 5 years
- (c) October 18, 2017 - Charleston 10 years
- (d) February 14, 2018 - Sumter 18 years
- (e) February 14, 2018 - Sumter 18 years
- (f) February 14, 2018 - Clarendon 12 years
- (g) February 14, 2018 - Clarendon 3 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 15, 2018
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) Involuntary guilty plea
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached Appendix
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

no

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any?

(c) your sentencing? yes

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

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

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

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

i. Melisa Gay, Esq., 222 W. Coleman Blvd Ste 221, Mt. Pleasant, SC 29464

ii. William Thrower, Deceased

iii. _____

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

i. plea and sentencing

ii. Post Conviction Relief

iii. _____

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

New Trial

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

no

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Greenville)

I, Daeshaun Forrest, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Daeshaun Forrest ✓

SWORN to and subscribed before me this 5th ^{day} ~~day~~
day of November 5, 2020.

Nancy C. Cobb (L.S.)
Notary Public

My Commission Expires: 1-23-2023

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

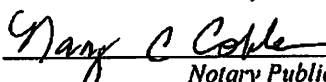
I, Daeshaun Forrest, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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



Applicant

SWORN or affirmed to and subscribed before me this
5th day of November, 2020.



Notary Public

My Commission Expires: 1-23-2023

STATE OF SOUTH CAROLINA)
COUNT OF CHARLESTON)
Daeshaun Forrest #346850,)
Applicant,)
Vs.)
State of South Carolina,)
Respondent.)

THE COURT OF COMMON PLEAS

CASE NO.: 2020 - CP - 10 - 5001

APPENDIX

FILED
2020 NOV 13 PM 1:41
JULIE J. ARMSTRONG
CLERK OF COURT

The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, would answer No. 11 of the Application for Post Conviction Relief as follows:

1. In June, 2020, Counsel was retained to represent the Applicant in a Post -Conviction Relief Action.
2. The Applicant pled guilty on October 18, 2017 in Charleston County to Attempted Murder, Firearms Provision and Discharging a firearm.
3. On February 14, 2018, in Sumter County Applicant pled guilty to two counts of Armed Robbery. On the same day, Applicant pled guilty to Accessory after Felony and Failure to Stop for Officer in Clarendon County.
4. On October 30, 2017 a Notice of Appeal was filed.
5. On may 18, 2018 a remittitur was sent to the Lower Court from the Court of Appeals.
6. The Applicant believed that William Thrower had timely filed a Post Conviction Relief Application. That this turned out not to be true. See attached Affidavit of Tricia Blanchette.
7. That Counsel for the Applicant is informed and believes that the Applicant should be granted an evidentiary hearing due to excusable neglect.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', written over a horizontal line.

Tommy A. Thomas, Esq.
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063

November 9, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

AFFIDAVIT

I, Tricia Blanchette, Esquire, being duly sworn would state as follows:

1. On October 18, 2017, Daeshawn Forrest pled to Attempted Murder, Firearms Provision and Discharging a firearm in Charleston County. On February 14, 2018, Daeshawn Foster pled guilty to two counts of Armed Robbery from Sumter County, as well as one count of Accessory after Felony and one count of Failure to Stop for Officer out of Clarendon County. He was sentenced to eighteen (18) years. He was represented by Melissa Gay, Esquire.
2. On August 6, 2019, I had a consultation at Lieber with Daeshaun A. Forrest. He raised concerns that the attorney handling his PCR, William Thrower, Esquire, had died. It was his understanding that Attorney Thrower had filed a PCR Application in Charleston County and consulted with Attorney Gay, the Solicitor's Office and/or the Court about a resentencing in Charleston and Sumter County.
3. On August 22, 2019, I contacted the Office of the Attorney General after a review of the Clerk of Court's website for Charleston and Sumter County did not show a PCR Action filed. Thereafter, the Attorney General's office responded that they had nothing on file in their office.
4. On October 18, 2019, I received a review and consultation fee from Mr. Forrest's mother who had been attempting to get access to Mr. Thrower's file and assist her son in pursuing his PCR Action.
5. On October 28, 2019 I met with Mr. Forrest at Lieber and had him sign authorization to contact the Receiver's Office at the Office of Disciplinary Counsel. I gave him documents regarding Attorney Gay's disciplinary matters, and I told him that I hoped the file would contain a PCR Application prepared by Mr. Thrower and/or contacts Mr. Thrower made regarding resentencing.
6. Following that meeting, I contacted the Receiver's Office and obtained a form for Mr. Forrest to complete to authorize Mr. Thrower's file to be turned over to my care. I sent the form twice to Mr. Forrest, but it was not received by him.
7. On December 5, 2019, I went to Lieber to get the Receiver's form signed by Mr. Forrest to obtain Mr. Thrower's file.
8. On December 6, 2019, I provided said form to Patty Lundy at the Office of Disciplinary Counsel.
9. On December 9, 2019, I followed up with Ms. Lundy by email asking if I could pick up the file. I was told it would take some time to retrieve and locate in a warehouse. Thereafter, I continued to follow up regarding obtaining the file.

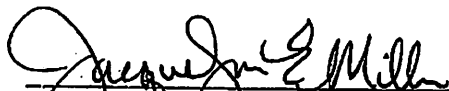
10. On February 3, 2020, I was informed that I could pick up the file later that week. I obtained the file and set up a call with Mr. Forrest.
11. On February 13, 2020 I spoke with Mr. Forrest regarding the contents of the file. I informed him that I did not find a draft or completed PCR Application nor did I find anything regarding work towards resentencing.
12. On February 18, 2020, I forwarded a copy of file to client and mother and referred them to Tommy Thomas, Esquire. I spoke with Mr. Thomas to let him know the family would be contacting him.
13. On March 3, 2020 I had a final meeting with Mr. Forrest at Lieber regarding this matter. Thereafter, with Mr. Forrest's consent, I provided Mr. Thrower's file and a copy of my work product to Attorney Thomas.
14. It is my opinion that Mr. Forrest believed that a timely PCR Application had been completed and filed by Mr. Thrower. Upon receipt of his file from Mr. Thrower and checking the records of the Clerk of Court and Office of the Attorney General, I told Mr. Forrest I could find no evidence of such Application on February 13, 2020, and I advised him to obtain counsel to file a PCR Application. I did not offer him representation as I found my involvement may require an Affidavit and/or testimony at a hearing.

FURTHER AFFIANT SAYETH NOT.



Tricia Blanchette
 Attorney at Law
 Law Office of Tricia A. Blanchette
 PO Box 2147
 Leesville, SC 29070
 803-908-3266

Sworn to before me this 28 day of July, 2020



Notary Public for the State of South Carolina.
 My Commission Expires: 5/1/26



THOMAS LAW

November 9, 2020

Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

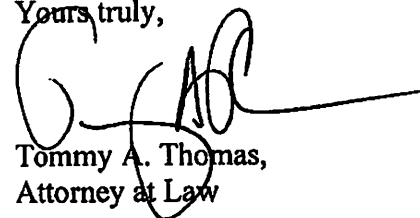
RE: Daeshaun Forrest #346850 v. State

Dear Sir or Madam:

Enclosed please find for filing an original and a copy of a Post Conviction Relief Application with coversheet for filing in the above captioned action. Please be advised that I have been retained to represent Mr. Forrest regarding this action.

Kindly return the clocked copies to me in the enclosed envelope. Thank you and should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem

TOMMY A. THOMAS, P.C.

803 732 5507 | FAX 803 781 4226 | INMATE LINE 803 732 6542
HARRINGTON BUILDING, 7588 WOODROW STREET, IRMO, SC 29063
MAIL: P.O. BOX 88, IRMO, SC 29063

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Daeshaun Forrest, SCDC # 346850,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2020-CP-10-5001

**RETURN AND MOTION TO DISMISS
(Counsel Retained)**

FILED
2021 OCT 29 AM 10:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY DGR

In response to the amended post-conviction relief (PCR) application filed by Applicant Daeshaun Forrest on November 13, 2020¹, and received by Respondent the State of South Carolina on November 13, 2020, Respondent makes this return:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its October 2015 term, the Charleston County Grand Jury indicted Applicant for attempted murder (2015-GS-10-06030); possession of a weapon during the commission of a violent crime (2015-GS-10-06031); discharging firearms into a dwelling (2015-GS-10-06032). Applicant was represented by Melissa Gay, Esquire. Assistant Solicitor Edward Regin “Ted” Corvey, III of the Ninth Circuit Solicitor’s Office prosecuted the case.

¹ Respondent’s return was due to be filed on January 13, 2021. See Rule 12(a), SCRCP (“[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.”) Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.”); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

On October 13, 2017, Applicant appeared before the Honorable Donald B. Hocker, where he pled guilty as indicted. On October 18, 2017, Judge Dennis sentenced Applicant to five years for possession of a weapon during the commission of a violent crime, ten years for discharging firearms into a dwelling and thirty years upon the service of eighteen years, to be served concurrently.

Direct Appeal

On October 24, 2017, a notice of direct appeal was filed on Applicant's behalf. On December 19, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal because he failed to provide a sufficient guilty plea explanation. Applicant then filed a motion to reinstate appeal on December 21, 2017. The South Carolina Court of Appeals denied the motion to reinstate, stating that there was no material fact or principle of law either overlooked or disregarded, so there is no basis for reinstating. The Remittitur was sent May 18, 2018.

II. ALLEGATIONS RAISED IN APPLICATION

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

As his requested relief, Applicant states he is seeking a new trial.

Attached to and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records of the current PCR action. The State reserves the right to amend this Return upon receipt of any relevant materials.

III. ARGUMENT

Respondent submits all of Applicant's remaining allegations for post-conviction relief should be summarily dismissed for her failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

- (A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.
- (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C) If the application contends that there is evidence of material facts not previously presented and heard that required vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

Id. §§ 17-27-45(A)-(C).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

In the present case, Applicant pled guilty to all offenses on October 13, 2018. He pursued a direct appeal that was denied and remitted to the lower court on May 18, 2018. Therefore, any post-conviction relief action must have been filed on or before May 18, 2019. Applicant filed his application on November 13, 2020, well beyond the statutory filing period had expired. Therefore, all allegations should be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

In his application, Applicant argues the statute of limitations as set forth in S.C. Code Ann. § 17-27-45 should be equitably tolled because of “excusable neglect,” stating that Applicant’s counsel failed to file a timely PCR application. Respondent submits there is no authority to toll the statute of limitations in this case.

Our courts have held that “statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system.” *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). *Moates* explained:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Id. Statutes of limitations should be followed as strict rules in order to set a hard deadline to ensure an organized legal system.

In rare circumstances, the statute of limitations will be equitably tolled to allow a petitioner the opportunity to exercise his or her rights when they were denied the chance to do so. This doctrine has been specifically extended into the context of post-conviction relief cases, as well. Equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial

remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim. *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008). *Pelzer* explains that the court typically applies the extraordinary circumstances doctrine when the plaintiff has been actively misled by another party. "It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights." *Id.* However, the equitable tolling doctrine does not require wrongful conduct on the part of the State, such as fraud or misrepresentation. *Id.*

Pelzer explained the doctrine should be limited to very exclusive circumstances. "[E]quitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine." *Pelzer*, 378 S.C. at 521, 662 S.E.2d at 620. *Pelzer* cited to an opinion from the Fourth Circuit Court of Appeals in denying equitable tolling to a party as "particularly illuminating:"

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loosen the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result.

Pelzer, at 378 S.C. 522-23, 662 S.E.2d at 621 (citing *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir.2000) (holding habeas petitioner's missing filing deadline due to erroneous advice from counsel not extraordinary circumstance requiring equitable tolling))).

In *Pelzer*, a post-conviction relief applicant notarized and mailed his application before the statute of limitations expired, but mailed it to the Office of Appellate Defense instead of to the county Clerk of Court for filing. 378 S.C. at 518, 662 S.E.2d at 619. The Office of Appellate Defense forwarded it to the Clerk, but it was not received by the Clerk until after the statute of limitations had expired. *Id.* at 518-19, 662 S.E.2d at 619. The circuit court dismissed the application as untimely. The Court of Appeals affirmed, finding that mailing did not constitute filing and “the narrow window by which *Pelzer's* application missed the statute of limitations [could not] be considered as so exceptional a circumstance as to warrant equitable tolling.” *Id.* at 522, 662 S.E.2d at 621.

This Court has also chosen **not** to extend the doctrine of equitable tolling to situations where the applicant claimed he was ignorant of the statute of limitations because he was incarcerated in another state. *Leamon v. State*, 363 S.C. 432, 611 S.E.2d 494 (2005) (holding incarceration in another state does not toll the running of the statute of limitations). *Leamon* explained the applicant had a full year to submit a post-conviction petition, and ignorance of the statute of limitations is not an excuse for late filing. *Id.*, 363 S.C. at 435, 611 S.E.2d at 496.

This Court has held that the statute of limitations should be equitably tolled for the filing of a post-conviction relief application in limited circumstances. See *Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009) (finding the statute of limitations should be equitably tolled when a mentally incompetent PCR applicant was prevented from timely filing by his mental incompetency, and the applicant should proceed with his PCR action only if the application was

filed within one year of the applicant regaining competency); *Mose v. State*, 420 S.C. 500, 803 S.E.2d 718 (2017) (allowing equitable tolling where the applicant notarized and relinquished control of his application to prison authorities for mailing seventeen days prior to the filing deadline, but due to circumstances outside applicant's control, the application was not filed until three days past the deadline). Equitable tolling has also been allowed where "extraordinary circumstances prevented the plaintiff from filing despite his or her diligence" and where "the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim." *Pelzer*, 378 S.C. at 521, 662 S.E.2d at 621.

In the present case, Applicant has presented no extraordinary circumstances to warrant tolling of the statute of limitations. As the *Leamon* Court similarly found, Applicant had a full year to submit a post-conviction petition, and ignorance of the statute of limitations is not an excuse for late filing. *Id.*, 363 S.C. at 435, 611 S.E.2d at 496.

IV. DENIAL OF ALL OTHER ALLEGATIONS

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

V. REQUEST FOR RELIEF

WHEREFORE, Respondent requests all allegations raised in Applicant's application be dismissed as barred by the statute of limitations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LAUREN T. MIMS
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

October 27, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2020-CP-10-5001

DAESHAUN FORREST, #346850

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

CERTIFICATE OF SERVICE BY MAIL

2021 OCT 29 AM 10:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY DGR

FILED

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

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, SC 29063

DATED this 27th day of October, 2021.

Vickie Hall

Vickie Hall, Legal Assistant
For Respondent

HH
GS
AG
SOL

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Daeshaun Forrest, SCDC # 346850,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-10-5001

CONDITIONAL ORDER OF DISMISSAL

FILED
2021 DEC -6 PM 35
JULIE J. ARISTIDE
CLERK OF COURT

This matter is before the Court by way of an application for Post-Conviction Relief (PCR) filed by Daeshaun Forrest (Applicant) on November 13, 2020:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its October 2015 term, the Charleston County Grand Jury indicted Applicant for attempted murder (2015-GS-10-06030); possession of a weapon during the commission of a violent crime (2015-GS-10-06031); discharging firearms into a dwelling (2015-GS-10-06032). Applicant was represented by Melissa Gay, Esquire. Assistant Solicitor Edward Regin "Ted" Corvey, III of the Ninth Circuit Solicitor's Office prosecuted the case.

On October 13, 2017, Applicant appeared before the Honorable Donald B. Hocker, where he pled guilty as indicted. On October 18, 2017, Judge Dennis sentenced Applicant to five years for possession of a weapon during the commission of a violent crime, ten years for discharging firearms into a dwelling and thirty years upon the service of eighteen years, to be served concurrently.

Direct Appeal

On October 24, 2017, a notice of direct appeal was filed on Applicant's behalf. On December 19, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal because he failed to provide a sufficient guilty plea explanation. Applicant then filed a motion to reinstate appeal on December 21, 2017. The South Carolina Court of Appeals denied the motion to reinstate, stating that there was no material fact or principle of law either overlooked or disregarded, so there is no basis for reinstating. The Remittitur was sent May 18, 2018.

For purposes of the Conditional Order of Dismissal, the Court incorporates the Charleston County Clerk of Court records regarding Applicant's conviction, Applicant's SCDC records, the and records of this PCR action.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law and all relevant supporting documents. Pursuant to South Carolina Code Sections 17-27-70 and -80, this court informs the parties of its intent to dismiss no genuine issue of material fact which would necessitate an evidentiary hearing. *See* S.C. Code Ann. §17-27-70(b) (establishing procedure for summary disposition of PCR applications) *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). Respondent moves for summary dismissal, and this Court finds summary dismissal is appropriate for the following reasons:

Statute of Limitations

This Court finds this application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2014). Specifically, the act requires as follows:



- (A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.
- (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C) If the application contends that there is evidence of material facts not previously presented and heard that required vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

Id. §§ 17-27-45(A)-(C).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, subsection 17-27-70(c) of the South Carolina Code authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

In the present case, Applicant alleges that equitable tolling should apply to his PCR application due to ‘excusable neglect,’ stating that Applicant’s counsel failed to file a timely PCR application. However, this Court finds that no inexcusable neglect occurred, thus the application for PCR shall be denied.

Our courts have held that “statutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system.” *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). *Moates* explained:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Id. Statutes of limitations should be followed as strict rules in order to set a hard deadline to ensure an organized legal system.

In rare circumstances, the statute of limitations will be equitably tolled to allow a petitioner the opportunity to exercise his or her rights when they were denied the chance to do so. This doctrine has been specifically extended into the context of post-conviction relief cases, as well. Equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim. *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619-20 (Ct. App. 2008). *Pelzer* explains that the court typically applies the extraordinary circumstances doctrine when the plaintiff has been actively misled by another party. “It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights.” *Id.* However, the equitable tolling doctrine does not require wrongful conduct on the part of the State, such as fraud or misrepresentation. *Id.*



Pelzer explained the doctrine should be limited to very exclusive circumstances. “[E]quitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.” *Pelzer*, 378 S.C. at 521, 662 S.E.2d at 620. *Pelzer* cited to an opinion from the Fourth Circuit Court of Appeals in denying equitable tolling to a party as “particularly illuminating:”

[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loosen the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result.

Pelzer, at 378 S.C. 522-23, 662 S.E.2d at 621 (citing *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir.2000) (holding habeas petitioner's missing filing deadline due to erroneous advice from counsel not extraordinary circumstance requiring equitable tolling)).

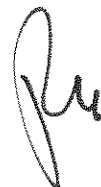
In *Pelzer*, a post-conviction relief applicant notarized and mailed his application before the statute of limitations expired, but mailed it to the Office of Appellate Defense instead of to the county Clerk of Court for filing. 378 S.C. at 518, 662 S.E.2d at 619. The Office of Appellate Defense forwarded it to the Clerk, but it was not received by the Clerk until after the statute of limitations had expired. *Id.* at 518-19, 662 S.E.2d at 619. The circuit court dismissed the application as untimely. The Court of Appeals affirmed, finding that mailing did not constitute filing and “the narrow window by which *Pelzer's* application missed the statute of limitations

[could not] be considered as so exceptional a circumstance as to warrant equitable tolling.” *Id.* at 522, 662 S.E.2d at 621.

This Court has also chosen not to extend the doctrine of equitable tolling to situations where the applicant claimed he was ignorant of the statute of limitations because he was incarcerated in another state. *Leamon v. State*, 363 S.C. 432, 611 S.E.2d 494 (2005) (holding incarceration in another state does not toll the running of the statute of limitations). *Leamon* explained the applicant had a full year to submit a post-conviction petition, and ignorance of the statute of limitations is not an excuse for late filing. *Id.*, 363 S.C. at 435, 611 S.E.2d at 496.

This Court has held that the statute of limitations should be equitably tolled for the filing of a post-conviction relief application in limited circumstances. *See Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009) (finding the statute of limitations should be equitably tolled when a mentally incompetent PCR applicant was prevented from timely filing by his mental incompetency, and the applicant should proceed with his PCR action only if the application was filed within one year of the applicant regaining competency); *Mose v. State*, 420 S.C. 500, 803 S.E.2d 718 (2017) (allowing equitable tolling where the applicant notarized and relinquished control of his application to prison authorities for mailing seventeen days prior to the filing deadline, but due to circumstances outside applicant’s control, the application was not filed until three days past the deadline). Equitable tolling has also been allowed where “extraordinary circumstances prevented the plaintiff from filing despite his or her diligence” and where “the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.” *Pelzer*, 378 S.C. at 521, 662 S.E.2d at 621.

In the present case, Applicant has presented no extraordinary circumstances present to warrant tolling of the statute of limitations. As the *Leamon* Court similarly found, Applicant had



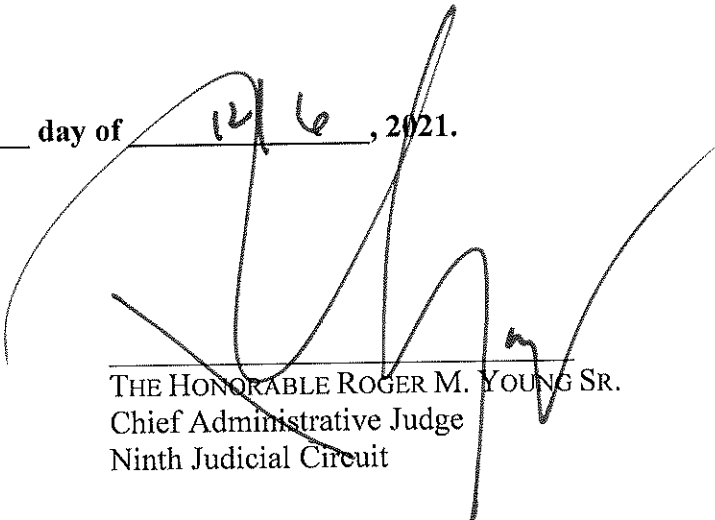
a full year to submit a post-conviction petition, and ignorance of the statute of limitations is not an excuse for late filing. *Id.*, 363 S.C. at 435, 611 S.E.2d at 496. Therefore, Applicant's application for post-conviction relief fails to comply with the statute of limitations and shall be summarily dismissed.

