

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Lawton McIntosh, Circuit Court Judge

JAMAL KHALID RIOS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000005

APPENDIX

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

IN THE COMMON PLEAS
7th JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,
4
5 Plaintiff,

6 vs.

CASE NO. 2023-CP-42-03943

7 JAMAL K. RIOS,
8
9 Defendant.

10 HEARING BEFORE: HONORABLE J. MARK HAYES, II

11 DATE: October 11, 2022

12 TIME: 1:23 PM

13 LOCATION: Spartanburg County Judicial Center
14 180 Magnolia Street
15 Spartanburg, SC 29306

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

20 ATTORNEYS FOR THE PLAINTIFF
21 JAMES EDWARD HUNTER, ESQ.

22 ATTORNEYS FOR THE DEFENDANT
23 BEVERLY JONES, ESQ.
24 and JAMES A. CHEEK, ESQ.
25

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1 MR. HUNTER: Your Honor, standing before you today
2 is Jamal Rios, with his attorney, Beverly Jones. He's pleading
3 today to two indictments. They're both true billed by the
4 Grand Jury. He's pleading under North Carolina versus Alford.

5 He's here on 22-3943, unlawful possession of a
6 firearm by a person convicted of domestic violence, first
7 degree.

8 He's also here on 2020-GS-42-4898, count 1 only,
9 which was originally indicted as domestic violence. Your
10 Honor, he's pleading to a lesser included, assault and battery
11 of high and aggravated nature.

12 As part of this plea, we are dismissing use of
13 vehicle, resisting arrest, domestic violence, first degree, and
14 possession of a weapon during the commission of a violent
15 crime.

16 THE COURT: You are Mr. Rios?

17 MR. RIOS: Yes, sir.

18 THE COURT: Mr. Rios, if you would, please raise
19 your right hand. Let the clerk of court swear you in.

20 JAMAL K. RIOS

21 being first duly sworn, testified as follows:

22 THE COURT: Thank you, Mr. Rios.

23 Mr. Rios, I just need to let you know that we are
24 making a recording of everything that happens here. This lady
25 over here to my right, she's a court reporter. She's taking

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1 down everything that's said. I just tell you that for,
2 whenever you speak today, please speak up loud enough so both
3 she and I can hear you.

4 Likewise, if ever during this process you can't
5 hear me or anybody else when we speak, I need you to
6 immediately let us know and we'll speak up as well; okay?

7 MR. RIOS: Yes, sir.

8 THE COURT: Thank you, Mr. Rios.

9 Mr. Rios, it is your intent to enter a plea to the
10 two charges that this gentleman just announced?

11 MR. RIOS: Yes, sir.

12 THE COURT: How old are you, Mr. Rios?

13 MR. RIOS: Twenty-eight years old.

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

15 MR. RIOS: I got my GED.

16 THE COURT: How far did you go before you dropped
17 out?

18 MR. RIOS: Tenth grade.

19 THE COURT: Presently, are you married, single,
20 divorced, or widowed?

21 MR. RIOS: Single.

22 THE COURT: Do you have any children?

23 MR. RIOS: Yes, sir. I have three.

24 THE COURT: How old is your oldest child?

25 MR. RIOS: Ten years old.

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1 THE COURT: And your youngest?

2 MR. RIOS: Nine months.

3 THE COURT: Before you got arrested on these
4 charges, did you have a job outside of the home?

5 MR. RIOS: Yes, sir.

6 THE COURT: What kind of work were you doing?

7 MR. RIOS: I worked at the Pork Rind Factory before
8 I was arrested. I lost my job, like, a few months prior to the
9 arrest.

10 THE COURT: Ever served in the military?

11 MR. RIOS: No, sir.

12 THE COURT: Within the last 24 hours, have you
13 consumed any type of substance that's adversely or negatively
14 affecting your ability to understand what we're doing today?

15 MR. RIOS: No, sir.

16 THE COURT: In the past, have you ever received any
17 substance abuse treatment for a drug or alcohol problem?

18 MR. RIOS: Yes, sir.

19 THE COURT: Did you receive treatment for a drug
20 problem or alcohol problem or both?

21 MR. RIOS: It was for both. For prior drug
22 conviction in 2014. And I completed the program in 2016 at
23 ATU.

24 THE COURT: When you completed that program in
25 2016, did you consider it to be a success at that time?

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1 MR. RIOS: Yes, sir.

2 THE COURT: Are you satisfied with the work that
3 your lawyers have done for you in these cases?

4 MR. RIOS: Yes, sir.

5 THE COURT: Has anybody perhaps come to you and
6 threatened you in any way or have they made you any promises in
7 order to get you to make the decision to enter these pleas
8 today?