III. CONCLUSION

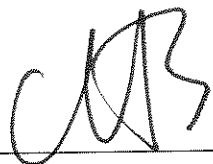
Pursuant to subsection 17-27-70(b) of the South Carolina Code (2014), this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have, factual or legal, with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Lauren Mims, Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this ____ day of 12/6, 2021.



THE HONORABLE ROGER M. YOUNG SR.
Chief Administrative Judge
Ninth Judicial Circuit


_____, South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT

DOCKET NO: 2020-CP-10-5001

DAESHAUN FORREST #346850)
)
 Applicant.)
)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

REPLY TO CONDITIONAL ORDER
 OF DISMISSAL

BY
 DGR

JULIE J. ARMSTRONG
 CLERK OF COURT

2021 DEC 20 AM 11:45

FILED

The Applicant, through his attorney Tommy A. Thomas, would reply to the Conditional Order of Dismissal as follows:

PROCEDURAL HISTORY

During its October 2015 term, the Charleston County Grand Jury indicted Applicant for attempted murder (2015-GS-10-06030), possession of a weapon during the commission of a violent crime (2015-GS-10-06031); discharging firearms into a dwelling (2015-GS-10-06032). Applicant was represented by Melissa Gay, Esq. Assistant Solicitor Edward Regin "Ted" Corvey, III of the Ninth Circuit Solicitor's Office prosecuted the case.

On October 13, 2017, Applicant appeared before the Honorable Donald B. Hocker, where he pled guilty as indicted. On October 18, 2017, Judge Dennis sentenced Applicant to five years for possession of a weapon during the commission of a violent crime, ten years for discharging firearms into a dwelling and thirty years upon the service of eighteen years, to be served concurrently.

On October 24, 2017, a notice of direct appeal was filed on Applicant's behalf. On December 19, 2027, the South Carolina Court of Appeals dismissed Applicant's appeal because

he failed to provide a sufficient guilty plea explanation. Applicant then filed a Motion to reinstate appeal on December 21, 2017. The South Carolina Court of Appeals denied the motion to reinstate, stating that there was no material fact or principle of law either overlooked or disregarded, so there is no basis for reinstating. The Remittitur was sent May 18, 2018.

ARGUMENT

The State argues that the Applicant is barred from proceeding to an evidentiary hearing on the basis of the statute of limitations. The Respondent cites 15-27-10 - 160 Post Conviction Procedure Act S.C. Code Ann. "An application must be filed within one year after the entry of a Judgement of Conviction or within one year after the sending of the Remittitur to the Lower Court from an Appeal, or the filing of a final decision on Appeal, whichever is later." The Respondent does acknowledge that under rare circumstances that the Statute of Limitations can be equitably tolled and cites the case of Pelzer v. State 378 S.C. 516, 662 SE 2d 618 Ct of Appeals (2008). In conclusion, the Respondent argues that in the Applicant's case, he has presented no extraordinary circumstances to warrant a tolling of the statute of limitations and cites Leamon v. State 363 S.C. 432, 611 SE 2d 494 (2005).

The Applicant would contend that there are in fact extra ordinary circumstances which would allow him to go forward to an evidentiary hearing. The Respondent's site to the Leamon case as used in their argument, has no relevance to the issue at hand. The Leamon case is in reference to ignorance to the statute of limitations is not an excuse for late filing. In this case, the Applicant is not arguing ignorance of the statute of limitations. The Applicant is arguing that he retained counsel for Post Conviction Relief and his attorney failed to file a Post Conviction Relief Application timely. It was only after the Attorney's death that the Applicant discovered that no action had been filed. The Applicant would argue that under Pelzer, he is entitled to

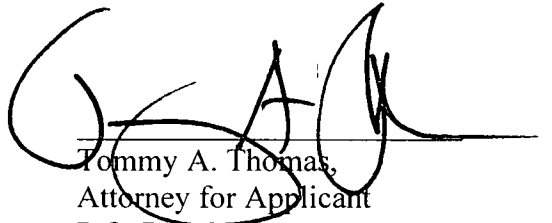
equitable tolling of the statute of limitations and further that he is entitled to an evidentiary hearing on the merits.

In the Courts' Conditional Order of Dismissal, the Court notes that Pelzer holds in part that the Court typically applies extraordinary circumstance doctrine when the Plaintiff has been misled by another party. In this case, the Applicant was intentionally misled by William Thrower, that an Application for Post Conviction Relief had been filed. Counsel further misled the Applicant by accepting a retainer fee and taking additional payments for the prosecution of a Post Conviction Relief Action. Affidavit of Veronica Brown attached. It was only until the Applicant retained Tricia Blanchette, Esq. to look into this matter that he discovered otherwise. Pursuant to Attorney Blanchette's Affidavit, which is attached to the PCR Application, she was eventually able to pick up Attorney Thrower's file from the Office of Disciplinary Counsel on February 3, 2020. On February 13, 2020, she notified the Applicant that she did not find a completed or filed PCR Application, nor did she find anything regarding work towards representation. It was Attorney Blanchette's opinion that the Applicant believed that a timely PCR Application had been completed and filed by Attorney Thrower. The Applicant then filed his current Application for Post Conviction Relief on November 13, 2020. A copy of Attorney Blanchette's Affidavit is attached hereto.

Therefore, the Applicant would contend that he is entitled to an equitable tolling of the statutes of limitations. That there is evidence that he believed that an Application for Post Conviction Relief had been completed and timely filed by Attorney Thrower. That it wasn't determined until February 13, 2020 that Mr. Thrower had not worked on, prepared or filed the PCR Application. That current counsel was retained and an Application for Post Conviction Relief was filed. The Applicant would further contend that this type of facts scenario is exactly

what the Pelzer case would allow. This is a rare circumstance where the statute of limitations should be equitably tolled to allow the Applicant the opportunity to exercise his rights when he was denied the chance to do so.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. A. Thomas', written over a horizontal line.

Tommy A. Thomas,
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

December 17, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

DAESHAUN FORREST #346850)

DOCKET NO: 2020-CP-10-5001

Applicant.)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

AFFIDAVIT OF VERONICA BROWN

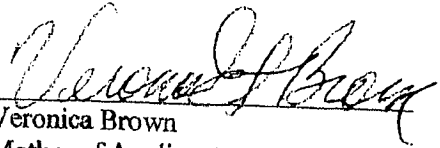
My name is Veronica Brown. I am the mother of Daeshaun Forrest. That the Affiant, being duly sworn would state as follows:

I was told by Mr Bill Thrower that he was for sure able to win this PCR case. We were suppose to go to court in March of the year he died he told me that he found a lot of discrepancy in this case. He told me that he spoke with Lisa Gay and believed there was issues there for PCR. Lisa did not represent my son properly. She did not fight for my son as a paid lawyer. She told me that if my son took an Alford Plea that he would get no more than 8 years. She allowed the solicitor and Judge Dennis to bully her in the court room. Mr. Thrower also said he spoke with the solicitor, Ted Corvy who he said is no longer a solicitor, and that he agree to get my son charges dropped to time served. I believe the Solicitor held the evidence from Lisa and my son until a couple days before my son was pressured by the solicitor and Lisa Gay to take the Alfred pleas.

In the end I found out that Mr. Thrower never even did anything with my son's case. There was no PCR applied for at all. I paid every 2 weeks and he just fed me lies. Attached are

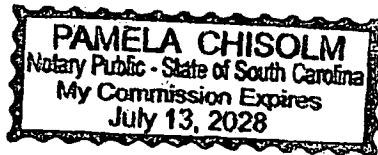
copies of checks that I gave to Mr. Thrower. I just want my son to have a day in court like Mr. Thrower promised me.

FURTHER AFFIANT SAYETH NOT.


Veronica Brown
Mother of Applicant

Sworn to before me this 17 day of
December, 2021


Notary Public for South Carolina
My commission Expires: July 13, 2028



HEAVENLY HOST JANITORIAL 0002

DATE 5/30/18 68-7497 2560

PAY TO THE ORDER OF William J. Thrower \$ 2000.00

Two thousand 00/100 DOLLARS

NAVY FEDERAL CREDIT UNION

FOR Don Paynet Veronica Brown

For Deborah Jones

VERONICA E FORREST BROWN 0005

DATE 9/25/18 68-7497 2560

PAY TO THE ORDER OF Thrower \$ 150.00

One hundred fifty 00/100 DOLLARS

NAVY FEDERAL CREDIT UNION

FOR Don Paynet Veronica Brown

For Deborah Jones

For deposit only

10055305

NAVY FEDERAL CREDIT UNION

PAY TO THE ORDER OF

SOUTHERN FIRST

MT. PLEASANT, SC 29404-5012

FOR DEPOSIT ONLY

WILLIAM J. THROWER

OPERATING

10055305

VERONICA E FORREST BROWN 0001

DATE 8/1/18 68-7497 2560

PAY TO THE ORDER OF William Thrower \$ 400.00

four hundred 00/100 DOLLARS

NAVY FEDERAL CREDIT UNION

FOR Deborah Forrest Veronica Brown

Deborah Jones

For deposit only

1135

10055305

NAVY FEDERAL CREDIT UNION

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

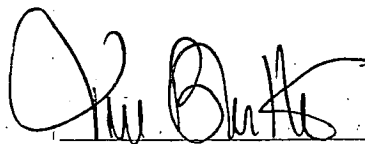
AFFIDAVIT

I, Tricia Blanchette, Esquire, being duly sworn would state as follows:

1. On October 18, 2017, Daeshawn Forrest pled to Attempted Murder, Firearms Provision and Discharging a firearm in Charleston County. On February 14, 2018, Daeshawn Foster pled guilty to two counts of Armed Robbery from Sumter County, as well as one count of Accessory after Felony and one count of Failure to Stop for Officer out of Clarendon County. He was sentenced to eighteen (18) years. He was represented by Melissa Gay, Esquire.
2. On August 6, 2019, I had a consultation at Lieber with Daeshaun A. Forrest. He raised concerns that the attorney handling his PCR, William Thrower, Esquire, had died. It was his understanding that Attorney Thrower had filed a PCR Application in Charleston County and consulted with Attorney Gay, the Solicitor's Office and/or the Court about a resentencing in Charleston and Sumter County.
3. On August 22, 2019, I contacted the Office of the Attorney General after a review of the Clerk of Court's website for Charleston and Sumter County did not show a PCR Action filed. Thereafter, the Attorney General's office responded that they had nothing on file in their office.
4. On October 18, 2019, I received a review and consultation fee from Mr. Forrest's mother who had been attempting to get access to Mr. Thrower's file and assist her son in pursuing his PCR Action.
5. On October 28, 2019 I met with Mr. Forrest at Lieber and had him sign authorization to contact the Receiver's Office at the Office of Disciplinary Counsel. I gave him documents regarding Attorney Gay's disciplinary matters, and I told him that I hoped the file would contain a PCR Application prepared by Mr. Thrower and/or contacts Mr. Thrower made regarding resentencing.
6. Following that meeting, I contacted the Receiver's Office and obtained a form for Mr. Forrest to complete to authorize Mr. Thrower's file to be turned over to my care. I sent the form twice to Mr. Forrest, but it was not received by him.
7. On December 5, 2019, I went to Lieber to get the Receiver's form signed by Mr. Forrest to obtain Mr. Thrower's file.
8. On December 6, 2019, I provided said form to Patty Lundy at the Office of Disciplinary Counsel.
9. On December 9, 2019, I followed up with Ms. Lundy by email asking if I could pick up the file. I was told it would take some time to retrieve and locate in a warehouse. Thereafter, I continued to follow up regarding obtaining the file.

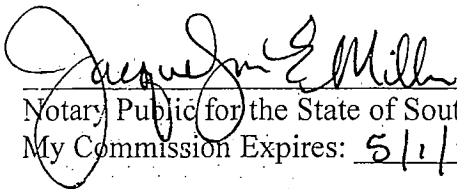
10. On February 3, 2020, I was informed that I could pick up the file later that week. I obtained the file and set up a call with Mr. Forrest.
11. On February 13, 2020 I spoke with Mr. Forrest regarding the contents of the file. I informed him that I did not find a draft or completed PCR Application nor did I find anything regarding work towards resentencing.
12. On February 18, 2020, I forwarded a copy of file to client and mother and referred them to Tommy Thomas, Esquire. I spoke with Mr. Thomas to let him know the family would be contacting him.
13. On March 3, 2020 I had a final meeting with Mr. Forrest at Lieber regarding this matter. Thereafter, with Mr. Forrest's consent, I provided Mr. Thrower's file and a copy of my work product to Attorney Thomas.
14. It is my opinion that Mr. Forrest believed that a timely PCR Application had been completed and filed by Mr. Thrower. Upon receipt of his file from Mr. Thrower and checking the records of the Clerk of Court and Office of the Attorney General, I told Mr. Forrest I could find no evidence of such Application on February 13, 2020, and I advised him to obtain counsel to file a PCR Application. I did not offer him representation as I found my involvement may require an Affidavit and/or testimony at a hearing.

FURTHER AFFIANT SAYETH NOT.



Tricia Blanchette
Attorney at Law
Law Office of Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
803-908-3266

Sworn to before me this 28 day of July, 2020



Notary Public for the State of South Carolina
My Commission Expires: 5/1/26

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT

DOCKET NO: 2020-CP-10-5001

DAESHAUN FORREST #346850)
)
 Applicant.)
)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
)

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Applicant
 hereby certify that I emailed, a copy of a Reply to Conditional Order of Dismissal to Lauren
 Mims, Esq. of the Attorney General's Office, at:

Lauren Mims, Esq.
laurenmims@scag.gov
 Attorney General's Office
 P.O. Box 11549
 Columbia, SC 29211-1549



Jacquelyn E. Miller
 Paralegal to Tommy A. Thomas
 Attorney for Applicant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

December 17, 2021

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

2020-CP-10-05001

Daeshaun A. Forrest)

) TRANSCRIPT OF RECORD

-vs-)

) November 4, 2022

State of South Carolina)

) Via WebEx

B E F O R E:

The Honorable Diane S. Goodstein, Judge

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

Lauren T. Mims, Esquire
Attorney for the State

Tommy A. Thomas, Esquire
Attorney for the Applicant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

1 THE COURT: Good morning.

2 MR. THOMAS: Good morning.

3 THE COURT: I am so sorry I'm late.

4 I have a new computer, and it had to be taught things,
5 like the internet, and I'm just real sorry, everybody.
6 I should have done this last night, but I was so tired
7 when we got in, but thank you, guys, for your patience.
8 I really appreciate it, and I see we have our Applicant.
9 Good morning. Thank you for being on the WebEx.
10 And, Mr. Thomas, does your client consent to proceeding
11 in this way?

12 MR. THOMAS: Yes, ma'am, from my
13 understanding. We spoke yesterday, and he does.

14 THE COURT: That is awesome. Well, I sure
15 appreciate you doing that.

16 MR. THOMAS: Yes, ma'am.

17 THE COURT: Although, I'm afraid we're
18 not as efficient as I thought we might be, but I really
19 appreciate you participating like this.

20 MR. THOMAS: Yes, ma'am.

21 THE COURT: All right. Ms. Mims, if you
22 will introduce the case.

23 MS. MIMS: Yes, ma'am. This is the hearing
24 on the State's motion to dismiss for Daeshaun A.
25 Forrest, Docket No. 2020-CP-10-05001. As far as a brief

1 procedural history, Applicant is presently confined
2 in the South Carolina Department of Corrections.
3 During the October 2015 term, the Charleston County
4 Grand Jury indicted Applicant for attempted murder ---

5 THE COURT: Ms. Mims, hold on one second
6 for me. I'm so sorry.

7 MS. MIMS: No problem.

8 THE COURT: Hold on one second. I'm so
9 sorry.

10 MS. MIMS: It's okay.

11 THE COURT: All right. Now you can proceed.
12 I'm -- thank you.

13 MS. MIMS: Okay. I'll just start over.
14 Applicant is presently confined in the South Carolina
15 Department of Corrections. During the October 2015
16 term, the Charleston County Grand Jury indicted
17 Applicant for attempted murder, possession of a weapon
18 during the commission of a violent crime, discharging
19 firearms into a dwelling. Applicant was represented
20 by Melisa Gay, Esquire; Assistant Solicitor Edward
21 "Ted" Corvey of the Ninth Circuit Solicitor's Office
22 prosecuted the case.

23 On October 13, 2017, Applicant appeared
24 before the Honorable Donald B. Hocker, where he pled
25 guilty, as indicted, on October 18. He was sentenced

1 to five years for possession of a weapon during the
2 commission of a violent crime, ten years for discharging
3 firearms into a dwelling, and 30 years upon the service
4 of 18 years, to be served concurrently.

5 Applicant also filed a direct appeal.

6 A notice of appeal was filed on his behalf on October
7 24th, 2017. On December 19, 2017, the South Carolina
8 Court of Appeals dismissed Applicant's appeal, because
9 he failed to provide a sufficient guilty plea
10 explanation. Applicant then filed a motion to reinstate
11 appeal on December 21st, 2017. The South Carolina Court
12 of Appeals denied the motion to reinstate, stating there
13 was no material fact or principal of law overlooked
14 or disregarded, so there was no basis for reinstating.
15 The remittitur was sent May 18th, 2018.

16 Applicant then filed a post-conviction --
17 this post-conviction relief action on November 13, 2020.
18 Respondent submitted its return and motion to dismiss
19 on October 27, 2021. Judge Young entered into
20 a conditional order of dismissal on December 6, 2021.
21 Applicant's counsel filed a reply to the conditional
22 order of dismissal on December 20th, 2021, and this
23 hearing followed. And as Mr. Thomas has responded
24 to the conditional order of dismissal, I will allow
25 him to begin.

1 THE COURT: All right. Yes, sir,
2 Mr. Thomas.

3 MR. THOMAS: Yes, ma'am, if it pleases
4 the Court.

5 THE COURT: Yes, sir.

6 MR. THOMAS: We did respond to the
7 conditional order, and that has affidavits of both
8 Veronica Brown and also Tricia Blanchette.
9 Just briefly, what happened -- Lauren did a good
10 job as far as the summary of the procedural history.
11 There was an appeal filed. He did plea. He was
12 represented by Melisa Gay. The appeal was dismissed,
13 because there wasn't a viable reason as to why it should
14 be going forward from a guilty plea, and that was,
15 I believe, in May of 2018.

16 His mom, who is Veronica Brown, went
17 and hired Mr. Thrower, William Thrower, to represent
18 him in post conviction. And if you look at the
19 affidavit, there are two checks -- three checks actually
20 that are attached totaling \$400, \$500, \$600, first
21 one being 8/1 of '18, and also the other two for \$150
22 each was 9/25 of '18.

23 What happened from there is that,
24 unfortunately, Mr. Thrower passed away in January
25 of 2019. They thought that everything had been filed.

1 They did find out, I think, in February or March of 2019
2 that he had passed, but they just -- not being schooled
3 in the law, they assumed that he had done what he had
4 been paid to do, and that he had filed the application.

5 When they were unable to find out any more
6 information, they actually then were referred to
7 Tricia Blanchette, and Ms. Blanchette did her affidavit,
8 and that it took some time for her to determine whether
9 or not an application had been filed, and whether
10 or not Mr. Thrower had been actively working on the
11 postconviction.

12 What kind of complicated things
13 was that ODC picked up the file after his passing,
14 and she had to contact ODC, try to make arrangements
15 to get his file, which she finally did. And then
16 once she received it, and a final determination
17 was made, she then sent that -- referred that case
18 to me. We went, and we kind of validated all the things
19 that she had found, and we filed the application
20 for postconviction.

21 What we're asking the Court for today
22 is basically equitable tolling under the Pelzer case.
23 I do believe that scenario, in conjunction with COVID
24 coming in, in March of '20, complicated everything
25 because the courts were closed, and it was almost

1 impossible to communicate with anybody at SCDC.

2 And just in closing, in looking at Pelzer,
3 it sets out three, basically, situations where equitable
4 tolling has been deemed available. And what I think
5 is really kind of impressive or pressing in this case,
6 which we've included in our return, is that Pelzer
7 explains that the Court typically applies the
8 extraordinary circumstance doctrine when the Plaintiff
9 has been actively misled by another party.

10 Now, it does talk in Pelzer about
11 being misled by the State, or by the clerk's office
12 or something like that. But I think that the family
13 -- there is evidence that the family was misled
14 by Mr. Thrower that an application had been filed,
15 that this was pending, and that they really shouldn't
16 be penalized for them not being schooled in the law.

17 I mean, you and I or, you know, Lauren Mims,
18 we would know where to go, where to check and
19 everything. And that process really didn't begin
20 until Ms. Blanchette was retained, and it took a delay
21 there because of ODC, and then also there was another
22 delay that began -- a short delay that began in March
23 of '20 with COVID-19.

24 THE COURT: Now, Mr. Thomas, for our
25 record ---

1 MR. THOMAS: Yes, ma'am.

2 THE COURT: --- let's -- let me ask you
3 to -- let's chart the timing. You've done a fabulous
4 job now really in terms of summary.

5 MR. THOMAS: Yes, ma'am.

6 THE COURT: I'm going to ask you to let's
7 chart these occurrences.

8 MR. THOMAS: Yes, ma'am.

9 THE COURT: Because I think that's going
10 to be, you know, really important, particularly,
11 if you're looking for equitable tolling. So, I got
12 my pen; I got my paper.

13 MR. THOMAS: Yes, ma'am.

14 THE COURT: I'm going to start from May
15 the 18th, 2018, because that is my understanding that's
16 the date that the remittitur was sent ---

17 MR. THOMAS: Yes, ma'am.

18 THE COURT: --- dismissing the appeal,
19 right?

20 MR. THOMAS: Yes, ma'am.

21 THE COURT: So under -- if all was well,
22 then the statute would have run May the 18th of 2019 --
23 not 2019, but in that vicinity, because it would have
24 been when the remittitur ---

25 MR. THOMAS: Yes, ma'am.

1 THE COURT: --- would have been received.

2 MR. THOMAS: Yes, ma'am.

3 THE COURT: So let's talk in terms of --
4 you know, we're talking late May of 2019.

5 MR. THOMAS: Yes, ma'am.

6 THE COURT: So let's talk about that.

7 The next event that occurred after May of 2019,
8 was the retaining of Mr. Thrower; is that right?

9 MR. THOMAS: Yes, ma'am.

10 THE COURT: And that looks like that ---

11 MR. THOMAS: Yes, ma'am.

12 THE COURT: Okay.

13 MR. THOMAS: That was the retaining
14 of Mr. Thrower.

15 THE COURT: All right.

16 MR. THOMAS: And that was 8/1 of 2018
17 and 9/25 of 2018.

18 THE COURT: And 9/25 of 2018. Now let
19 me ask this. When the -- when ODC received the file
20 of Mr. Thrower -- well, let me ask you this way.
21 Have you had an opportunity to review Mr. Thrower's
22 file?

23 MR. THOMAS: I have not had an opportunity;
24 I have relied upon speaking with Tricia Blanchette.

25 THE COURT: Okay.

1 MR. THOMAS: We have spoken pretty
2 intensively -- or extensively, and also I had
3 discussions with her when she was working through
4 her affidavit.

5 THE COURT: Got it.

6 MR. THOMAS: Yes, ma'am.

7 THE COURT: Now -- so in her affidavit,
8 can you point me to language where she talks about
9 whether or not Mr. Thrower was actually retained,
10 as opposed to I'll talk to you for an hour, and you
11 can pay me for my hour, whatever that might be.
12 You know what I'm saying?

13 MR. THOMAS: Yes, ma'am, yes, ma'am.

14 THE COURT: Okay. All right.

15 MR. THOMAS: It appears from the affidavit
16 that on August 6 of 2019, she had a consult at Lieber
17 with Mr. Forrest. And then -- and the other date that's
18 in play in here is Mr. Thrower's passing in January
19 of 2019. So he passed relatively 9, 10, 11, 12 --
20 three or four months after the retaining in 8 of '18.
21 And ---

22 THE COURT: Let me ask this of you.

23 MR. THOMAS: Yes, ma'am.

24 THE COURT: Does it appear -- does it appear
25 in his file that he was actually retained?

1 MR. THOMAS: The only thing that we have,
2 there's -- from my understanding, there's nothing
3 in the file; there's nothing in regards to working
4 on the post-conviction application or anything.
5 The only thing that we have that indicates that
6 he was retained are the checks.

7 THE COURT: And was there -- was there,
8 in fact, a file created though?

9 MR. THOMAS: From what I understand,
10 and I don't want to be wrong about this -- if I can
11 beg the Court's indulgence just for a second.

12 THE COURT: Um-huh.

13 (Pause.)

14 THE COURT: Lauren, have you mailed those
15 affidavits to us?

16 MS. MIMS: They were included in the digital
17 packet, but I can get you over a packet right now.

18 THE COURT: Okay, that would be great.

19 MS. MIMS: Okay.

20 MR. THOMAS: Your Honor, if it pleases
21 the Court ---

22 THE COURT: And send it to the AOL e-mail,
23 Lauren.

24 MS. MIMS: Okay.

25 MR. THOMAS: Your Honor, if it pleases

1 the Court, it does appear that Ms. Blanchette picked
2 up a file from ODC, and that was on February 3rd
3 of 2020. She was informed that she could pick
4 up the file later that week, obtained the file, and set
5 up a call with Mr. Forrest. And on February 13th, 2020,
6 she spoke with Mr. Forrest regarding the contents
7 of the file, and I informed him that I did not find
8 a draft or a complete PCR application, and -- nor did
9 I find anything regarding work towards resentencing.

10 THE COURT: Okay. All right. Let me
11 do this. Just give me a second, and let me do this.
12 I'm going to walk down, and I'm going to get my iPad.
13 I'll step away for probably two minutes, so I can get
14 my iPad, because I want to look at those affidavits,
15 because I think they're critical.

16 MR. THOMAS: Yes, ma'am.

17 THE COURT: Because if he has -- if there's
18 a file with ODC, if there's a file, and you've got
19 the checks showing monies paid, that's pretty important.

20 MR. THOMAS: Yes, ma'am.

21 THE COURT: So let me run and go get that.
22 I'll be right back.

23 MR. THOMAS: Yes, ma'am.

24 THE COURT: Thank you all for your patience.
25 If anybody needs to step away and take a comfort break,

1 please feel free to do that.

2 (Recess taken.)

3 (Back on the record.)

4 THE COURT: Thank you all. I'm back.

5 Let me get this file up. Coming up now.

6 MS. MIMS: Your Honor, what I sent you
7 was Applicant's reply ---

8 THE COURT: Got it.

9 MS. MIMS: Yeah, the affidavit starts around
10 Page 4 or 5.

11 (Pause.)

12 THE COURT: All right. This says that
13 she provided -- Mr. Thomas, that you have a copy
14 of Mr. Thrower's file.

15 MR. THOMAS: Yes, ma'am, she did.
16 And I apologize.

17 THE COURT: That's okay.

18 MR. THOMAS: I've got a huge stack of stuff.
19 I'll be more than happy to ---

20 THE COURT: That is fine, Mr. Thomas.
21 Goodness gracious, that's fine.

22 MR. THOMAS: Yes, ma'am.

23 THE COURT: Goodness. Let me ask this
24 question just to kind of cut to the chase on this ---

25 MR. THOMAS: Yes, ma'am.

1 THE COURT: --- piece of the issue.

2 MR. THOMAS: Yes, ma'am.

3 THE COURT: Ms. Mims, is it the attorney
4 general's position that Mr. Thrower was not, was not,
5 retained?

6 MS. MIMS: We have no evidence either way.

7 THE COURT: Okay.

8 MS. MIMS: And, you know, he wasn't retained
9 at the time of the appeal. You know, we just have
10 no evidence to say whether he was or was not. You know,
11 we appreciate that, you know, Mr. Thomas provided
12 the checks and provided the affidavit from Ms. Brown,
13 but we have no retainer agreement or anything like that.

14 THE COURT: Okay. Okay.

15 MS. MIMS: And -- okay.

16 THE COURT: And that's -- well, it appears
17 that -- all right, if the remittitur was sent in
18 May of 2018, then our magical time would be May
19 of '19, right?

20 MR. THOMAS: Yes, ma'am.

21 MS. MIMS: Yes, Your Honor.

22 THE COURT: Okay. And it appears from
23 the -- it appears from what I'm being told that --
24 that the attempt to retain -- to retain Mr. Thrower,
25 it looks like we're looking at 5/30 of '18, looks like

1 there was -- it says down payment for Daeshaun Forrest,
2 and that is a check written on May the 30th of 2018.
3 And on May the 30th of 2018, all that would have been
4 available at that moment -- well, I don't know this.
5 I don't know this.

6 But it appears that certainly
7 is corroborative that his mother was attempting
8 to retain Mr. Thrower to do the PCR, because at that
9 point, the PCR was -- I gather was the next proceeding,
10 unless -- unless the appellate time for some
11 of the other charges -- unless that time had run.
12 Do you know what I mean? Because, obviously,
13 Mr. Forrest was dealing with charges from various
14 jurisdictions.

15 But if we're talking about this date,
16 it's looking as though she retained, or is attempting
17 to retain, or did retain Mr. Thrower for her son
18 very shortly after the remittitur on the appeal
19 would have been returned to Charleston. Now --
20 so -- and it says -- and then we've got -- although,
21 the affidavit of Ms. Brown says that she paid him every
22 two weeks, I certainly am showing, you know, substantial
23 money that -- by check that was paid.

24 And so she says, I paid every two weeks.
25 And, obviously, she's concerned that these -- that

1 what she thought was going to be done was not done.
2 All right. So, so -- okay. Now so that get's that --
3 let's talk about -- go back to our timeline.

4 MR. THOMAS: Yes, ma'am.

5 THE COURT: Because the next thing
6 that occurs, it appears, is that I've got a note
7 here -- it appears to me that towards the end of May,
8 there -- it appears that Mr. Thrower was retained
9 to do something, and that's the end of May of '18.

10 MR. THOMAS: Yes, ma'am.

11 THE COURT: And take it from there,
12 Mr. Thomas.

13 MR. THOMAS: Yes, ma'am. Yes, ma'am,
14 I'll be glad to. So we're looking -- I think we're
15 looking at a date -- a statute date of May of 2019,
16 which the Court had referenced earlier. Intervening
17 in there, Mr. Thrower, unfortunately, passes in
18 January of 2019, so we're still within the statute
19 of limitations at that time. He then contacts
20 Ms. Blanchette, and she ---

21 THE COURT: He, of course, now is
22 Mr. Forrest?

23 MR. THOMAS: Yes, ma'am. I will let ---

24 THE COURT: Because he can't be Mr. Thrower,
25 you know, unfortunately, right? Yeah.

1 MR. THOMAS: So, I think that now looking
2 at her affidavit, she determines completely that nothing
3 has been filed, and nothing has been worked up, because
4 she says on No. 11 of her affidavit on February 13th,
5 2020, "I spoke with Mr. Forrest regarding the contents
6 of the file. I informed him that I did not find a draft
7 or a completed PCR application." So what I would
8 argue is that now we're working from February of '20,
9 so we're now into '20.

10 THE COURT: Let me -- I hate to interrupt
11 you.

12 MR. THOMAS: Yes, ma'am.

13 THE COURT: Was Ms. Blanchette retained
14 by Mr. Forrest, or was she appointed by the Court ---

15 MR. THOMAS: She was retained ---

16 THE COURT: --- to help figure out what
17 is going on with Mr. Thrower's ---

18 MR. THOMAS: She was retained, Your Honor.

19 THE COURT: Okay, okay.

20 MR. THOMAS: So ---

21 THE COURT: Who was -- let me ask this.
22 I know ODC had Mr. Thrower's files. But who was
23 appointed by ODC to try to figure out what was -- figure
24 out the status of Mr. Thrower's clients?

25 MR. THOMAS: She says -- Tricia says that

1 on December 6 -- this is No. 8.

2 THE COURT: Okay, I missed that. Okay.

3 MR. THOMAS: On December 6, 2019,
4 she provided the form signed by Mr. Forrest
5 to Patty Lundy [ph.]. I do not know who Ms. Lundy
6 is. I don't know. Normally, I've dealt with ---

7 THE COURT: I think now they have lawyers
8 who are part of ODC that participate in that process,
9 so maybe Ms. Lundy was that person.

10 MR. THOMAS: They do, they do. And I had
11 dealt with another gentleman, and his name escapes me,
12 but he handles a lot of the deceased attorneys files.

13 THE COURT: Yes.

14 MR. THOMAS: Yes, ma'am.

15 THE COURT: Yeah, but it doesn't -- okay.
16 But it doesn't appear from this affidavit that Ms. Lundy
17 had contacted Mr. Forrest, does it?

18 MR. THOMAS: No, ma'am. No, ma'am, it does
19 not. I don't think there was any contact from ODC to
20 Mr. Forrest. Although, he did, from what I understand,
21 had applied to the -- and Mr. Forrest can testify
22 to this, I do not have those records, that he applied
23 to the bar for a refund of some monies, and I do think
24 that he did, or his mom received a refund of -- a small
25 refund of some money.

1 THE COURT: Of some of the fee.

2 MR. THOMAS: Yes, ma'am, yes, ma'am.

3 THE COURT: Okay, okay.

4 MR. THOMAS: So we would argue that
5 the date of February 13th, '20, she finds out -- she
6 has the file, she finds out that nothing has been filed.
7 She provides the affidavit to me on July 28th of '20,
8 we're now beyond the statute. And March, COVID comes
9 in, in '20. I had difficulties in contacting him.
10 We filed the post-conviction application in November
11 of '20.

12 THE COURT: Got it. Well, and I just --
13 I just noticed from the work that Ms. Blanchette
14 was doing, you can kind of see that she's working
15 at the end of '19, and, you know, by the first --
16 obviously, by the end of February of '20, that's when
17 the world woke up and realized there's this thing called
18 COVID, and by March -- by March, we were shut down.

19 MR. THOMAS: Everything was shut down,
20 yes, ma'am.

21 THE COURT: Yeah, it was. So this
22 is looking a little bit like a perfect storm.
23 Ms. Mims, let me hear from you.

24 MR. THOMAS: Yes.

25 MS. MIMS: Yes, Your Honor. I appreciate

25 | And then from that, we still don't have

1 a post-conviction relief application for another --
2 almost a year, from my understanding. And with all
3 of those factors together, I think it's just too unclear
4 to say that, you know, Mr. Thrower misled Mr. Forrest
5 and his mother, or that he wasn't working diligently
6 on a PCR application, because his untimely passing
7 happened while the statute of limitations -- before
8 the statute of limitations had run.

9 And, you know, in Pelzer and other
10 cases where equitable tolling has been held, you know,
11 there has been attempts from Applicants in all of those
12 cases, Mose v. State, Ferguson v. State, as well
13 as Pelzer v. State, attempts from Applicants to file
14 a PCR application. And, here, there has not been
15 an attempt from Mr. Forrest. And for those reasons,
16 Your Honor, I ask that you grant the State's motion
17 to dismiss.

18 THE COURT: Thank you so much, Ms. Mims.
19 Wonderful, wonderful presentation. This is going
20 to be the order of the Court. Mr. Thomas, I'm going
21 to ask you to please draft an order for me. I do think
22 that the attempts of Mr. Forrest to retain counsel,
23 and it's clear, based on the record before me,
24 that although he may have had matters pending in other
25 jurisdictions, what is clear is that the remittitur

1 would have arrived in Charleston County shortly before
2 the -- his mom took the steps to retain Mr. Thrower.

3 And it appears that while I haven't
4 seen a letter retaining -- an engagement letter
5 or a fee letter, in all candor, I think those very
6 well may be more -- it's been a long time since
7 I practiced law, but those may be more prevalent,
8 perhaps, on the civil side than the criminal side.

9 Although, I think that lawyers
10 are encouraged, if not required, to do otherwise.
11 I don't think Mr. Forrest ought to be penalized
12 for that, because his mom has a got check for \$2,000,
13 which is a lot of money, that says down payment for
14 her son.

15 And there isn't any indication before
16 me this morning that that money would have reasonably
17 gone for anything, other than retaining Mr. Thrower
18 to prosecute the PCR. That was -- if you will,
19 that was what the table was set for.

20 MR. THOMAS: Yes, ma'am.

21 THE COURT: And I can't -- you know, I hate
22 -- I hate to say that a person who is obviously --
23 and I don't -- quite frankly, I don't remember
24 the circumstances of Mr. Thrower's death, but my memory
25 is that he was ill for a short period of time, and then

1 he passed. And I don't -- I apologize. I don't
2 remember the circumstances, but that's my memory.

3 But I don't think that -- it's hard
4 to say that someone's dying misled a client, but clearly
5 I'm sure he would like -- he would much have preferred
6 to file that PCR rather than die. And so the fact
7 that he -- the fee had been paid, he passed away,
8 I'm not willing to find that he would not have filed
9 that PCR timely had he lived, just not willing to make
10 that determination.

11 And so -- and from everything that
12 I've been told, promptly, meaning, within a month
13 of learning of Mr. Thrower's passing, it appears
14 that Mr. Forrest began to kind of find out what
15 the status of his PCR was, and that effort was ongoing.
16 It was ongoing. I mean, Ms. Blanchette was retained,
17 and then Mr. Thomas was retained, and there was
18 a response filed to the order of dismissal, and then
19 the PCR filed.

20 You know, there are orders from the chief
21 justice, and I can't quote them, but in essence,
22 what the chief justice is saying, during the midst
23 of the pandemic, is people remember there was a pandemic
24 when you deal with each other, and I find it very
25 difficult because SCDC was shut down. And as time

1 went on, more and more lockdown to where, ultimately --
2 you know, as I recall, first of all, transportation
3 was shut down almost immediately, but there were still
4 things that were up and operational. And then, even
5 to this day, in large part, SCDC is shut down. And so,
6 you know, to say that COVID did not have a very dramatic
7 effect on SCDC would be to ignore reality.

8 And the fact that Mr. Thomas was able
9 to get something filed in the summer of 2020, to get
10 that PCR filed, is fairly remarkable, quite frankly.
11 So if this -- there is a quote from a case, and it was
12 actually made in the closing argument by Alex Sanders
13 in a case that he tried many years ago, and repeated
14 it when he was chief judge of the Court of Appeals.
15 And the quote was, "Well, if that is the law, then
16 the law was an ass." I quote Alex Sanders, chief judge
17 of the Court of Appeal.

18 If this -- in my mind, if equitable tolling
19 -- and I understand that, Ms. Mims, no one -- while
20 no one from the State misled Mr. Forrest, he was relying
21 on his lawyer, and I am confident that Mr. Thrower
22 didn't mean to die and leave Mr. Forrest without a PCR.
23 But if this -- if this isn't equitable, to my mind,
24 I don't know what would be. I think equitable tolling
25 must apply.

1 MR. THOMAS: Thank you, Your Honor.

2 THE COURT: And so you will have to --
3 Ms. Mims, Mr. Thomas, we'll be making law, so you better
4 draft -- you better draft yourself a special order then,
5 Mr. Thomas.

6 MR. THOMAS: Yes, ma'am, I will.

7 THE COURT: Because I think we're going
8 to see it -- we very well may see it in print
9 at a different level, and somebody is grading my papers.

10 MR. THOMAS: Yes, ma'am.

11 THE COURT: But I think equitable tolling
12 must apply. You know, it's important, Ms. Mims, that
13 the attorney -- all of this is going on, the attorney
14 general doesn't know much about it, so it's
15 heartbreaking. And if that last little -- if that
16 last piece could have happened while Mr. Forrest
17 was scurrying around, that would be a bit helpful
18 for the attorney general to be able to know.

19 You all didn't know, but it's clear
20 to me that there was an awful lot of effort being made
21 from Mr. Forrest to try to figure out what he was to do,
22 how he was to proceed to save the PCR. It was obviously
23 important to him. I'm so sorry that the attorney
24 general -- you guys are sort of out there, clearly,
25 without a whole lot of notice about what was going on.

1 But it's clear to me Mr. Forrest was doing
2 about everything I know -- about everything he could
3 do, other than pro se file the PCR. But if a person
4 wants a lawyer, I think he was doing everything.
5 He retained, ultimately, three lawyers to get this
6 thing done; Mr. Thrower, Ms. Blanchette, and Mr. Thomas.
7 If that doesn't show a pretty desperate attempt on his
8 part to get a PCR, I don't know what would. He's pretty
9 committed to it. So, Mr. Thomas ---

10 MR. THOMAS: Yes, ma'am.

11 THE COURT: --- now here is my rule, I begin
12 with 30 days.

13 MR. THOMAS: Yes, ma'am.

14 THE COURT: --- for your order. But listen,
15 Mr. Thomas, you know, you're not looking for things
16 to do, you've got plenty to do. So if you need longer,
17 just get with Ms. Mims so she knows, and shoot
18 me an email, you know, once y'all have chatted.
19 If you need longer, let me know, and you're welcome
20 to take that.

21 MR. THOMAS: Yes, ma'am.

22 THE COURT: I just -- what I do
23 is I calendar them. I just need to be able to keep
24 up with the -- when to expect your order, so I don't
25 let it languish.

1 MR. THOMAS: Yes, ma'am, I'll be glad to.

2 THE COURT: Okay. Thank you all so much.

3 MR. THOMAS: Yes, ma'am.

4 THE COURT: Thank you, Mr. Forrest.

5 Do you have any questions? If you do, Mr. Thomas --
6 obviously, you want to put it -- to put it in football
7 parlance, you won. So, Mr. Thomas is going to be
8 drafting me an order, and he's going to have to --
9 we're making a little bit of law here, Mr. Forrest,
10 which is nothing you want to be doing, so he's going
11 to take some good time to draft it, because it's got
12 to survive the appellate process. You with me?

13 MR. FORREST: Yes, ma'am.

14 THE COURT: So, I need you to be patient
15 with Mr. Thomas and with me and with Ms. Mims, because
16 Ms. Mims will be able to weigh in on his proposed order,
17 and then I'll -- and then I've got to weigh in on it,
18 and then I will sign it, and you will get a copy
19 of it when I've signed it from Mr. Thomas, and then
20 it may be appealed, because, you know, we're making
21 a little law, but the attorney general will make that
22 determination, and you'll either proceed on your PCR,
23 or it will go up on appeal.

24 But at this moment, what I have -- there's
25 a little used theory in our law called equitable

1 tolling. It's not used very often. I think this
2 is appropriate, but you're not meeting the elements
3 of the law, as it exists on equitable tolling. The
4 misrepresentation is -- or the misleading is supposed
5 to come from the State; I don't think the State has
6 misled you. I think you got misled, but I don't think
7 it was the State. The only remedy that is meaningful
8 is for me to equitably toll the statute of limitations,
9 which is what I'm doing.

10 The tolling -- the misleading came from
11 the death of your attorney. And I've got to call
12 it misleading, because that's the term in the case law,
13 but I don't -- I think you were misled, but I don't
14 think he intended to do that, okay? He died, but the
15 reality is that you are suffering the effects of that.
16 And so if there is, say -- if there is a theory
17 of equitable tolling, I believe that under the most,
18 most extraordinary circumstances, they ought to apply,
19 and I'm applying them. If the theory exists, I believe
20 they ought to reach out to embrace your circumstance.

21 MR. FORREST: Thank you.

22 THE COURT: All right. So we need some
23 patience, because you're wrapped up in the law.

24 MR. THOMAS: Yes, ma'am.

25 MR. FORREST: Yes, ma'am.

1 THE COURT: Thank you.

2 MR. THOMAS: Yes, ma'am, thank you.

3 THE COURT: Ms. Mims, I know you'll
4 do an excellent review. I'm just going to tell
5 you, you know, during -- I don't mind saying this,
6 Mr. Thomas, but Ms. Mims is one of my former law clerks,
7 but she was my COVID law clerk. And during that
8 particular period of time, she and I -- this was about
9 our relationship, it was on the video. But, you know,
10 she's got to stand on the law as it exists, and I can
11 appreciate that 100 percent.

12 MR. THOMAS: Yes, ma'am.

13 THE COURT: All right. Thank you.

14 MR. THOMAS: Yes, ma'am. Thank you so much.

15 THE COURT: Thank you all. Have a wonderful
16 weekend. Thank you. All right, bye.

17 MR. THOMAS: Bye.

18 (End of Transcript of Record.)
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)

County of Charleston)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 4th of November, 2022, via WebEx.

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

January 26, 2025



Yvestre Torres

Circuit Court Reporter

County of ☒ Charleston ☐ Berkeley

Case No. 2020-CP-10-05001

Daeshaun A. Forrest, 346850

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

ORDER

FILED
2022 NOV 22 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: _____ denied _____ granted _____ under advisement; a formal order will be filed (see below - No.6)
2. Motion(s) was/were heard in this case and the court orders:
The motion to dismiss and/or for summary judgment is hereby _____ granted _____ denied _____ under advisement, based upon the _____ statute of limitations and/or _____ the successive nature of the application or _____ other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:
_____ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.
_____ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or _____ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.
4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed _____ with prejudice _____ without prejudice.
- ✓ 5. Other: statute of limitations regarding applicant's
PCR is equitably tolled & a more formal
order is to follow
- ✓ 6. The court further orders:
_____ ✓ The _____ Attorney General ✓ Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within 30 days.
_____ Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.
_____ The court does not request proposed orders.

IT IS SO ORDERED.

Date: 11 / 08 / 2022

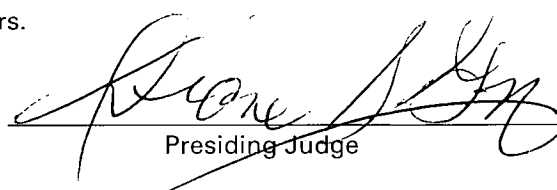
Charleston, S.C.

Court Reporter: Yvestre Torres

Attorney for State: Lauren T. Mims &

Samantha J. Weidauer

Attorney for Defendant: Tommy A. Thomas


Presiding Judge

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

DAESHAUN FORREST, #346850)

Applicant.)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

DOCKET NO: 2020-CP-10-5001

ORDER DENYING RESPONDENT'S
MOTION TO DISMISS

2023 MAY 25 AM 11:59

FILED

This matter is before the Court by way of an application for Post-Conviction Relief filed by Applicant on November 13, 2020. A Return and Motion to Dismiss was filed on October 29, 2021. A Conditional Order of Dismissal was filed on December 6, 2021. A Reply to Conditional ~~Order~~ ^{Order 285} of Dismissal was filed on December 20, 2021. A Motion Hearing was held on November 4, 2022.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its October 2015 term, the Charleston County Grand Jury indicted Applicant for attempted murder (2015-GS-10-06030); possession of a weapon during the commission of a violent crime (2012-GS-10-06031); discharging firearms into a dwelling (2015-GS-10-06032). Applicant was represented by Melisa Gay, Esquire. Assistant Solicitor Edward Regin "Ted" Corney, III of the Ninth Circuit Solicitor's Office prosecuted the case.

On October 13, 2017, Applicant appeared before the Honorable Donald B. Hocker, where he pled guilty as indicted. On October 18, 2017, Judge Dennis sentenced Applicant to five years for possession of a weapon during the commission of a violent crime, ten years for discharging

firearms into a dwelling, and thirty years upon the service of eighteen years for attempted murder, to be served concurrently.

Direct Appeal

On October 24, 2017, a notice of direct appeal was filed on Applicant's behalf. On December 19, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal because he failed to provide a sufficient guilty plea explanation. Applicant then filed a motion to reinstate appeal on December 21, 2017. The South Carolina Court of Appeals denied the motion to reinstate, stating that there was no material fact or principle of law either overlooked or disregarded, so there is no basis for reinstating. The remittitur was sent May 18, 2018.

The Honorable Roger M. Young, Sr. signed and filed a conditional order of dismissal on December 6, 2021. A reply to the conditional order of dismissal was filed on December 20, 2021. No final order has been signed or filed.

This matter is now before the Court on November 4, 2022, on the state's motion to dismiss.

Present before the Court is the applicant, Daeshaun Forrest, and his attorney, Tommy A. Thomas, Esquire. Lauren Mims, Esquire appeared for the State. The Court has before it the state's motion for dismissal, the conditional order of dismissal, and Applicant's reply to the conditional order of dismissal which contains an affidavit from Veronica Brown, photo copies of the front and back of three checks from Ms. Brown to William J. Thrower, and an affidavit of Tricia Blanchette.

Pursuant to argument by counsel for both the State and Applicant, the Court finds the following time line:

1. Applicant pled guilty to attempted murder, possession of a weapon during the commission of a violent crime, and discharging firearm into a dwelling on October 18, 2017. An appeal was filed, which was later dismissed in May 2018. Pursuant to the affidavit of Veronica Brown, Mr. William Thrower was retained to represent Applicant for a post-conviction relief action. Three checks were presented to the Court in the amount of \$400.00 dated August 1, 2018, and two checks in the amount of \$150.00 each dated September 25, 2018. Mr. Thrower passed away in January 2019.
2. Based upon the denial of the appeal in May 2018, it appears that the statute of limitations would expire in May 2019. Pursuant to the affidavit of Tricia Blanchette, Applicant reached out to Ms. Blanchette regarding the filing of his post-conviction relief action on August 6, 2019. Ms. Blanchette notes that it was Applicant's understanding that Mr. Thrower had filed a PCR Application in Charleston County. Ms. Blanchette was retained in October 18, 2019.
3. Due to Mr. Thrower's passing, the files from Mr. Thrower's office were retained by the Office of Disciplinary Counsel. Ms. Blanchette reached out to Patty Lundy at the ODC after receiving a signed release from Mr. Forrest on December 6, 2019. On February 3, 2020, Ms. Blanchette was informed that she could pick up the file later that week. After receipt and review of the file, she spoke with Applicant on February 13, 2020 to inform him that there was no draft or completed PCR application in the file. On February 18, 2020, Ms. Blanchette referred the Applicant to Tommy A. Thomas. A sworn affidavit was provided to Tommy Thomas on July 28, 2020, and an application for post-conviction relief was filed on November 13, 2020.

In making its decision, the Court takes into consideration the checks issued to Mr. Thrower, the affidavit of Veronica Brown, the affidavit of Tricia Blanchette, and oral argument made by both Mr. Thomas and Ms. Mims.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

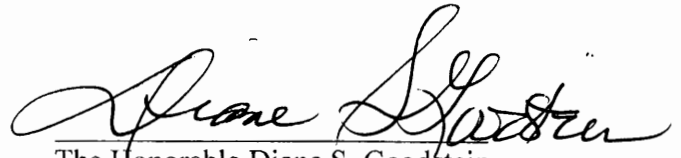
The Court finds and concludes that Applicant reached out to three different lawyers regarding the filing of his post-conviction relief application – Mr. Thrower, Ms. Blanchette, and Mr. Thomas. A fee was paid to Mr. Thrower to retain him to file the post-conviction relief application. Clearly, Mr. Forrest was vigilant and exercised his due diligence in ensuring the completion and filing of his post-conviction relief application. Applicant relied upon his attorney, Mr. Thrower, to file his post-conviction relief application and it can be safely inferred that Mr. Thrower would have timely filed the application had he not unexpectedly passed away. The other intervening factor in this situation was the beginning of the pandemic in March 2020. The South Carolina Department of Corrections was essentially locked down, which made it extremely difficult for counsel to contact and speak with Applicant. As a result, it was not possible to file the application for post-conviction relief until November 2020.

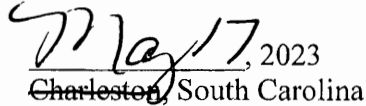
Therefore, the Court finds that in this situation, Applicant was not induced to miss the filing deadline by the State of South Carolina but was, in essence, misled from the death of Mr. Thrower. Applicant had the right to rely upon Mr. Thrower's representation upon being retained that he would timely file a post-conviction relief application. In this situation, the doctrine of equitable tolling must apply. "Equitable tolling has been deemed available where...extraordinary circumstances prevented the plaintiff from filing despite his or her diligence....[and] the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim." *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618,

620-21 (2008) (citing 51 Am.Jur.2d Limitation of Actions § 174 (2007)). Due to the extraordinary circumstances that occurred and Mr. Forrest's continued attempts to ensure the filing of his post-conviction relief application, equitable tolling would only be just in this case. As held by the Fourth Circuit, "any resort to equity must be reserved for those rare instances where – due to circumstances external to the party's own conduct – it would be unconscionable to enforce the limitation period against the party and gross injustice would result." *Pelzer*, 378 S.C. at 522-23, 662 S.E.2d at 621 (citing *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir.2000)).

Therefore, Respondent's motion to dismiss is DENIED.

And it is so ORDERED.


 The Honorable Diane S. Goodstein
 Judge of the Ninth Judicial Circuit


 May 17, 2023
 Charleston, South Carolina

 Orangenburg

State of South Carolina	)	
	)	In the Circuit Court
County of Charleston	)	
	)	
Daeshaun Forrest,	)	
	)	
	)	2020-CP-10-05002
Plaintiff,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

Charleston County Courthouse
March 12, 2024

TRANSCRIPT OF PCR HEARING

B E F O R E

The Honorable Walton J. McLeod, IV

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

Tommy A. Thomas, Esquire
Attorney for Plaintiff

Assistant Attorney General Bryan Hall
Attorney for State of South Carolina

FOR COPIES CONTACT: Melissa R. Singletary
Certified Verbatim Court Reporter
msingletary@sccourts.org

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(There were no exhibits marked during this hearing)

Daeshaun Forrest vs The State of South Carolina

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1 THE COURT: All right, Mister attorney?

2 MR. HALL: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 MR. HALL: Bryan Hall, assistant attorney general for
5 the state. Your Honor, this is the case of Daeshaun Forrest
6 verses the State of South Carolina, docket number 2020-CP-
7 10-05001. Back in October of 2015, the Charleston County
8 grand jury indicted Mr. Forrest for attempted murder,
9 indictment number 2015-GS-1006030, possession of a weapon
10 during the commission of a violent crime and its 2015-GS-
11 10-06031 and discharging firearms into a dwelling,
12 indictment number 2015-GS-10-06032. On October 13th of
13 2017, Mr, Forrest pled guilty under Alford before the
14 Honorable R. Markley Dennis, assistant solicitor Edward
15 Corbin, the third prosecuted the case, and Mr. Forrest was
16 represented by Ms. Melisa Gay. He was sentenced on October
17 18, which was about a week later. And he was sentenced to
18 30 years provided upon the service of 18 years for the
19 attempted murder, five years for the weapons charge and 10
20 years for discharging into a dwelling.

21 Mr. Forrest filed a direct appeal on October 24th,
22 2017. The Court of Appeals dismissed the appeal for failure
23 to provide sufficient explanation of an issue that can be
24 appealed from his guilty plea, and the remittitur was sent
25 on May 18, 2018. This PCR was untimely filed on November 13

Daeshaun Forrest vs The State of South Carolina

4

1 of 2020. In October 20 --- on October 29, 2021 the state
2 filed its return moving to dismiss the application as
3 barred by the statute of limitations. On December 6th of
4 2021 the Honorable Roger Young issued a conditional Order
5 of Dismissal granting Mr. Forrest twenty days from the date
6 of the Order to provide a sufficient reason why his PCR
7 should go forward. On December 20, 2021, Mr. Forrest filed
8 a response, and a motions hearing was held on November 4 of
9 2022. On May of 25th of 2023, the Honorable Diane
10 Goodstein denied the state's motion finding that Mr.
11 Forrest was entitled to equitable tolling. And Your Honor,
12 we are here for the evidentiary hearing on his PCR
13 allegations of ineffective assistance of counsel and
14 involuntary guilty plea. Mr. Forrest is present and
15 represented by Mr. Tommy Thomas. And we'll let Mr. Thomas
16 clarify the part of his allegations, but the state is ready
17 to proceed, Your Honor.

18 THE COURT: Mr. Thomas.

19 MR. THOMAS: May it please the Court. This case is
20 fairly simple, in that the issues really are all
21 surrounding the ineffective assistance of counsel, as well
22 as involuntary guilty plea. My client is going to testify
23 that he felt like due to his representation and his
24 attorney that he was put in a position that he was forced
25 to accept a plea, and as a result it was not freely and

Daeshaun Forrest vs The State of South Carolina

5

1 voluntarily given, and nor was it knowingly and
2 intelligently given, Your Honor.

3 THE COURT: All right. You ready to call your first
4 witness?

5 MR. THOMAS: Yes, Your Honor. If it would please the
6 Court, we would call Mr. Forrest to the stand.

7 THE COURT: Very well.

8 DEPUTY CLERK: Do you swear or affirm the testimony
9 you give the court will be the truth, the whole truth and
10 nothing but the truth so help you God?

11 MR. FORREST: Yes ma'am.

12 MR. THOMAS: Your Honor, may it please the court?

13 THE COURT: Yes, sir.

14 **Mr. Daeshaun Forrest - Examination by Mr. Thomas**

15 Q: Mr. Forrest, will you please state your full name.

16 A: Daeshaun Forrest

17 Q: And you are currently in the South Carolina
18 Department of Correction?

19 A: Yes sir.

20 Q: And where are you being housed?

21 A: Ridgeland.

22 Q: Ridgeland?

23 A: Ridgeland Correctional Institution.

24 Q: And you're serving how long a sentence?

25 A: 18 years.

Daeshaun Forrest vs The State of South Carolina

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1 Q: 18 years. And what's your max out?

2 A: I believe it's 2031, 2030.

3 Q: Okay, all right. Mr Forrest, you were arrested and
4 you were indicted for what? Do you remember what the
5 charges were?

6 A: Attempted murder, shooting into a dwelling, and
7 possession of a firearm.

8 Q: Okay. And you actually entered into a plea on these
9 charges?

10 A: Yes sir.

11 Q: And that plea was before the Honorable Markley
12 Dennis?

13 A: Yes sir.

14 Q: That was back in 2017?

15 A: Yes sir.

16 Q: Okay. Now you filed a post conviction relief action,
17 and you understand that the relief this Court could grant
18 you is basically to set your conviction aside?

19 A: Yes sir.

20 Q: And you would then be put in a situation to where you
21 could go back to trial or retrial?

22 A: Yes sir.

23 Q: Or you could actually attempt to negotiate a plea
24 with the state. Do you understand that?

25 A: Yes sir, I totally understand that.

Daeshaun Forrest vs The State of South Carolina

7

1 Q: Okay, now you've got an attempted murder charge, and
2 you understand that you have additional exposure? In other
3 words, if you went back to trial, you potentially could get
4 more time.

5 A: Yes.

6 Q: You and I talked about that?

7 A: Yes.

8 Q: Okay. Based upon that understanding you wish to go
9 forward today?

10 A: Yes sir.

11 Q: Okay. Now, when you went in front of Judge Dennis,
12 and I'll use a legal term, they bifurcated that hearing. In
13 other words, you did it in two parts. Did you understand
14 that?

15 A: No, honestly, I never seen it done like that before.
16 I never heard of it being done like that.

17 Q: Okay and tell me a little bit about your situation.
18 You were arrested when? Do you remember roughly?

19 A: I was arrested 2015.

20 Q: Okay.

21 A: In June, June or May.

22 Q: All right, and you were placed in the County
23 Detention Center?

24 A: I was in Clarendon County at first.

25 Q: Okay.

Daeshaun Forrest vs The State of South Carolina

8

1 A: For all the charges and bond out. Then I moved to
2 Charleston County.

3 Q: Moved to Charleston County. Did you make bond?

4 A: I made bond like two years and a half later.

5 Q: Okay.

6 A: 2017 I made bond.

7 Q: All right. And was your bond revoked?

8 A: Yes sir.

9 Q: How long were you out on bond?

10 A: A month.

11 Q: A month? Okay, and then you were back in in the
12 detention center?

13 A: Yes sir.

14 Q: Now, when you went to court in October of 2017, what
15 was your understanding as to why you were going back to
16 court?

17 A: I was going back to court for my bond, to get my bond
18 back.

19 Q: To get your bond back?

20 A: Yes sir to get my bond revocation overturned.

21 Q: Okay, did you know that you were going back for a
22 plea?

23 A: No. That day, she called me --- called me, my mother
24 and my girlfriend to the back and told us that she already
25 had arranged a plea with Charleston County and two other

Daeshaun Forrest vs The State of South Carolina

9

1 counties that I didn't even ask her to do.

2 Q: When you said she, who is she?

3 A: Melisa Gay.

4 Q: And she was your attorney?

5 A: Yes sir.

6 Q: Was she retained? Was she hired, or was she appointed
7 to represent you?

8 A: She was hired.

9 Q: Okay. And the reason I asked you about the bond and
10 the detention center, did your attorney come to see you
11 while you were in the detention center?

12 A: She probably came to see me one time, but any other
13 time, it was her assistant that came and saw me.

14 Q: Okay. And how long before your plea was Ms. Gay
15 retained?

16 A: She probably been not even a whole 90 days.

17 Q: Okay. So, who was representing you before that?

18 A: Mark Archer. I believe it was Mark Archer.

19 Q: Mark Archer. Was he appointed or was he retained?

20 A: He was appointed.

21 Q: Appointed, all right. So during that time that Ms.
22 Gay was representing you, you were back in the detention
23 center?

24 A: Yes sir.

25 Q: And how many times did she come see you?

Daeshaun Forrest vs The State of South Carolina

10

1 A: Once.

2 Q: Did you have an opportunity to fully talk with her
3 about what was going on in your charges?

4 A: Nah. The only time I talked to her was 72 hours
5 before my trial. That's the only time she basically she
6 tried to explain to me something but she was rushing with
7 it.

8 Q: Okay. All right. And how about, do you know what
9 discovery is? In terms of what we talk about when we talk
10 about discovery?

11 A: A motion to discovery?

12 Q: Yes.

13 A: Yes.

14 Q: Yeah, evidence that the state has against you.

15 A: Yeah.

16 Q: Did you sit out and go over that with her?

17 A: Nah.

18 Q: Did you see any of it?

19 A: I saw what they gave me in my rule five package but I
20 never saw it. It was things like the videos that they said
21 they had and other statements. But I never saw any of that
22 until 72 hours before I went to trial. Actually, I saw one
23 of the main videos when I went to plea.

24 Q: Okay. Now, you said that this was 72 hours before you
25 went to trial, which you didn't ever have a trial?

Daeshaun Forrest vs The State of South Carolina

11

1 A: No sir.

2 Q: Okay. Now, but you still thought that you were going
3 to that hearing for a bond hearing?

4 A: Yeah. That's what I was hoping for.

5 Q: Okay okay. And did Ms. Gay talk with you about a
6 plea?

7 A: Nah. The only time she ever talked to me is she
8 talked, she --- she never talked to me, she talked to my
9 mother. And she was telling them, but they were --- they
10 basically referred the word to me, basically like she was
11 offering like this, what plea the state was offering. But
12 it never was me and her never talked, and I never told her
13 I wanted to plea.

14 Q: Okay, let's talk about plea offers. Were there more
15 than one offer or what happened with that?

16 A: The first plea that she came that she told my
17 girlfriend to tell me about was 20 years. And I told her,
18 no. I told her, if I was to take a plea, I would take a
19 plea to the second degree assault, so it would be zero to
20 ten because that's statutes on it so that's why I was
21 going. Melissa Gay told my girlfriend no they don't want
22 you to plead to nothing but the attempted murder. And I
23 didn't understand that because the guy never even got shot.
24 And the first plea that I had before I got Melisa Gay was
25 shooting in a dwelling. So I was like why did this get to

1 me getting attempted murder.

2 Q: Okay. Let's take this time to talk about, what did
3 the state think that you did? What were they claiming that
4 you had done?

5 A: The state claimed that I shot at my uncle-in-law at a
6 hotel. Well I allegedly shot through the door, through a
7 window at my uncle.

8 Q: From outside?

9 A: From outside.

10 Q: Okay. And is that? Is that what they were claiming?
11 Is that it?

12 A: Yeah that's all that they were claiming. He said that
13 he heard my voice.

14 Q: He said he heard your voice? Okay. Did anyone get
15 hurt?

16 A: No.

17 Q: Okay. Now, when you sat down with Ms. Gay, what
18 evidence did you understand that they had against you?

19 A: Evidence that I understood is they just had is they
20 just had the victim against me. They had a star witness but
21 when I read the evidence or statement, it was, it was not
22 factual because the video that you see he's talking about
23 different color clothes and all types of stuff. So, I knew
24 there was no evidence. They didn't have any.

25 Q: Did they have any DNA? Any scientific type of

Daeshaun Forrest vs The State of South Carolina

13

1 evidence?

2 A: No sir.

3 Q: Any other eyewitnesses?

4 A: No.

5 Q: And this was your uncle?

6 A: Yeah.

7 Q: And what was your relationship with your uncle?

8 A: He was my uncle-in-law, I mean I wasn't around him.

9 Q: Did y'all have a beef about something?

10 A: Nah.

11 Q: Now, you mentioned videos. Were there surveillance
12 videos?

13 A: Yes. There was a surveillance of a guy with a bandana
14 on his face in all black, and he ran and shot at the
15 window. This is the video that I saw right before Judge
16 Dennis rendered his sentence to me.

17 Q: Have you ever seen that video before?

18 A: No.

19 Q: Okay and who showed it to you?

20 A: I saw that video, that day but Melisa Gay showed me a
21 video of the side of the building of a guy walking with the
22 same clothes on and putting the mask on his face.

23 Q: All right, I don't understand. What --- what about
24 the clothes?

25 A: Just all black. It was an all black guy in the video

Daeshaun Forrest vs The State of South Carolina

14

1 on the side of the building. She was just showing me a
2 video of the person putting a mask on their face. The
3 person that was wearing the same clothes in the video.

4 Q: Okay. And in that video, did that person putting the
5 mask on identify you?

6 A: No. No sir.

7 Q: And in the other video, was there anything in the
8 other video that would lead someone to believe that that
9 was you?

10 A: No. No sir.

11 Q: Clothes? Anything?

12 A: No sir.

13 Q: All right. Now, so you had --- did you and Ms. Gay
14 speak about those videos, and you making a decision to
15 plea guilty?

16 A: No. The only reason why the pleading came up is
17 because the investigator said she went to Sumter County and
18 before I got out, I just came from the prison for strong
19 armed robbery. And she told me that Sumter County was
20 saying that if I plea with Charleston County, no matter
21 what Charleston County gave me they would make it run
22 concurrent. But she said, but if I plead in Charleston
23 County that Sumter County was not letting me go to trial.
24 They were going straight --- Well they would not let me get
25 a plea. They were going straight for trial. And statute and

Daeshaun Forrest vs The State of South Carolina

15

1 all, I was going to get life without parole and that's what
2 she was pushing on. Like you need to take this plea because
3 it's not Charleston County you need to worry about, it's
4 Sumter County.

5 Q: Now, I understand that you're saying, that you had
6 charges in other counties. Did Melisa Gay represent you in
7 those other counties?

8 A: No.

9 Q: Okay. So was she trying to talk with you about a plea
10 based upon the other counties as well?

11 A: Yes but the thing about that is, I never even told
12 her to reach out to other counties. She went and took it
13 upon herself when she came that day, October 13, Friday,
14 she came to me and said, I already talked to the other
15 counties and the solicitors agreeing and I'm like, how you
16 even talk to them? I'm under the impression, okay she must
17 be taking over my whole case. She must be representing me
18 in all the cases. But I found out after I plead in
19 Charleston County, and then a year later, well, six months
20 later, 2018, February, Valentine's day, she wasn't
21 representing me.

22 Q: Right. But we're not here about the other counties. But
23 let me ask you one question, did you get any special deals
24 in these other two counties?

25 A: They run concurrent with Charleston County, but I

Daeshaun Forrest vs The State of South Carolina

16

1 wouldn't call it special, because I got 18 years and Sumter
2 County overrides it.

3 Q: Okay. Now, so take us back, if you can, to the day
4 that you went in court. So you went in thinking that you
5 were going to a bond, and at that point is that when you
6 learned that you were talking about a plea?

7 A: Yeah, she pulled us to the back and obviously she has
8 a conversation with my mother and girlfriend first, because
9 when they came back there they were kind of shaken up, and
10 they basically let me know that okay you need to listen to
11 your lawyer. This what she's talking about ...

12 Q: Who are you talking about?

13 A: My mother Veronica, Melisa Gay, and my mother Desiree
14 Jordan.

15 Q: And there here in the courtroom today?

16 A: Yes sir.

17 Q: Okay. Now, so time frame wise how much time did you
18 have to make these decisions?

19 A: Right then and there. I had to make that decision
20 right then and there.

21 Q: Right. And you had your mother and your girlfriend
22 there with you?

23 A: Yes sir.

24 Q: And they heard the conversation between, you and
25 Melisa gay because they were there?

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1 A: Yes.

2 Q: Okay. Now, so as far as plea offers, you told me
3 about the 20. Was there another offer?

4 A: I mean, that wasn't even really. I mean, we really
5 don't even know if that was the offer. That was official
6 offer from the solicitor because that's what she was
7 saying. She was saying, they want to plead to nothing but
8 anything less than zero to 20. That's what it was. When I
9 went to courtroom, that's what I thought I was pleading to.
10 I was pleading from zero to 20. I never even knew that I
11 was open pleading to 30 years, zero to 30, zero to 5 and
12 then zero to 10. I never know that. I never knew that.

13 Q: So you didn't, did you understand the range of
14 sentence on all of these charges?

15 A: No.

16 Q: Now you plead Alford to which one?

17 A: I thought I was pleading. It was supposed to be
18 Alford to all of them. She was saying attempted murder. I
19 didn't even know that they were still going to the
20 shooting in the dwelling and possession of firearm. I
21 thought that if I plead to attempted murder that all that
22 came with it.

23 Q: Okay, all right. Now, you understood what Alford is?

24 A: No.

25 Q: Do you remember Judge Dennis asking you about it?

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1 A: He asked me about it, but I never knew that it was. I
2 learned I know what it is now.

3 Q: Yeah, that you're saying you're not guilty.

4 A: Yeah.

5 Q: But you feel like you go to trial that you will be.
6 Now, you remember talking to Judge Dennis? Do you remember
7 him asking questions?

8 A: No sir.

9 Q: Okay. Do you remember him talking to you about what
10 the benefit of your plea was going to be? Did you
11 understand any of that?

12 A: No, because he really was saying, I remember him
13 saying that this is really ain't getting no benefit.

14 Q: Right.

15 MR. THOMAS: Your Honor, may I approach?

16 THE COURT: Yes sir.

17 MR. THOMAS: Your Honor, if it please the court. I'm
18 going to be --- I'm going to direct him to page 13 of the
19 transcript of the first guilty plea transcript, Your Honor.

20 THE COURT: All right. Understood.

21 Q: I want you to look at pages 13 lines nine through 18.
22 You don't need to read those out loud. Okay, do you
23 remember that? Judge Dennis is asking you basically about
24 the benefit. Do you remember that?

25 A: Yes sir.

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1 Q: Did you talk to your attorney about what, I guess, we
2 could use the word benefit. What benefit of entering into a
3 plea is versus going to trial?

4 A: She never really talked to me about it. The benefits
5 she was telling me well she never said benefit. She
6 basically explained that you going to get run concurrent.
7 That everything's going to run concurrent. The benefit was
8 I didn't have to go to court. I didn't have to face those
9 other charges in court. They would all be in one.

10 Q: They would nolle prosequere or dismiss some of the
11 charges?

12 A: Yes.

13 Q: Okay. And you may not know the answer to this and if
14 you don't, then that's fine. Did you understand Judge
15 Dennis talking about that it was his perception that you
16 were getting a benefit from those charges being dismissed
17 and that this in essence was really not a guilty plea? Did
18 you understand any of that?

19 A: I heard him saying that but I didn't understand.

20 Q: But you didn't understand. Okay. Give you any concern
21 about because, I mean, you're standing up there basically
22 asking the court to sentence you to this crime?

23 A: Yeah I was concerned.

24 Q: Okay. Why did you do this?

25 A: You say how?

1 Q: Why did you this?

2 A: I was scared. I was scared that. See, I was scared
3 that I had other charges facing over me ...

4 Q: Well let's not talk about, let's not talk about.
5 Well, you had other charges in Charleston County?

6 A: Yeah.

7 Q: Okay, okay. Now you're telling the court that --- are
8 you telling the court that you did want to plead guilty or
9 you didn't want to plead guilty?

10 A: I didn't want to plead guilty.

11 Q: And why didn't you want to plead guilty?

12 A: Because I strongly felt that I could've beat my
13 charges. I felt I could've beat the charges.

14 Q: And that was based upon what evidence that you
15 believed they had?

16 A: Yes sir.

17 Q: So why didn't you take it to trial?

18 A: Like I said she basically used my mom and my
19 girlfriend against me. I was afraid about it but at the
20 same time I was afraid to let my family down because how
21 she presented it to them or how she presented it to us as
22 in you're going to get 30 years. If you go to trial, you're
23 going to get 30 years. And then you'll go to these other
24 counties and deal with the other charges and you're going
25 to get life without parole things like that. I mean I plead

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1 because, looking at my mom and looking at my girlfriend
2 already crying and hurt because this lady done tell me so
3 much they was scared. I mean at the time, I was crying
4 because basically I'm giving my life up.

5 Q: Let me ask you this, you know that's why the judge
6 asked you all those questions to make sure that what you
7 were doing is what you wanted to do. Now based upon
8 everything that you knew that Ms. Gay had told you, the
9 information you did know, do you feel like your plea was
10 freely and voluntarily given? Did you want to do this?

11 A: No. I feel like she pressured me into doing it. She
12 gave me no other option. I really feel like she already
13 gave up on me.

14 Q: All right.

15 A: At the beginning, she made it seem like when I first
16 meet her she, she was saying, I can beat your trial, there
17 are loop holes, there's this. She gave me all types of
18 examples. She even talked about a Brady violation that was
19 in my case. And then last week, she changed the whole
20 thing. She just started saying, you need to plea.

21 Q: Okay. So you had hope to begin with?

22 MR. HALL: Objection, leading.

23 THE COURT: Overruled.

24 Q: Let me ask you too, the other part of this prong is
25 that you knew what you were doing when you entered into the

1 plea and that you were intelligent, in other words, that
2 basically you understood what was going on. You understood
3 how and why you were making this decision. Can you tell us
4 about that? What was going on about those requirements?

5 A: It wasn't really me on intelligence. It was me going
6 off emotions. I was scared. That was one of my feelings, I
7 was scared, frightened, and I just wanted it all to be over
8 with. I actually told, I actually told Judge Dennis that
9 when he asked me first, he said, no, what I'm --- because
10 he saw how shaken up I was. He was like I don't even want
11 this plea. He said no I'm not taking this plea. But I
12 looked over to my mom and my girlfriend and I just said,
13 you know, Your Honor, I'm going to take this plea. He said,
14 are you sure? I said no but I got to.

15 Q: Right. That's a pretty rough day in court.

16 A: Roughest day of my life.

17 Q: Yes.

18 MR. THOMAS: Your Honor, I beg the court's
19 indulgence.

20 THE COURT: Very well.

21 Q: All right, Daeshaun, we talked about this, you've
22 been waiting a long time to come into court today, and this
23 is your day. Now I'm not saying that I've forgotten
24 something. I'm not saying that, you know that I didn't
25 bring something upon your behalf, but if I did, this is

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1 your opportunity to have the last say. Is there anything
2 else that you feel like that I didn't bring or that needs
3 to be brought to the attention of the court?

4 A: Okay. In the plea agreement, in the plea which was
5 saying I was pleading. She also said that the court was
6 only going to give me 10 years. That's what they were
7 fighting for. She said, that's her exact words. They were
8 going to give me ten and she said she was going for eight.
9 And when we got into the courtroom, the judge asked them
10 how much they want, how much they would want for it. They
11 said 25 mandatory. I looked at Melisa Gay, she looked the
12 other way, you know, what I was saying about the Brady
13 violation. At first, I didn't know what Brady violation
14 was. I explained it to her assistant what happened when I
15 went to my first plea then I end up going for this trial
16 setting, Judge Dennis he stopped the whole thing and he was
17 talking --- He was chastising the solicitor, telling the
18 solicitor saying, you know, you know this you're not
19 supposed to do this. He told all the solicitors none of
20 y'all are gonna do this again. So I explained it to Melisa
21 Gay's assistant. He said, well, you got a Brady violation.
22 And he explained to me a Brady violation was any evidence
23 spoken, any evidence brought up after your first plea. He
24 was saying that's a Brady violation. And that's what he
25 told me so that's what I was going off. He said, well, we

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1 can go to the court. We can go to them right now. We can
2 get it down, Melisa Gay and I can go to them and get it
3 down to simple assault get my charge down to simple assault
4 something like that. He was like, they don't want to go to
5 trial, they don't want to go to trial. This is one of the
6 reasons I wanted to go to trial because her assistant told
7 me, if we go to trial and Judge Dennis knows this, and the
8 solicitor knows this, both of them --- we can file charges
9 on both of them. So this is when I was like okay, we want
10 to go to trial and you know that I was violated then let's
11 go to trial. She told me, when I asked her about it, I
12 don't know nothing about that. I don't know what he's
13 talking about.

14 MR. THOMAS: Your Honor, I have no further questions.

15 THE COURT: Cross examination.

16 **Mr. Daeshaun Forrest - Cross Examination by Mr. Hall**

17 Q: How are you doing Mr. Forrest?

18 A: All right.

19 Q: Mr. Forrest you said you only met your attorney one
20 time?

21 A: Yes sir.

22 Q: All right. But you reviewed the discovery in this
23 case, didn't you? Right? You have to speak up so the Court
24 Reporter can hear you.

25 A: You talking about discovery before I had her or

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1 discovery when I have ...

2 Q: You reviewed the discovery in this case, didn't you?

3 A: Yes.

4 Q: And the victim in this case is your uncle?

5 A: Uncle in law.

6 Q: Okay. Uncle in law. And you said that your uncle in
7 law recognized your voice?

8 A: Yeah. He said he recognized my voice over gun fire.

9 Q: Okay. And he would have testified to that at trial,
10 right?

11 A: No.

12 Q: At least. Okay. You said there were some videos in
13 this case, right?

14 A: Yes sir.

15 Q: And there was one video in particular in which you
16 were on video captured shooting several times into the
17 hotel room. Is that right?

18 A: No, allegedly that's what they say. I was not on that
19 video.

20 Q: But the person that the state alleged was the person
21 in that video, that was you, right?

22 A: No.

23 Q: But the state alleged.

24 A: Well the state said that, but that wasn't me.

25 Q: Okay. But there was a video of a person that was

1 mistakenly you, shooting into a hotel room, right?

2 A: Yes sir.

3 Q: And you testified that you had charges in other
4 counties, correct?

5 A: Yes sir.

6 Q: And your attorney told you that it was in your best
7 interest to plead guilty because you were facing life
8 without parole. Isn't that right?

9 A: Yes sir.

10 Q: And you testify that you have to make a decision in
11 that moment. Right?

12 A: Yes sir.

13 Q: And then ultimately you made a decision to plead
14 guilty? You have to speak up.

15 A: Yes sir.

16 Q: Now I want to ask you about some of the comments you
17 made during your plea hearing. The judge asked you whether
18 your attorney had explained the charge to you and you told
19 them that your attorney did. Didn't you?

20 A: I don't remember that.

21 Q: What if I told you it's in the transcript? Would you
22 dispute that?

23 A: I can't dispute if it's in the transcript.

24 Q: Okay. And the judge asked whether your attorney had
25 explained to you the possible punishments for each charge,

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1 and you told him, yes, didn't you?

2 A: Yes I did. But I was in a fog the whole time. I was
3 just pleading. It wasn't the fact I understood anything. I
4 just plead --- I just plead just to get it over with.

5 Q: And your testimony here was that you wanted a jury
6 trial, but the judge also explained to you that by pleading
7 you wouldn't have a jury trial. Right?

8 A: Right.

9 Q: And the judge told you that by pleading you were
10 giving up your right to challenge the state's evidence at
11 trial, right?

12 A: Yes sir.

13 Q: And so this video in question, by pleading you were
14 waiving your right to challenge that, right?

15 A: Yes sir. I understand that now.

16 Q: But the judge also explained it to you before you
17 plead, correct? The judge asked you and you said yes.

18 A: The judge tried to explain it to me. But to be
19 honest, like I said with him, I wasn't even listening
20 because I just wanted to get it over with.

21 Q: Again, what you told him you understood, right?

22 A: Yes I did.

23 Q: And the judge told you that by pleading guilty, you
24 were giving up your right to remain silent, right?

25 A: Yes.

1 Q: Okay. And you also told the judge you weren't under
2 the influence of any drugs or alcohol at the time of the
3 plea?

4 A: Yes sir.

5 Q: And you have been treated for depression in the past,
6 but you weren't on any depression medication at the time of
7 the plea, right?

8 A: No sir.

9 Q: Okay. And you also told the judge that your attorney
10 explained to you before you pled that by pleading guilty
11 under Alford you were admitting that the state approval of
12 your guilt to a jury at trial right?

13 A: Yes sir I did say that. If it's in the transcript I
14 did say that.

15 Q: Okay. And you told the judge that it was your
16 decision to plead guilty?

17 A: Yes sir.

18 Q: Okay. And you told him that you were pleading guilty
19 because you believed it was the best thing for you to do,
20 right?

21 A: Yes sir.

22 Q: Because you were facing life without parole?

23 A: No I wasn't.

24 Q: But you told the judge that you were totally
25 satisfied with your attorney's representation of you,

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1 right?

2 A: Yeah in that moment I told him that. I'll say it once
3 again, I was confused, I was scared and I wanted to get it
4 over with. So whatever in my mind, I felt like the whole
5 courtroom was against me, so I'm in a lose lose situation.
6 So whatever they want me to do, I'm just going to go ahead
7 and get it over with. And I felt like my lawyer was working
8 with them, so.

9 Q: Your testimony here is that your lawyer forced you to
10 plead guilty but didn't the judge ask you about that in
11 your plea hearing?

12 A: No.

13 Q: Yes, he did excuse. Excuse me. Sorry. The judge
14 at your plea hearing said that, based on his experience in
15 PCR cases, someone says their lawyer forced them to plead
16 guilty. Then the judge asked you if that was the case here,
17 and you said no, didn't you?

18 A: If that's in the transcript ...

19 Q: You have to speak up.

20 A: If that's in the transcript, yes. Once again, I'll
21 say it again, I felt like my back was up against a wall.
22 There's no not that I didn't feel like he was going to help
23 me by me saying she forced me into it. I didn't feel like
24 he was going to help me.

25 Q: But, but he asked?

1 A: Yeah he asked.

2 Q: And you said no?

3 A: I didn't feel like he was going to help me.

4 Q: And you said no? Is that correct?

5 A: Correct.

6 MR. HALL: No further questions, Your Honor.

7 THE COURT: Redirect?

8 MR. THOMAS: Your Honor, just one or two.

9 **Mr. Daeshaun Forrest - Redirect by Mr. Thomas**

10 Q: Daeshaun, I think counsel is talking about the time
11 when you said that the Judge stopped the process?

12 A: Right.

13 Q: And why did he stop that process? Do you remember?

14 A: He stopped the process because I started crying. I
15 started crying and stumbling over my words. And he was
16 like, no, no, I don't except this plea.

17 MR. THOMAS: And Your Honor, for the Court's
18 purposes, that's page 25.

19 THE COURT: Say it again.

20 MR. THOMAS: Page 25 of the transcript.

21 Q: One last question.

22 A: Yes sir.

23 Q: Did you want to enter did you want to take that plea,
24 enter that plea?

25 A: No. No sir.

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1 MR. THOMAS: No further questions, Your Honor.

2 THE COURT: Recross?

3 MR. HALL: No, sir.

4 THE COURT: All right. The witness may step down.

5 MR. HALL: Judge, may we take a five minute recess?

6 (There was a break in the proceedings)

7 THE COURT: Yeah, that will be fine. All right, we are
8 back on the record in this case. You can call your next
9 witness.

10 MR. THOMAS: Your Honor, if it may please the court,
11 we call Veronica Forrest to the stand.

12 THE COURT: Veronica Forrest.

13 DEPUTY CLERK: Do you swear or affirm the testimony
14 you shall give the court will be the truth, the whole truth
15 and nothing but the truth so help you God?

16 MS. FORREST: I swear.

17 DEPUTY CLERK: You can be seated plea.

18 **Ms. Veronica Forrest - Examination by Mr. Thomas**

19 Q: May it please the Court?

20 THE COURT: Yes sir.

21 Q: Ms. Forrest, are you related to Daeshaun?

22 A: That's my son.

23 Q: Okay. And you understand that you're under oath
24 today?

25 A: I do.

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1 Q: To tell the truth?

2 A: Yes sir.

3 Q: And you intend to tell the truth?

4 A: I intend to tell the truth.

5 Q: Okay. Ms. Forrest, you were there with your son the
6 day that this plea was given?

7 A: Yes I was.

8 Q: Okay. And do you remember speaking with Melisa Gay
9 and your son?

10 A: Yes I do.

11 Q: And what were y'all talking about?

12 A: Basically he was waiting to go back and get his way
13 --- waiting to go back to get his thing back.

14 Q: His bond?

15 A: His bond back. I'm sorry.

16 Q: That's fine.

17 A: And she just, well, she --- first of all, all before
18 this was going on, she could not get the video. She
19 couldn't get anything that she was supposed to get from the
20 solicitor.

21 Q: What video are you talking about?

22 A: There's a video that she played in a room and she
23 said plans have changed.

24 MR. HALL: Objection, hearsay.

25 A: No. No. That's not hearsay I was there.

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1 THE COURT: The objection was made to hearsay. Please
2 don't testify as to what other people told you. It's a
3 valid objection. You can rephrase your question, and let's
4 just remember, we're in the courtroom and everybody's just
5 going to have to be nicer to one another. Okay? So I know
6 the subject matter is tense. It's important. I appreciate
7 you just letting the attorneys make their objections and
8 make the record and you just try and answer the question.
9 Okay?

10 A: Yes sir.

11 THE COURT: Thank you.

12 Q: Thank you, Your Honor. So there was a video?

13 A: Yes.

14 Q: Did you see the video?

15 A: Yes, she came inside a little room she had my son
16 in.

17 Q: And this was right before?

18 A: This was right before we went into the courtroom.

19 Q: Yes ma'am. Had you ever seen that video before?

20 A: No sir. No sir.

21 Q: Had Ms. Gay ever spoken to you about that video?

22 A: She spoke to all of us and told us that there is a
23 video ...

24 MR. HALL: Objection, hearsay.

25 MR. THOMAS: Well, okay. I'll try to work around it.

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1 THE COURT: Try to work around it the best you can.

2 MR. THOMAS: Okay.

3 THE COURT: You just can't testify what other you
4 can't testify to what other ...

5 MS. FORREST: She said to me?

6 THE COURT: Correct?

7 MS. FORREST: Oh.

8 THE COURT: Yeah, we're here to hear about your
9 personal knowledge. But not what other people told you.

10 MS. FORREST: Okay.

11 Q: So in regards to the video, was it your understanding
12 that video was helpful or not helpful for Daeshaun?

13 A: That it was not helpful.

14 Q: Okay. And you were able to see it?

15 A: Yes sir.

16 Q: Did you think it would hurt Daeshaun?

17 A: Yeah, I thought it would hurt him.

18 Q: Okay, but we're talking about making a decision in
19 regards to a plea. Is that, why --- you were back in the
20 room with Daeshaun?

21 A: Uh-uh (affirmative response).

22 Q: Okay, and that was at Ms. Gay's direction?

23 A: Yes.

24 Q: Okay. So when you were there, you got to talk to your
25 son?

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1 A: Uh-huh (affirmative response).

2 Q: And so, and what was your opinion about whether he
3 should accept the plea or not?

4 A: Honestly, I didn't want him to accept the plea.

5 Q: Okay.

6 A: I did not want him to because we were supposed to go
7 to trial.

8 Q: All right.

9 A: That was my thing, we were going to go to trial. Then
10 everything flipped around that day.

11 Q: Yes ma'am.

12 A: And I couldn't understand that.

13 Q: Are you involve in your son's case with him?

14 A: I was very involved.

15 Q: Okay. And you were able to see as well as your son
16 what evidence the state had against him?

17 A: Yes.

18 Q: And based upon what you saw, you felt well. Tell me
19 what you're feelings were based upon what you saw.

20 A: Based upon what I saw, I knew that wasn't my son.

21 Q: In that video?

22 A: I knew that wasn't my son in that video.

23 Q: Okay. Okay. Now, this all happened very, very, very
24 quickly?

25 A: Very quickly.

1 Q: And what was your impression, if any, in regards to
2 Daeshaun's state or his ability to enter into that or to
3 make a decision?

4 A: He was not in his right mind at the time. I mean he
5 was very confused. He was crying. He didn't know what to
6 do. Like I said we were our thing was, we was going to go
7 to trial, but when she came to us with the video ...

8 Q: Yes ma'am?

9 A: She said to us ...

10 Q: Don't tell us what she said.

11 A: Okay. I'm sorry.

12 Q: But what was it --- You can tell us what you know. So
13 when she came back there, you were talking about a plea?

14 A: Right.

15 Q: And did she have a recommendation in regards to the
16 plea?

17 A: She just had she just had the paper in her hand. She
18 said this is what they're offering you and I think that you
19 should take it because there's clearly enough evidence
20 right here that this is you. That you can clearly see that
21 this is you. That's what she said to him. And if you don't
22 take this plea then you can get 30 years or more. So my son
23 got really shook like, I'm going to get 30 years, you know
24 what I'm saying. So she told us, she said, well this is an
25 Alford plea which means you didn't do it Daeshaun, but we

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1 have enough evidence to say that you did it.

2 Q: Okay. And that was in regards to the attempted murder
3 charge?

4 A: Yes.

5 Q: Or was that in regards to all the charges?

6 A: That was everything.

7 Q: To all of it?

8 A: To all of it.

9 Q: All right. And, Ms. Forrest, I know that your son
10 considers you being here today important. And you have the
11 opportunity to deserve the whole --- you were there?

12 A: I was there.

13 Q: Okay. And you saw the whole process?

14 A: I did.

15 Q: And this is your son?

16 A: Uh-huh (affirmative response).

17 Q: Okay. And do you have an opinion and I may have asked
18 you this question already and if I have, I apologize,
19 whether or not this plea was voluntarily?

20 MR. HALL: Objection, leading.

21 THE COURT: Since we're talking about legal terms
22 here, Mr. Thomas, why don't you try to rephrase your
23 question about it.

24 Q: Okay. Okay. So you were there. You got to see Ms.

25 Gay, you got to see Daeshaun, I mean the best thing is that

1 you were there?

2 A: Uh-huh (affirmative response).

3 Q: And you were able to observe Daeshaun's state?

4 A: Yeah.

5 Q: And it was your opinion that he should not accept the
6 plea?

7 A: Yeah. I didn't want him to accept it.

8 Q: In your opinion, did Daeshaun --- was he able to make
9 a rational decision?

10 A: No, he didn't have no time. It wasn't enough time.

11 Q: Did he have enough information?

12 A: He didn't have enough information.

13 Q: I'll ask you the same question. You've been very
14 involved in your son's case?

15 A: Yes.

16 Q: And we've all been waiting a long time?

17 A: Yes.

18 Q: For this hearing. Is there anything else that you
19 would want to tell the court that I may have forgotten to
20 ask you?

21 A: In the courtroom, it looked like a bullying concert.
22 The judge was talking to her like she was trash, the
23 solicitor was and she did not defend my son, not one bit.

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1 She's said nothing. They even told her to shut up. And I
2 knew something was right. That, you know what I'm saying?
3 Like, if I have known that it would click that way, I would
4 have fired her right there and then, because everything
5 that she said leading up to that was all a lie. She misled
6 me. She mislead all of us. She didn't. She didn't. She
7 wasn't not even my son's lawyer long enough to do anything
8 with his case. His first lawyer's wife died. So therefore
9 we had to find a lawyer quickly, because we were supposed
10 to go to trial. So like I said, when we went to court that
11 day, it was not for trial, but she turned it into that. She
12 allowed all of this stuff to happen. You're his lawyer.
13 Where are you representing him at? She didn't represent him
14 at all. So if somebody was representing me that way, I
15 would be afraid too, and I would just go to whatever they
16 tell me to do, because the lawyer is supposed to be the one
17 protecting you. That's what we paid her for, not to be
18 bullied, to be quiet and let whatever happened to my son,
19 happen. He was not guilty. You could not see his face. You
20 nothing. How would you say that was him?

21 MR. HALL: Objection, Your Honor.

22 MS. FORREST: You couldn't see his face.

23 THE COURT: Ma'am, an objection has been made. Yes
24 sir?

25 MR. HALL: Narrative.

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1 THE COURT: Sustained. It's been ongoing. We need to
2 throw another question in there somewhere.

3 Q: Okay. All right. Thank you so much for being her
4 today.

5 A: Yes sir, anytime.

6 Q: Yes ma'am.

7 THE COURT: Alright, cross examination.

8 **Ms. Veronica Forrest - Cross Examination by Mr. Hall**

9 Q: Ms. Brown, you hired Ms. Gay to represent your
10 son, right?

11 A: My daughter in law, hired her.

12 Q: Okay. Someone hired her to represent your son?

13 A: Yes.

14 Q: And so Ms. Gay was your son's attorney, right?

15 A: Yes.

16 Q: She wasn't your attorney was she?

17 A: No she wasn't.

18 Q: Okay.

19 A: But I was there for it.

20 Q: And isn't it true that you were convicted of
21 obstructing police in 1997?

22 A: And?

23 Q: Yes or no?

24 A: Yes.

25 Q: And isn't it true that you're convicted of breach of

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1 trust with fraudulent intent back in 2006?

2 A: Yes.

3 Q: Okay. And Mr. Forrest testified that you wanted him
4 to take the plea, but in your testimony, you testify you
5 didn't want him to take the plea. Isn't that right?

6 A: In the beginning, I did not want him to take the
7 plea. But once she drilled us with all this stuff, I said,
8 son, just go ahead and take the plea.

9 Q: And that was after she had explained to you the
10 evidence, the video and everything else that she had
11 explained to you?

12 A: That was after she told my son he was going to get 30
13 or more years if he didn't do what he needed to do.

14 Q: Okay. And you weren't present at every meeting
15 between Ms. Gay and your son, were you?

16 A: At the jailhouse, no. But me and her had many
17 conversations on the phone about my son and his case. Me,
18 her and my husband and his girlfriend.

19 Q: No further questions, Your Honor.

20 THE COURT: Okay. Redirect.

21 MR. THOMAS: I've got two, I believe.

22 **Ms. Veronica Forrest - Redirect by Mr. Tommy Thomas**

23 Q: So they asked you, the Attorney General asked you
24 about the charges you've had in the past.

25 A: Those things happened when I was a young girl. I'm

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1 fifty years old today.

2 Q: So does that have any impact upon your understanding
3 about telling the truth today?

4 A: No, not at all. Matter of fact, I'm a minister of the
5 Lord. I don't have to lie.

6 Q: Thank you, Your Honor.

7 THE COURT: Any recross?

8 MR. HALL: No further questions, Your Honor.

9 THE COURT: The witness may step down. Today is your
10 birthday?

11 MS. FORREST: Yes sir.

12 THE COURT: Happy birthday.

13 MS. FORREST: Thank you.

14 MR. THOMAS: Today's your birthday?

15 MS. FORREST: No my birthday's not today. My
16 birthday's [REDACTED].

17 THE COURT: I thought you just said it was her
18 birthday.

19 MR. THOMAS: It's my birthday.

20 MS. FORREST: No it's his birthday.

21 THE COURT: Oh it's your birthday?

22 MR. THOMAS: Yeah. It's my birthday and my day in
23 court. That one will be with you for a while.

24 THE COURT: All right. I don't know how I misheard
25 that. Happy birthday to you.

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1 MR. THOMAS: Thank you, Your Honor. Your Honor, if it
2 would please the Court, we will call ms. Jordan to the
3 stand and I hope I have her name correct.

4 THE COURT: First name?

5 MS. JORDAN: Desiree.

6 DEPUTY CLERK: Do you swear or affirm the testimony
7 you shall give the court in the trial in this case is the
8 truth, the whole truth and nothing but the truth so help
9 you God?

10 MS. JORDAN: Yes.

11 DEPUTY CLERK: Please take a seat.

12 **Ms. Desiree Jordan - Examination by Mr. Thomas**

13 Q: Ms. Jordan, same question. You understand that you're
14 under oath today?

15 A: Yes.

16 Q: And you're sworn to tell the truth?

17 A: Yes.

18 Q: Do you intend to tell the truth?

19 A: Yes.

20 Q: Thank you. Your relationship with Daeshaun is what,
21 girlfriend?

22 A: Yeah, yeah, girlfriend.

23 Q: Okay, and then you know him?

24 A: Yes.

25 Q: You've known him for some period of time?

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1 A: Yes.

2 Q: Did you have an occasion to be in the courthouse the
3 day that he entered into the guilty plea.

4 A: I was there.

5 Q: Okay. And did you have an occasion to be in the room
6 with his mom and Daeshuan?

7 A: Yes I was.

8 Q: Okay. And you heard the conversations from Ms. Gay?

9 A: Uh-huh (affirmative response).

10 Q: And you heard conversation with the mom and also with
11 Daeshuan?

12 A: Yes.

13 Q: And you were able to observe the whole situation?

14 A: Yes.

15 Q: And you were able to observe Daeshaun's situation?

16 A: Yes.

17 Q: What was your opinion about what you saw?

18 A: When?

19 Q: When you were in the room, were you talking about the
20 guilty plea, discussing the guilty plea?

21 A: When I was in the room with Daeshaun when we were in
22 the courthouse?

23 Q: Yes and with mom.

24 A: Oh yeah. Basically we were speaking about what she
25 came to us with being that that wasn't what we were at

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1 court for.

2 Q: Okay. Did you know why Daeshaun was in court?

3 A: Yes.

4 Q: Okay, and did you have an opinion in regards to
5 whether he should enter the plea or not?

6 A: My opinion basically was no but she was basically
7 saying that was his only option.

8 MR. HALL: I --- I withdraw my objection.

9 THE COURT: Very well.

10 MR. THOMAS: I have no further questions, Your Honor.

11 THE COURT: All right. Cross examination.

12 **Ms. Desiree Jordan - Cross Examination by Mr. Hall**

13 Q: How are you doing Ms. Jordan?

14 A: Good.

15 Q: You weren't at every meeting between Mr. Forrest and
16 his attorney were you?

17 A: Was I what?

18 Q: Were you at every meeting between Mr. Forrest and his
19 attorney?

20 A: No because when she went to the jailhouse that was
21 the only time I wasn't there but we was --- I was mainly
22 the one speaking to her.

23 Q: Okay. So when she met with him at the jail, you don't
24 know what was said between them? You don't know what he
25 explained to him?

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1 A: No.

2 Q: Okay. No further questions, Your Honor.

3 THE COURT: Any redirect?

4 MR. THOMAS: No, Your Honor.

5 THE COURT: Okay the witness may step down. Thank you.

6 Any other witnesses?

7 MR. THOMAS: Your Honor, if it may please the court,
8 that's the applicant's case.

9 THE COURT: Very well.

10 MR. THOMAS: Thank you.

11 THE COURT: The state gets to call their witnesses.

12 MR. HALL: Judge I don't know if want to break for
13 lunch now or if you want to let's just get through this?

14 THE COURT: Well that's true. We've got to. Y'all
15 approach real quick let's talk.

16 MR. HALL: Well call her. The state calls ...

17 THE COURT: Well we'll probably have to start in the
18 afternoon or a little bit later because we do need to at
19 some point need to break but we'll go ahead and proceed
20 with the next witness.

21 MR. HALL: Okay, yes sir. The state calls Melisa Gay.

22 MS. GAY: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MS. GAY: Hopefully. This is be easier than yesterday.

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1 DEPUTY CLERK: Do you swear or affirm the testimony
2 you shall give the court is the truth, the whole truth, and
3 nothing but the truth so help you God?

4 MS. GAY: Yes.

5 **Ms. Melisa Gay - Examination by Mr. Hall**

6 Q: How are you doing Ms. Gay?

7 A: I'm fine.

8 Q: Ms. Gay, how long have you been practicing law?

9 A: Since 1991 so it's gonna be 33 years soon.

10 Q: And how much of that time was devoted to or is
11 devoted to criminal law?

12 A: All of it.

13 Q: All of it. And can you tell us how you got involved?
14 And first, did you represent Mr. Forrest?

15 A: Yes.

16 Q: Can you tell us how you got involved in Mr. Forrest's
17 case?

18 A: I was hired to represent him.

19 Q: And during the course of represents, representing
20 him, how many times did you meet with him?

21 A: This case is really old, so I don't have a memory of
22 how many times I met with him. There have been some things
23 discussed in the testimony from him and his family. This
24 case had a previous attorney that had done a large amount -
25 -- Had represented him for a lot longer than I had. So when

1 I became involved in this case, he was on a trial doc, and
2 so his case was had a short lifespan in my practice because
3 his case came up for trial. And so I think it was mentioned
4 that he said that I only represented him for 90 days or
5 something like that. But the amount of time that I have
6 represented was to get involved, get figured out then his
7 case came up for trial. And so I don't know how many times
8 I met with him, enough, in my opinion, to have to have gone
9 over his issues with him.

10 Q: And by the time that you got his case, was his case
11 already on the trial docket?

12 A: Yes.

13 Q: And during your meetings with Mr. Forrest, did you
14 explain to him the charges that he was facing in
15 this case?

16 A Yes.

17 Q: Okay. And did you explain to him the possible
18 penalties for each charge?

19 A: Yes.

20 Q: And did you explain to him that he was facing life
21 without parole?

22 A: Yes, because he had serious, violent felony charges
23 in another county, and so his whole posture for the case
24 that he had in Charleston County was either going to be the
25 first violent felony that he could get convicted of, or the

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1 second violent felony to give him life, or they weren't
2 really able to LWOP him like the notice but if he were to
3 get convicted in a situation that was without some
4 arrangement of what was going to happen in the next county
5 he would be facing life. I think mandatory life because
6 it's doubled most serious violent felonies.

7 Q: And can you tell us what evidence the state had
8 against Mr. Forrest?

9 A: Well, when --- Okay, so this, as been described, is a
10 situation where a person shot through --- I have the
11 warrant. I can ... It's says that on May 14, 2015 at
12 approximately 2:00 p.m. defendant and victim were involved
13 in a verbal altercation over the phone in reference to
14 money. Once the victim arrived back at the hotel around
15 3:00 p.m. he went to his room, which is room 243, the
16 victim stated that the defendant's girlfriend, who also had
17 a room near his, came and asked his girlfriend to come out
18 of his room to hers. Very shortly thereafter, the victim
19 stated that as he was sitting in his room, when he heard
20 the defendant's voice outside yelling through the door, he
21 stated that he then heard shots being fired through the
22 window at which time he sought refuge in the bathroom. The
23 victim was very clear that he knew that it was the
24 defendant outside his room yelling because the defendant is
25 his nephew and has known him for several years. Upon

1 viewing video surveillance at the incident location it
2 shows only one person dressed in all black standing outside
3 the room and appeared to fire a gun into it. A still photo
4 of the surveillance was shown to the victim and he
5 positively identified without hesitation it to be the
6 listed defendant due to his clothing and hairstyle. These
7 facts are based on the statement of the victim witnesses
8 through the investigation of the detective. So that's just
9 the piece of paper warrant.

10 So this case had a defense about the possibility that
11 the person who was on the video, who's actually shooting it
12 through a window, you know, through the curtains of a hotel
13 room, arguably that maybe the jury would have found that it
14 wasn't him. The problem was, is that right --- and as I
15 said, I wasn't involved all that long. Right before the
16 case was scheduled to be tried there was this discussion
17 about this other video, and they're all right that on the
18 day of when it came to court, and all that, there was
19 another video. That video was from a different angle. It
20 was from the parking lot of the hotel. And so this person
21 was had a mask on. That was the person who shot through the
22 window. And in that video, I was standing there with his
23 family members and him, and we were watching it. And so an
24 individual who they, to me identified was him, because they
25 said, I said, do you recognize that, yes, I do. He comes

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1 out from around an area and is like putting the mask on his
2 head in the same exact place, but if it's not putting the
3 mask on his head, having the mask in his hand or not having
4 the mask on with the exact same clothing. So it was
5 definitely possible that the jury could see that video and
6 connect his personage as the man who's shooting in the
7 window based on the video shortly before that of him in the
8 parking lot of the hotel with the same clothing on. So that
9 was always the problem. Was there going to be not guilty or
10 not? And after many years of doing this, and I, of course,
11 this was a long time ago even, advised him that I felt
12 that, in my professional opinion, that there was a strong
13 likelihood that the jury would convict him based on the
14 evidence that I was presenting him. And so he was given
15 that evidence late in the process. He was given that
16 evidence in the courtroom. If I recall, and I don't
17 remember, everything, there was actually a jury panel
18 waiting for him, see. I think we tried to do this once, and
19 it fell apart. And then we came back, and at that point, he
20 wasn't --- he was saying he wanted to trail so down the
21 hall in this building was 200 people waiting to pick the
22 jury for Mr. Forrest. And so if Mr. Forrest had not pled
23 that morning, we were picking his jury. If he had been
24 convicted of this charge by a jury he was set up to be
25 having his next charge be the possibility of life. All of

1 that was explained to him.

2 Q: And with all this information in mind, was it Mr.
3 Forrest's decision to plead guilty?

4 A: It was Mr. Forrest's decision to say that they needed
5 to dismiss the charge against him, it was extremely
6 difficult to get him to understand, really just his
7 exposure, because he did not want to plea guilty. That's
8 why he pled under Alford. He did not want to admit that it
9 was him and he did not have to under the Alford plea, but
10 he did not want either option. So, you know, as we say, in
11 my practice, you know, there's option A, try to have a
12 plea, option B, have a trial, and there's no option C,
13 they're not going to dismiss the case. So on that
14 particular day, Mr. Forrest had to make a decision. And we
15 were all going back and forth and in and out. They talk
16 about seeing the video up here in this building, they were
17 back in a little room with me where I could show it to him,
18 because I asked the court to allow his family to be able to
19 talk to him, which happens only in occasions in my practice
20 where, you know, I'm asking the judge to please let him
21 talk to his family so that they could, you know, help him
22 make this decision. And they are both right that they told
23 him that he should plea whether or not they thought he
24 should or not, they told him that he should because of the
25 exposure in the case, purely because of the exposure in the

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1 case.

2 Q: And so because the jury panel was waiting if Mr.

3 Forrest wanted a trial, could he have gone to trial?

4 A: Yeah, he was --- I was going to be ready to do it if

5 I need to, for sure. That would have been --- And the

6 problem was, is that they had this new piece of evidence

7 of, I can't remember all the things that we make, but you

8 know when somebody hands you something, a solicitor hands

9 you something right at the last minute, you know, obviously

10 you say, hey, can we take a minute here to figure this out?

11 Judge Dennis did not want to give us any more time, and

12 ultimately, he's the one who said this has to be decided.

13 Q: And did you explain to Mr. Forrest what an Alford

14 plea was?

15 A: Yes, and the benefit to Mr. Forrest, he even

16 described it. The benefit wasn't so much about the charges

17 themselves it was about how it was going to affect his life

18 in the future with being charged with other crimes in

19 different counties for most serious, violent felonies, and

20 he testified, which is true, that his sentences were

21 concurrent, which they didn't have to be because it was a

22 different county. So that was what was decided. The benefit

23 would be, is that I was able to tell him if anything that

24 happens to you in another county is going to be concurrent.

25 And it was.

1 Q: And did you engage in plea negotiations with the
2 state?

3 A: Yes.

4 Q: Do you recall what those offers were?

5 A: I recall --- Could you tell me who the solicitor is.
6 I can't remember.

7 Q: Yes, it was assistant solicitor, Edward Reggie Corbin
8 the third.

9 A: Ted Corbin. Okay, so it was a situation where he had
10 had --- he'd already been involved in the case for a long
11 time, much longer than I had, obviously, and his position
12 had been pretty dug in by then. He had --- when we did the
13 plea, and as we talked about it all, his issue was that
14 this was horrifying to him, that this had happened because
15 the bullet had been shot straight through the hotel room,
16 through the curtains kind of thing and the guy had to hide
17 in the bathroom. And, you know, there was all this stuff
18 that, to him, made this an a very egregious situation.

19 I mean in terms of my efforts to the very last
20 minute, you know, I was attempting to try to come up with
21 some kind of way to give Mr. Forrest options and to, you
22 know, limit time and things like that. But an attempted
23 murder case is a 30 year offense. And so if he had been
24 convicted, I don't know what the judge would have given
25 him, but the penalty range goes all the way up to 30. And

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1 so, you know, whatever we were discussing and trying to
2 figure it out. I did, I thought, tried very hard to get him
3 to get a sentence that was not going to be what he got.
4 And, you know, it was disappointing. You know, Judge Dennis
5 sentenced him, he's the one who picked the number.

6 MR. HALL: Beg the Court's indulgence. No further
7 questions, Your Honor.

8 THE COURT: Redirect? Excuse me, cross examination.

9 MR. THOMAS. Yes, Your Honor, may it please the court.

10 **Ms. Melisa Gay - Cross Examination by Mr. Thomas**

11 Q: Melissa good to see you.

12 A: Happy birthday.

13 Q: So you came in, kind of at the end of, I guess his
14 representation?

15 A: At the end of a case that was already very old.

16 Q: Yeah.

17 A: And had been not handled by, you know, the court
18 system we were doing --- It wasn't just before covid, but,
19 you know, this is a case that it happened in 2015. You know
20 so years already ...

21 Q: Right.

22 A: ... since it happened. So, yeah, the case, it was
23 very old already and at the end of it.

24 Q: Right. Okay. What happened? I didn't quite
25 understand, there were two videos?

1 A: Yes.

2 Q: Okay, and the first video was not very damaging? Is
3 that what your opinion was?

4 A: The first video was very damaging for whoever the
5 shooter was.

6 Q: Right.

7 A Very damaging.

8 Q: Yeah.

9 A: It's like a person shot through the window and walked
10 away and had a gun and all that stuff. The identity of that
11 person was for the state's perspective, in terms of proof
12 and credibility, or weight, was that the victim claimed
13 that it was him talking and he recognized his voice and all
14 that stuff.

15 Q: Just by the voice?

16 A: By the voice, yeah. And he said that he had a beef
17 with him and all those kinds of things. So there was an
18 issue about identity on that. But as we got closer to the
19 trial and we got further along, I honestly can't remember
20 if Ted had told me beforehand there's this video and it
21 just took that long to get it or what, but we were getting
22 ready to go figure out the case and get it all resolved and
23 he said, well, you know, I'm going to show you this video
24 and it turned out that I didn't even have time to take the

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1 video to the jail to show it to him. We did it here in the
2 building.

3 Q: Right.

4 A: And so that video was the video that was him. He said
5 it wasn't him, but everybody in his family told me it was
6 him, you know, I'm not God. I don't know whether it's him
7 or not, but people who were watching the video with me said
8 --- and I said, well, is that him? Yes, that's him.

9 Q: Why did it take the state so long for that video to
10 emerge?

11 A: I don't have, I don't remember. I don't know.

12 Q: Yeah, so it emerged that literally right before the
13 plea or trial?

14 A: It was --- he was --- we tried to do the plea one
15 other time, and then that fell apart. And then we so the
16 day that we were back in the courthouse was the jury panel
17 day, and that this is you didn't want to plea, so now
18 you're here to plea. And it was, maybe I had already showed
19 him to him, but then I showed it to his family. I can't, I
20 really, I can't remember all of it, but we definitely had a
21 moment in one of these smaller rooms where the video was
22 being shown, and his family was there, and we were looking
23 at it.

24 Q: So that's when you had the conversation with him in

1 regards to accepting the plea?

2 A: Yes.

3 Q: Okay.

4 A: Because I was prepared with that if he had wanted a
5 trial, I was going to be there. I was going to qualify the
6 panel. I was going to do all things to try the case.

7 Obviously, done that a bunch of times. But when I saw that
8 video, it was different, and it was just like, I don't
9 think you're going to win your trial. And so, you know, I
10 mean, I am not, in my profession, in my capacity as an
11 attorney representing people, I mean, I don't tell them you
12 should plead because you're guilty or anything like that. I
13 say, you know, in my professional opinion, I think the jury
14 is going to find you guilty of this and that I think it's
15 in your best interest to consider a plea. So I did not
16 pressure him at any point to plead guilty. I gave him
17 options. He chose to do what he wanted to do. And, you
18 know, he did not plead guilty. He filed under North
19 Carolina versus Alford. The whole plea was set up that he
20 said he was not guilty. It's just that it was done. The
21 whole plea was done to avoid life in the next case.

22 Q: So the but he pled under Alford just to the attempted
23 murder?

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1 A: And that was the one that was the most serious
2 violent felony.

3 Q: Okay. Now, do you have an investigator at that time
4 that you used?

5 A: Yeah, his name is Brooks, and he's deceased.

6 Q: Okay.

7 A: And he, at the time of his death, he was 59 and he
8 worked for me for 27 years. And he would have been talking
9 with Mr. Forrest a good bit. He had been since 2018 so
10 2018 was six years ago. So he would have worked for me for
11 over 20 years in and by being the person in my office to
12 help me, you know, talk with clients and do different
13 things that I asked him to do.

14 Q: Right. Would he have made any representations or
15 would he have --- as Mr. Forrest testified that he was
16 given a kind of a rosier picture by the investigators. Is
17 that possible?

18 A: Well, I think that we all had a rosier picture until
19 that video came to light. The video was the thing that you
20 saw a person's face. You saw an actual person with clothing
21 on that match clothing of the person who shot through the
22 window. And so that was very damaging. Okay, Mr Brooks had
23 --- okay, we did this a long time before he died. And he

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1 was always very clear to say that I will talk to Lisa about
2 this. I will, you know, she will get in touch with you,
3 because we had had plenty of times when things had gotten
4 confusing about somebody having an expectation that was not
5 accurate because somehow they said that something happened
6 that didn't so we had a very clear way of doing what we did
7 that he never would have given legal advice, but he knew
8 enough about the law, you know, he had a college degree
9 from College of Charleston in some things, he would talk to
10 people sometimes about different cases or different
11 possibilities, but not to give them legal advice ever.

12 Q: Now, you mentioned the LWOP, was there a plan in
13 place that they were going to let him plea in one county
14 and then plea in another and they would try him in another
15 and LWOP him?

16 A: Yes, there was discussion by Mr. Corby about the fact
17 that if he was not --- if he was convicted by a jury on
18 this and it was not an arrangement where he pled to get the
19 understanding that it was going to run concurrent, that
20 there was the possibility that he would be getting a life
21 notice on the other case.

22 Q: Okay. And did Daeshaun understand that?

23 A: I don't know. I don't know. I mean that would be
24 considered speculation on my part. I don't know what he
25 understood. I knew that most everything that we were

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1 talking about that morning was about exposure. This is
2 what's going to happen to you if the jury convicts you if
3 we don't have some kind of arrangement here. So the
4 arrangement was that, because he was going to plead to
5 this, that the other county, I think it was one, maybe two,
6 but the other Sumter, I think, is the one that was not
7 going to seek life. They were just going to deal with his
8 case concurrent and he testified that that's what they did.

9 Q: And that's something that you were involved in with
10 the other attorneys?

11 A: That was something that the Charleston County
12 solicitor was agreeing to.

13 Q: Okay. Okay.

14 A: And the Charleston County solicitor was indicating to
15 me that that would be conveyed, and was okay with the
16 Sumter solicitor.

17 Q: Right. But you didn't --- you didn't represent him in
18 the other two counties.

19 A: No.

20 Q: Have you had an opportunity to go back and read that
21 transcript?

22 A: This one?

23 Q: Yeah from the bifurcation from where Judge Dennis
24 accepts the plea and then he does the sentencing.

25 A: Okay, so I think that part of it was because Mr.

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1 Forrest talked about how he was very emotional at the time.

2 Q: Right.

3 A: And I also, the real reason was because he had a
4 panel waiting, and he needed to pick a jury and do the next
5 case. And so we decided after he pled that we would come
6 back at another time because he needed to go forward and
7 have the case come in that was going to be the case that he
8 was trying next. And I think that it was, as y'all have
9 described a very emotional situation and he just said,
10 well, I'm gonna, you know --- oftentimes in this county, I
11 don't know how they do it in other counties, but we do
12 different things, like we'll do motions and then come back
13 and do it later in the afternoon or whatever. And so he
14 took the plea, like they do so many times when they have
15 other cases getting ready to come up for trial. And when he
16 took the plea, he just continued the sentencing so that he
17 could move on to what it is that he was doing, and maybe
18 also he wanted to think about it some, obviously and
19 everybody was kind of very upset at all but, and so I just
20 had this, I can't remember what courtroom we were in. We
21 might have been in this one or maybe downstairs, and it was
22 a small courtroom though. And I remember sitting in your
23 chair, like right there with Mr. Forrest next to me and all
24 of his family were there and just, you know, trying to
25 figure it all out and being very upset. And then Judge

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1 Dennis saying, well, we're just going to take --- Well,
2 I'll just sentence him later. And then he went back to the
3 jail.

4 Q: I've known Judge Dennis for a long time. In reading
5 this transcript, it sounded like it was a very difficult
6 time.

7 A: To get through the plea?

8 Q: Well, just I thought that --- I didn't understand
9 some of the things that Judge Dennis was doing. It seemed
10 like he was ...

11 A: I think Judge Dennis was irritated. I mean, you know,
12 occasionally, Judge Dennis would have his own whatever way
13 he was dealing with things, but I think that we had tried
14 to plead him before. Judge Dennis was the chief admin judge
15 at the time, so we had tried to plead him before and that
16 didn't work. And I think that he, this is my own opinion,
17 and I'm just going to say what I think, I think that he was
18 irritated that there was so much trepidation about doing
19 the plea. And it was his position was, if we're going to do
20 this plea, we're going to do the plea, if we're not, we're
21 picking that jury down there. And so there was this very
22 strong sense we're going to get pushed into picking a jury
23 if we don't continue, you know, to go this route, this way,
24 and that was not going to be beneficial to him, in my
25 professional opinion. Certainly, if he wanted to do that, I

1 was prepared and ready to go. But in my professional
2 opinion, I didn't think that was in his best interest.

3 Q: Because actually, at one time, I think it kind of
4 breaks down and Judge Dennis ...

5 MR. THOMAS: I think that might be that page 25, Your
6 Honor ...

7 Q: ... where he says that he's not going to accept the
8 plea.

9 A: Right. He thought that there was, how do we describe
10 this? I'm sure you have a word for it too gamemanship going
11 on or something. You know, just some caginess is maybe the
12 way to say it. So listen, you know, we're accommodating and
13 we're trying to like work this through, but if you don't
14 want to do this, we're all just going to pick that jury
15 down there and y'all come back in as a defendant at trial.
16 That I think was the issue, was just that Judge Dennis was
17 like I got a lot of other things to do here, and if you
18 don't want to plead, that's fine, but you know, I'm not
19 going to, you know what I mean.

20 Q: Right. And then this was a open plea in regards, I
21 mean, it was zero to whatever or, I mean ...

22 A: I think it was, I don't really remember exactly what
23 the plea negotiations were, but I was obviously aiming for
24 something a lot less than what he got.

25 Q: Right.

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1 A: And, you know, for any number of reasons, including
2 that he had been out of jail for a good while before living
3 his life, and, you know, doing the things that he was
4 supposed to do, and had good things, good family
5 connections, good things to talk about. In mitigation, I
6 felt like we have a lot of good stuff. You know, I just, I
7 thought that he had mitigation that should've mattered.

8 Q: Right. Right. There was a lot in that transcript
9 about benefit. Which I thought was surprising, you never
10 really seen a lot of that, about what the benefit was to
11 Mr. Forrest for entering into this plea. And he wasn't
12 going to accept the plea unless he was receiving some sort
13 of benefit. Do you remember that?

14 A: Well, I think that the benefit for him was not so
15 much the charge itself or any type of reduction, which is
16 often how Alford cases go, it was about what was going to
17 happen to him next. And that was discussed and talked
18 about, and the fact that he was going to end up with
19 concurrent sentences, and if he didn't, okay, let's take
20 the plea away.

21 Q: Yeah.

22 A: Let's say that he goes to trial and he gets convicted
23 by a jury, and there's not this understanding that there
24 may be some current sentences. In his case, because I
25 think you mentioned he had two he could have gotten popped

1 around to several different places, and certainly have
2 ended up with life. And so that was the benefit, is, you
3 know, if I was stretching or trying to explain to the judge
4 that that's what I believe to be the benefit. For Mr.
5 Forrest, the benefit was that he did not have to plea
6 guilty.

7 Q: Your Honor, may I approach for this next question?

8 THE COURT: Yes.

9 A: I have the transcript.

10 Q: Let me let me show you, wait a minute and I'll show
11 you in my notes, page 13 in that first transcript. You got
12 it? I was just going to let you look if this is easier.

13 A: Okay, so Judge Dennis is saying from the page before,
14 the court, in order to avoid a consequence, I want to enter
15 a guilty plea. The consequence, to me, the only benefit I
16 foresee is that you would have other charges that you may
17 be prosecuted on. Yes, sir. Do you consider that a benefit?
18 Yes, sir. Do you understand that you will have a record for
19 attempted murder? Yes, sir. Are you understanding --- Are
20 you understanding part of the sentence and part of the
21 process of a guilty plea is, as we all who practice law in
22 a criminal court know that guilty pleas most judges
23 consider that and use that to reduce what they may
24 typically sentence or will sentence someone to. Do you
25 understand that? Yes sir. That's not a guilty plea for me

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1 because you've already gotten a benefit as far as I'm
2 concerned. Do you understand that? Okay, so what Judge
3 Dennis was saying is, is that he believed that having him
4 be able to plea under Alford was a benefit.

5 Q: Okay. Let me, let me ask you this, and maybe I'm
6 misinterpreting it.

7 THE COURT: Mr. Thomas did you say that was on page
8 13?

9 MR. THOMAS: Yes, sir. Page 13 lines nine through 18.

10 THE COURT: Okay that's why.

11 MR. THOMAS: Is that the maybe the first transcript,
12 the sentencing, not the sentencing, but the acceptance of
13 the plea?

14 THE COURT: I mean I actually read it earlier, so I
15 know what you're talking about. I was just trying to find
16 it while you were pointing it out.

17 Q: Melisa, let me ask you this about and maybe I'm
18 missing the point and I'm asking if this gives you any
19 concern. It appears in that that Judge Dennis is saying,
20 normally, you would receive some sort of benefit from
21 accepting responsibility in pleading. I
22 am interpreting this as the benefit that you have, that you
23 are receiving is that the state is going to nolle prosequere
24 these other charges, and therefore I don't consider this as
25 a guilty plea in terms of you receiving a benefit or a

1 sentence by accepting responsibility. Did that concern you?
2 Or is that what was going on?

3 A: Okay. So Judge Dennis was the chief administrative
4 judge for a number of years based on covid not just the
5 usual one.

6 Q: Right.

7 A: And his way of doing things was he talked a lot
8 during pleas and, you know, had a lot of colloquy with
9 people and that would never have occurred to me what you
10 just said. I think that what, okay, if I was trying to, if
11 I was remembering and interpreting what was going on. He
12 kept saying that he wanted the case to go to trial. Like
13 this whole, you know, process of doing the plea was
14 basically at the point he was just like, so let's just go
15 to trial. This is getting to be ridiculous kind of thing.
16 And so his process of letting of accepting the Alford plea
17 and having that be the how the man got to do the plea as
18 opposed to having to admit guilt based on the fact that
19 there was like this jury down there waiting to go if we
20 needed to have a trial. It was kind of like his position
21 was, if you're not guilty, let's just have your trial, that
22 kind of thing. And so when we asked him and told him and
23 said, you know he's going to plea and he'd like to do it as
24 an Alford plea, my interpretation of what we just talked
25 about was, is that he was saying, okay, the benefit of that

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1 is that you don't have to admit that you did it. And that
2 that's a benefit in itself, because that's how a Alford
3 plea goes, you don't have to admit you did it. And that, in
4 terms of his sentencing, I don't know, he was all over the
5 board. Some days, he was really nice, you know, he was a
6 judge that did whatever he chose to do. I always tell
7 people that once you plead guilty and give up your right to
8 a trial, it's totally up to the judge and the judge's
9 discretion what happens in the sentencing. Unless you have
10 some type of negotiation or a range or some type of, you
11 know, something that's much more concrete than just
12 pleading straight up. This case was pled straight up, in
13 the sense that this case was pled to avoid the jury panel
14 that was down the hall, if that was going to be the choice
15 he made. So if you want to go in front of the jury and pick
16 the jury and let the jury decide, all kinds of consequences
17 are going to be there if you don't and you want to decide
18 you want to plead Alford and go this way, these
19 consequences, we can at least understand and know that
20 these other counties are going to run concurrent they're
21 not going to ask for life.

22 Q: Okay.

23 A: Which, I mean, in my practice, I think that's a good
24 thing to know.

25 Q: Yeah.

1 A: And be able to avoid.

2 MR. THOMAS: Beg the Court's indulgence. Your Honor,
3 no further questions.

4 THE COURT: All right. Redirect.

5 MR. HALL: Very briefly.

6 **Ms. Melisa Gay - Redirect by Mr. Hall**

7 Q: Ms. Gay, you explained to Mr. Forrest the LWOP
8 situation and that he was possibly facing LWOP?

9 A: Okay, so he wasn't possibly facing LWOP.

10 Q: He was facing LWOP if he had been convicted at trial?

11 A: Okay, so LWOP is a life without parole notice. What he
12 was facing was a statute that would require a life sentence
13 if, in fact, he got convicted by the jury and had whatever
14 sentence he got based on that conviction, based on some
15 other things as he moved through the process that the
16 statute could say, because they were also second, most
17 serious violent felonies require a statutory life sentence.
18 And so it was, you know, if I'm not saying that exactly
19 perfect, the understanding was, is that when he went off to
20 these other counties, he, I mean, that county would have to
21 be the county's file an LWOP notice. You know, Sumter would
22 have to be the county to decide to file an LWOP. So,
23 obviously I couldn't tell him what Sumter County was going
24 to do, but the exposure to him if he was convicted of this,
25 and he did get convicted of the charge, but the exposure

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1 without the plea, and the understanding that they weren't -
2 -- that they were going to allow his sentences to be
3 concurrent and not seek life, and all that, in my opinion,
4 was very significant for him. That's what I was talking to
5 him about.

6 Q: And did you explain that to him?

7 A: Yes.

8 Q: And did you have any concerns about his competency or
9 ability to understand?

10 A: No.

11 Q: Okay, and if Mr. Forrest had wanted to go to trial,
12 were you prepared for trial?

13 A: That day. I mean I would've had to. I mean I was
14 noticed to go to trial. I was there to pick the jury, if
15 that's what I was supposed to be doing. So the first time
16 that we came was the, let's think about this, are we going
17 to do it? Are we going to not do it? There's no jury panel
18 down the hall. The second time he came, he was up for
19 trial, and the case was old, and Judge Dennis wanted it
20 tried. So that's why it was all about, you know, what are
21 we going to do here? Well okay, if we're not going to do
22 this plea, let's just go ahead and go forward and you know
23 what we're going to do? Because they had --- they had ---
24 they were ready to go. And I don't remember, I really don't
25 remember why this video appeared at the last minute. I

1 certainly know myself well enough to have said to Ted
2 Corby, well, we just got this. He needs to think about it.
3 It was Judge Dennis who was the one that was saying, well,
4 that's those days are over. We're doing this now. And so -
5 -- but that second video, I mean, I distinctly remember
6 watching it with some family members and looking at this
7 person that you can see their face, see what they wore. It
8 was just like, okay, so that's the guy that was over here
9 with the gun shooting in the window. I mean, that was the
10 connection. The problems was that, you know, if it wasn't -
11 -- if his face was, it was from some distance, but not from
12 here to the man sitting over there, you know, it just
13 wasn't that far away. And so it was pretty easy to have
14 made an idea.

15 MR. HALL: No further questions.

16 THE COURT: Any recross?

17 MR. THOMAS: No, Your Honor.

18 THE COURT: All right the witness may step down.

19 MS. GAY: May I be excused Your Honor?

20 THE COURT: Any objections Mr. Thomas?

21 MR. THOMAS: Your Honor, I may have some recall, a
22 rebuttal witness.

23 THE COURT: Okay.

24 MR. THOMAS: But I need a second or two just to talk
25 to the witness.

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1 THE COURT: Okay.

2 MR. THOMAS: And otherwise, I have no objections to
3 her being excused.

4 THE COURT: You don't have objection to her departing?

5 MR. THOMAS: No, no no.

6 THE COURT: Just staying in the court case?

7 MR. THOMAS: Right.

8 THE COURT: You are excused.

9 MS. DIXON: I don't know anything about this rebuttal
10 witness. We might need to – I'm so sorry.

11 THE COURT: Ms. Gay you better sit tight for a minute.
12 Will y'all approach for a minute?

13 MS. GAY: I'm just going to go to the bathroom and be
14 right back.

15 THE COURT: All right. All right. Mr. Hall?

16 (Off the Record)

17 THE COURT: Yes, sir. Mr. Hall.

18 MR. HALL: The state rests at this moment. We just
19 want the record to be clear. We will allow Mr. Thomas to
20 put it on the record that the witness that he would've
21 called would've been Mr. Forrest's mother.

22 THE COURT: Well I'll put it this way. Does the
23 applicant wish to put up any reply or rebuttal witness?

24 MR. THOMAS: No, Your Honor.

25 THE COURT: Very well.

1 MR. HALL: Judge at this time the state rests. We do
2 have an evidentiary objection.

3 THE COURT: Okay.

4 MR. HALL: Your Honor, the state objects for any
5 allegations of prosecutorial misconduct, for any
6 allegations of a Brady violation in this case. We didn't
7 receive any notice about those allegations particularly
8 being raised and there was some testimony and questions
9 asked here that could be construed as such so we just
10 object on that basis.

11 THE COURT: Well they are not in the application for
12 relief. Is that correct, Mr. Thomas?

13 MR. THOMAS: I'm sorry.

14 THE COURT: As far as any issues of prosecutorial
15 misconduct?

16 MR. THOMAS: They are not, Your Honor.

17 THE COURT: And you know, sometimes things get
18 elicited in testimony that weren't really even being sought
19 by the attorney. You're not intending to add to the grounds
20 for your relief today?

21 MR. THOMAS: I am not, Your Honor.

22 THE COURT: Okay.

23 MR. HALL: Judge, we just want to clarify for the
24 record.

25 THE COURT: All right. It's been clarified. Does that

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1 help us?

2 MR. HALL: Yes sir.

3 THE COURT: All right, any summation?

4 MR. HALL: Yes, sir, we'll let Mr. Thomas go first.

5 THE COURT: That's right it's his case. Very well.

6 MR. THOMAS: Your Honor, if it may please the Court.

7 Very briefly, I actually considered maybe not a summation.

8 It is purely, a ...

9 THE COURT: I think we can tell Ms. Gay she's free to
10 depart?

11 MR. THOMAS: Oh yes.

12 MS. GAY: All right, thank you. Y'all have a good day.

13 MR. THOMAS: It is, Your Honor, purely a case of which
14 would be ineffective assistance and a involuntary guilty
15 plea. We would ask the court to look at the transcript. I
16 think the transcript has information about what's going on
17 that day, just in reading it, to me it's somewhat
18 adversarial. There's just a lot of tension in this
19 courtroom.

20 THE COURT: In the transcript?

21 MR. THOMAS: In the transcript. I think it's evident
22 in the transcript, not as much in the sentencing
23 transcript, but it is in the transcript of accepting the
24 plea. And I think that there is evidence that all of this
25 happened immediately, he thought he was going for a bond

1 hearing and it turned out to be here it is. You take this
2 plea, or we're going to trial. You know, he did get a
3 chance to go talk to his family. But I think that if you
4 look at the picture as a whole it paints a picture of an
5 involuntary guilty plea.

6 THE COURT: To your point, do you have a case you can
7 rely upon to where the courtroom becomes so tense that it
8 becomes an involuntary plea?

9 MR. THOMAS: You now, Your Honor, I have not, but if
10 you ...

11 THE COURT: Because, obviously tension is inherent in
12 this room.

13 MR. THOMAS: Yes, generally speaking. I think that the
14 tension, and that's what I'm asking the court, because I
15 think it's difficult to try to bring some of that out
16 through Ms. Gay about what was going on in that courtroom.
17 And I think really the only way to do it is to read it. I
18 know the court will do.

19 THE COURT: Yeah, I tried to read it as we were going
20 through.

21 MR. THOMAS: Yes.

22 THE COURT:... read it in full per your request.

23 MR. THOMAS: Yes, so I do think that it paints a
24 picture. I mean, I'll be glad to do some research and
25 submit that to the Court within a reasonable amount of

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1 time.

2 THE COURT: Sure.

3 MR. THOMAS: But I do think that there is evidence
4 there that this plea was forced in a way and that it wasn't
5 freely and voluntarily given. There's a little bit of
6 evidence that it wasn't knowingly and intelligently given.

7 THE COURT: Is your primary grounds for inefficient
8 ineffective counsel ...

9 MR. THOMAS: It revolves around the plea.

10 THE COURT: Okay.

11 MR. THOMAS: Yes sir.

12 THE COURT: I mean, you would assert the primary
13 action is that counsel allowed the plea to go forward?

14 MR. THOMAS: I think Your Honor, yes. And I think
15 that, I think that's where the ineffectiveness comes in,
16 maybe, you know, it's involuntary guilty plea first, and
17 then the ineffective assistance of counsel behind that, and
18 that is what provided for the involuntary plea. I think
19 that there were things that were done. I think that he
20 really didn't completely, I mean, this was an old case, but
21 I think he really didn't completely understand when he was
22 talking about going in for a bond hearing and then having
23 to switch gears. And then, if you look at it in the picture
24 with that transcript, I think it's credible to say that
25 this thing wasn't freely and voluntary and knowingly and

1 intelligently given.

2 THE COURT: Okay. Anything else for the moment?

3 MR. THOMAS: No, Your Honor.

4 THE COURT: Okay let me hear from the State.

5 MR. HALL: Judge regarding Mr. Forrest believing that
6 he was only there for a bond hearing, Ms. Gay testified
7 that he was on the trial roster and that if he didn't plea,
8 there was a jury panel waiting to go to trial if he had
9 wanted to go to trial. But regarding the ...

10 THE COURT: Well if he was there for a bond hearing,
11 he couldn't be there for trial. That's a small bit of
12 inconsistency there. It didn't get clarified on the record
13 either. I'm only left with what I have on paper but it's
14 not often that we bring somebody up for a bond hearing and
15 they get a jury.

16 MR. HALL: Yes, judge and Ms. Gay testified that he
17 was on the trial roster.

18 THE COURT: Okay, trial roster is different.

19 MR. HALL: Yes, yes.

20 THE COURT: But I'm a little confused in he's here for
21 a bond hearing or he's here on the roster to go forward for
22 trial now and this is a plea right before trial.

23 MR. HALL: Judge that comes down to a witness
24 credibility determination for Your Honor to make. He says
25 that we believed he was there for a bond hearing.

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1 THE COURT: Right.

2 MR. HALL: Ms. Gay says, you know he was on the trial
3 docket, a jury panel was waiting and it was his decision to
4 make --- whether to plead guilty or to go to trial. And so
5 it's for Your Honor to determine which witness you believe
6 in that regard.

7 THE COURT: Okay.

8 MR. HALL: Regarding the burden here in this case, of
9 course, the burden is on Mr. Forrest. To clarify the law
10 that this court must follow here in this case. To prove
11 that a plea was involuntary, the applicant must first prove
12 that counsel is ineffective, that's the first prong. And
13 then he has to prove that but for counsel's errors he
14 wouldn't have pled guilty and would have insisted on going
15 to trial. Your Honor, that case is *Hill v. Lockhart*, 474
16 U.S. 52 that's a U.S. Supreme Court case. And to follow up
17 with that, we cite *Padilla v. Kentucky* 559 U.S. 356, that's
18 also a Supreme Court case. And the U.S. Supreme Court
19 stated that counsel is presumed to have rendered competent
20 advice at the time their clients pled guilty and that the
21 burden is on the defendant to prove that the burden is on
22 defendant to prove that counsel did not. Your Honor, we
23 would also cite to *Dalton v State* 376 S.C. 130 that's from
24 our courts here. The Court of Appeals stated that in order
25 for a plea to be voluntarily and intelligently made, the

1 defendant must, the record must establish the defendant had
2 a full understanding of the consequences of his plea, the
3 charges against him and his constitutional rights. Those
4 constitutional rights being the right to a jury trial, the
5 right to remain silent, and the right to confront
6 witnesses. Your Honor, counsel testified that she explained
7 all of those things to him before he plead guilty. He knew
8 that he had a right to a jury trial, and he made the
9 decision to plead guilty. Under *Dalton v. State*, the court
10 also stated that the burdens on the applicant to prove ---
11 to show a valid reason why they should be allowed to depart
12 from the statements they made in the plea colloquy. And so
13 Your Honor, Mr. Forrest is here. The record speaks for
14 itself. He had an awareness of the charges against him,
15 possible penalties and constitutional rights. And with all
16 that information in mind he made the decision, on the
17 record to plead guilty, and Your Honor, we would ask this
18 court to deny his application on that basis.

19 THE COURT: All right. Any last words?

20 MR. THOMAS: May I address the issue of the jury
21 roster, the docket?

22 THE COURT: Yes you can.

23 MR. THOMAS: I may be wrong, and I could be. When I
24 read the transcript, it was my understanding that, yes, he
25 was on the trial docket, but he wasn't going to be tried

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1 that day.

2 THE COURT: Which I can see the confusion that bridges
3 the gap between.

4 MR. THOMAS: That's what I believe. I've read the
5 transcript a couple of times. I could have misunderstood,
6 but I would ask the court when you look at the transcript,
7 that's what I interpreted.

8 THE COURT: It's quite routine.

9 MR. THOMAS: Yes.

10 THE COURT: Someone would come in for a motion hearing
11 or even a plea when they're on the trial roster but not
12 necessarily for that term of court.

13 MR. THOMAS: Right. Thank you, Your Honor.

14 MR. HALL: But Judge, just also to clarify, Ms. Gay
15 did testify that Judge Dennis was saying that if he didn't
16 want to plead, that he would just go to the next.
17 Apparently there were a number of defendant's according to
18 Ms. Gay's testimony who were lined up, and Judge Dennis was
19 accepting pleas first and then if a defendant wanted a jury
20 trial they were going to try them I guess later on in the
21 week.

22 THE COURT: Which would explain the bifurcated
23 proceeding?

24 MR. HALL: Yes, sir.

25 THE COURT: Okay. Well I'll take it under advisement

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and make a decision.

STATE OF SOUTH CAROLINA)

) CERTIFICATE

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COUNTY OF CHARLESTON)

Be it known that I, the undersigned Melissa R. Singletary, Certified Verbatim Reporter, for the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of the testimony and evidence introduced in during this testimony of the captioned case, before the Circuit Court for Charleston County, South Carolina, so given on March 12, 2024, to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand this 9th day of September, 2024.

Melissa R. Singletary

Melissa R. Singletary, CVR
Certified Verbatim Reporter

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AG
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
Daeshaun Forrest, SCDC #346850,)
)
Applicant,)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2020cp1005001

ORDER OF DISMISSAL

2024 MAY -9 PM 12:30
JULIE JARVIS
CLERK OF COURT

FILED

This matter is before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Daeshaun Forrest (“Applicant”) on November 13, 2020. On March 12, 2024, an evidentiary hearing convened before the Honorable Walton J. McLeod, IV. Applicant was present and represented by Tommy A. Thomas, Esq. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf and called as witnesses Veronica Forrest Brown and Desiree Jordan. Respondent called as a witness Melisa W. Gay, Esq. Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (“SCDC”), serving an eighteen (18) year sentence. During its November 2015 term, the Charleston County Grand Jury indicted Applicant for attempted murder (2015-GS-10-06030), possession of a weapon during the commission of a violent crime (2015-GS-10-06031), and discharging firearms into a dwelling (2015-GS-10-06032). These charges arose from an incident in which a masked shooter, identified as Applicant, shot into a hotel room occupied by Applicant’s relative.

On October 13, 2017, Applicant pled guilty under *Alford*¹ before the Honorable R. Markley Dennis. Assistant Solicitor Edward R. Corvey, III, prosecuted the case. Melisa W. Gay, Esq., (“Counsel”) represented Applicant. On October 18, 2017, Judge Dennis sentenced Applicant to thirty (30) years provided upon the service of eighteen (18) years for attempted murder, ten (10) years for discharging into a dwelling, and five (5) years for possession of a weapon during the commission of a violent crime.

On October 30, 2017, Counsel filed a notice of appeal on Applicant’s behalf. The South Carolina Court of Appeals dismissed the appeal for failure to provide sufficient explanation of an issue that can be appealed from the guilty plea. *State v. Forrest*, S.C. Ct. App. Order Filed Dec. 18, 2017. The Remittitur was sent on May 18, 2018.

On November 13, 2020, Applicant untimely filed this PCR action. On October 29, 2021, the State filed its Return and moved to dismiss Applicant’s application for failure to comply with the statute of limitations. On December 6, 2021, the Honorable Roger M. Young issued a Conditional Order of Dismissal, granting Applicant twenty (20) days from the date of the Order to provide a sufficient reason for why the application should not be dismissed. On December 20, 2021, Applicant filed a response arguing he was entitled to equitable tolling of the statute of limitations based on an affidavit from Tricia Blanchette, Esq. stating Applicant believed a PCR application was timely filed by William Thrower, Esq. On November 4, 2022, a virtual hearing on the State’s motion was held before the Honorable Diane S. Goodstein. On May 25, 2023, Judge Goodstein denied the State’s motion to dismiss, finding Applicant was entitled to equitable tolling.

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

CURRENT APPLICATION

In his current PCR application, Applicant alleges he is being held in custody unlawfully for the following reasons:

- 1) Ineffective Assistance of Counsel
- 2) Involuntary Plea: coerced to plead guilty.

Before this Court are the Charleston County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate records; the plea transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

a) Applicant's Testimony

At the evidentiary hearing, Applicant averred he pled guilty because he was scared. Applicant averred he believed he could have "beaten" his charges at trial. Applicant testified that his bond was previously revoked and when he came to court on the day of the plea, Applicant believed and hoped he was going to court for a bond hearing. Applicant testified he was previously represented by Mark Archer, but Counsel was retained ninety (90) days before the plea and visited him once at the detention center. Applicant testified he did not have an opportunity to fully discuss the charges with Counsel and talked to her seventy-two (72) hours before the plea. Applicant testified he did not review discovery with Counsel, but saw the Rule 5 packets.

Applicant testified he did not see the videos in evidence but he saw one (1) of the videos when he went to plead. Applicant testified the State claimed Applicant shot at his uncle from outside of a hotel, and the State's evidence included the victim's statements against him. Applicant testified the surveillance video of the shooting showed a man in black clothing and a bandana but did not identify Applicant as the shooter. Applicant testified he did not discuss the videos with Counsel when deciding whether to plead. Applicant testified Counsel informed him that the State

would not accept a plea to anything other than attempted murder. Applicant testified Counsel discussed the plea with his mother and girlfriend and told them he was offered twenty (20) years, to which Applicant declined.

Applicant further testified that he was informed if he did not plead guilty to the Charleston County charges, then Sumter County would not offer him a plea deal. Applicant testified he knew that he was facing life without parole ("LWOP") for the charges in other counties if he did not plead guilty. Applicant testified he did not tell Counsel to reach out to other counties but Counsel did so on her own and arranged a plea with Charleston and two (2) other counties. Applicant testified the agreement with other counties was for the charges to run concurrent, but Applicant testified that he did not consider that a special deal.

Applicant testified that Counsel spoke to his mother and girlfriend and told them Applicant had to decide in the moment whether to plead. Applicant testified that Counsel informed him he was facing LWOP in for the charges in other counties if he did not plead. Applicant he testified he was scared, crying, and pled guilty based on emotions. Applicant testified he thought he was pleading to an offer of zero (0) to twenty (20) years and did not understand he was entering an open plea. Applicant testified that he did not understand what an *Alford* plea was and did not understand what the plea judge explained to him regarding the benefit of the plea. Applicant testified the plea judge chastised the solicitor for a potential *Brady* violation.

b) Veronica Forrest Brown's Testimony

Veronica Forrest Brown, Applicant's mother, testified she was present at the meeting between Applicant and Counsel. Brown testified Applicant was waiting to get his bond back. Brown testified Counsel could not get a video from the solicitor but thought the video received hurt Applicant. Brown testified she did not want Applicant to accept a plea, and Brown reviewed

the surveillance video in the State's evidence and knew that it was not her son in the video. Brown testified that Counsel explained to Applicant that an *Alford* plea meant Applicant would admit the State had enough evidence to convict at trial. Brown testified Applicant did not have enough time to make a rational decision and the courtroom looked like a bullying contest. On cross-examination, Brown testified that she did not want Applicant to plead guilty initially but after Counsel "drilled" them and said Applicant would get over thirty (30) years, Brown told Applicant to plead.

c) Desire Jordan's Testimony

Desire Jordan, Applicant's girlfriend, testified that she was at the courthouse when Applicant plead guilty and heard conversations Applicant had with Counsel. Jordan testified Counsel told Applicant it was his choice to plead guilty. On cross-examination, Jordan testified she was not present at every meeting between Applicant and Counsel.

d) Counsel's Testimony

Melisa W. Gay ("Counsel") testified she does not recall how many times she and Applicant met but, in her opinion, the time was sufficient to review the issues. Counsel testified Applicant was represented by a prior attorney who represented him longer, and the case was already on the trial docket with Counsel received it. Counsel testified that she explained to Applicant the charges against him and possible penalties. Counsel testified that she explained to Applicant he was facing LWOP in other counties due to serious violent charges pending. Counsel testified that a conviction could subject him to LWOP on the other charges.

Counsel testified that she discussed evidence with Applicant and reviewed a surveillance video with Applicant and his family. Counsel testified there were two surveillance videos in question: the first was damaging for the shooter; the second was used for identification. Counsel

testified Applicant's family recognized Applicant in the second video, and the jury could conclude Applicant was the shooter based on the video which depicted a person wearing the same clothes and putting on a mask shortly before the shooting. Counsel testified she advised Applicant there was a strong likelihood of him being convicted at trial, and the surveillance video evidence was received late.

Counsel testified that if Applicant did not plead, there was a jury panel waiting, and Applicant would have proceeded to trial. Counsel testified that it was difficult to get Applicant to understand that although he did not want to plead guilty or go to a trial, he had to make a decision. Counsel testified Applicant's mother and girlfriend told him that he should plead due to the sentence exposure. Counsel further testified that although the State had new evidence last minute, she was prepared for trial. Counsel testified that she did not pressure Applicant to plead but gave him options, and Applicant chose to plead. Counsel testified that Applicant pled to avoid receiving an LWOP notice in his pending cases in other counties. Regarding the plea judge's explanation of a benefit received for pleading under Alford, Counsel testified the benefit to Applicant was avoiding the potential penalties of potentially receiving LWOP or consecutive sentences for the pending charges in other counties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCF; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant must prove prejudice by showing “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 PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the applicant would not have pled guilty and would have insisted on going to trial.” *Dalton v. State*, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). To prove prejudice following a guilty plea, the applicant “must show that there is a reasonable probability

that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Counsel is presumed to have rendered competent advice at the time their clients considered pleading guilty. *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010). Additionally, the burden is on the applicant to convince the court that rejecting a plea or plea bargain would have been rational under the circumstances. *Id.*

This Court finds Applicant failed to prove Counsel was ineffective in advising him prior to pleading guilty. This Court finds credible Counsel's testimony that prior to the plea, Counsel explained to Applicant the charges against him and possible consequences including potential LWOP or a consecutive sentence for pending charges in other counties. This Court further finds credible Veronica Forrest Brown's testimony that Counsel explained an *Alford* plea to Applicant. Counsel indicated to the plea judge that she explained an *Alford* plea to Applicant. (Tr. 15, Oct. 13, 2017).

Counsel's testimony that Applicant made the decision to plead guilty to avoid being exposed to LWOP or a consecutive sentence for the pending charges in other counties. This Court finds credible Counsel's testimony that she was prepared to go to trial if Applicant chose to do so. This Court finds credible Counsel's testimony that she believed there was a strong likelihood of Applicant being convicted at trial based on a surveillance video in which Applicant's family identified him, and based on this video, a jury could conclude Applicant was the shooter. Based on the State's evidence, Applicant failed to convince this Court that rejecting the plea would have been rational under the circumstances. This Court further finds Applicant failed to overcome the presumption that Counsel rendered adequate advice before he pled guilty. Thus, Applicant did not meet his burden.

Involuntary Plea

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). “To be knowing and voluntary, a plea must be entered with an awareness of its consequences.” *Holland v. State*, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996). “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.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874. This involves awareness of “the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers” and “the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citing *Boykin v. Alabama*, 395 U.S. 238 (1969)). Statements made during a guilty plea should be considered conclusive unless the applicant presents valid reasons why he should be allowed to depart from the truthfulness of his statements. *Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874.

This Court finds, based on the record, Applicant pled guilty under *Alford* with a full understanding of the charges against him, the consequences of the plea, and his constitutional rights. Applicant indicated to the plea judge that Counsel explained to him the charges and possible punishments to each charge. Counsel credibly testified that a conviction to the Charleston charges could subject him to LWOP for the pending charges in other counties. The plea judge further explained to Applicant that he was charged with discharging firearms into a dwelling; possession of a weapon during the commission of a violent crime, which carries up to five (5) years; and attempted murder, which carries up to thirty (30) years in jail. The plea judge explained to

Applicant that by pleading he was waiving his right to a jury trial, right to confront witnesses, and right to remain silent. Thus, this Court finds Applicant pled guilty knowingly and intelligently.

This Court finds Applicant failed to prove his plea was involuntary. This Court finds credible Counsel's testimony that she did not pressure Applicant into pleading guilty and that she advised Applicant of his options, and Applicant chose to plead guilty. At the plea hearing, when asked by the plea judge whether this was the case of his lawyer forcing him to plead guilty, Applicant indicated that it was not. Applicant indicated to the plea judge that he wanted to plead guilty.

Applicant indicated to the plea judge that he was not under the influence of alcohol, drugs, or medication. Applicant indicated he was previously treated for depression but was not suffering from any long-term consequences of that depression at the time he pled. Applicant indicated that no threats were made to him for him to plead. Applicant also indicated that no promises were made to him to plead. This Court finds Applicant has failed to present a valid reason for why he should be allowed to depart from the truthfulness of his statements at the plea hearing. Thus, Applicant did not meet his burden.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he 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.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

IT IS SO ORDERED THIS 2 **day of** MAY, 2024.


WALTON J. MCLEOD, IV
Presiding Judge
Ninth Judicial Circuit

Lexington, South Carolina