9 MR. RIOS: No, sir.

10 THE COURT: Am I correct to conclude that your
11 decision to enter these pleas today, that it is a free and
12 voluntary decision on your part?

13 MR. RIOS: Yes, sir.

14 THE COURT: Mr. Rios, I need for you to understand,
15 under the law, you are presumed innocent of both of these
16 charges. You do have a right to a jury trial on either or both
17 of these charges.

18 At any jury trial that would take place, it would
19 be the State has the burden of proof. They would have to
20 convince all 12 members of a jury that you're, in fact, guilty
21 beyond a reasonable doubt of these charges.

22 Mr. Rios, do you understand that you have a right
23 to that jury trial?

24 MR. RIOS: Yes, sir.

25 THE COURT: Do you wish to have a jury trial on

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1 either of these charges?

2 MR. RIOS: No, sir.

3 THE COURT: Sir, I need you to understand there are
4 other very important Constitutional rights that you are
5 entitled to but that you have to give up in order to enter
6 these pleas. You have to give up your right to confront and
7 cross-examine the State's witnesses. You also have to give up
8 your right to present evidence which you or your lawyers may
9 feel establish a defense to these charges. And you have to
10 give up your right of subpoena as well as your right to remain
11 silent.

12 Mr. Rios, do you understand all of those rights?

13 MR. RIOS: Yes, sir.

14 THE COURT: You wish to give up all those rights
15 and go forward with these two pleas today?

16 MR. RIOS: Yes, sir.

17 THE COURT: Mr. Rios, thank you for answering those
18 questions. Mr. Rios, if you would, please, listen to this
19 gentleman, the Solicitor. He is going to give us the facts
20 behind these cases.

21 MR. HUNTER: Your Honor, first, like to note that,
22 at the time of this offense, which was on May 10th of 2020, the
23 Defendant was on probation; an active probation warrant for his
24 arrest.

25 On that day, May 10th, which was Mother's Day in

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1 2020, this happened at Prince Hall Apartments here in the city
2 and County of Spartanburg. On that date we allege the facts
3 would show the Defendant pulled up to Prince Hall Apartments.
4 The victim, Antonio Franks, who is seated back there, was at
5 his mother's apartment, was out talking to a friend.

6 Defendant pulled up and went into the apartment
7 complex, came back out, confronted Mr. Franks about something
8 Mr. Franks had allegedly said. At that time he pulled out a
9 gun, threatened to kill Mr. Franks.

10 Ultimately, Mr. Franks, fearing for his life, tried
11 to fight him off. Mr. Franks tried to fight him off but was
12 unsuccessful. And this Defendant did shoot Mr. Franks in the
13 face, entering his cheek and kind of going out towards his
14 neck.

15 Multiple witnesses on scene identified this --
16 Mr. Franks identified this Defendant in the hospital
17 immediately after police showed up. Other people on the scene
18 identified the vehicle as a Nissan, light colored Nissan. In
19 fact, one of them said between the years 2008 and 2013.

20 At the time, the Defendant was dating, now engaged,
21 to Leah McGregor. That is the type of car she drives, Your
22 Honor.

23 He shot him in the face. Mr. Franks then gets into
24 a vehicle driven by Roxy Hardison and is taken to the hospital.
25 Ultimately, it's likely if she had not been able to take him to

1 the hospital, he likely would have bled out there at Prince
2 Hall, Your Honor.

3 The shot went through his face, through his tongue.
4 Doctors were afraid he was never going to be able to talk
5 again. You will hear from him shortly.

6 He was in the hospital for almost a month. It's
7 interesting. He went in on Mother's Day, released right around
8 on Father's Day in June, Your Honor. His mouth was wired shut
9 for a long time. Had to be fed through a tube before going to
10 a liquid diet.

11 Again, we're quite lucky that he is here and
12 present with us. Ultimately, the short facts are this: He did
13 shoot the victim in the face here in the city and county of
14 Spartanburg.

15 THE COURT: Mr. Rios, you were able to hear the
16 Solicitor when he told me those facts?

17 MR. RIOS: Yes, sir.

18 THE COURT: Do you believe, as he stated the facts,
19 that he is substantially correct with those facts?

20 MS. JONES: Your Honor, this is an Alford plea.
21 I'm just explaining that to him.

22 MR. RIOS: Yes, sir.

23 THE COURT: Mr. Rios, do you understand that, on
24 these charges, on the assault and battery of a high and
25 aggravated nature case, that I could sentence you up to 20

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1 years today?

2 MR. RIOS: Yes, sir.

3 THE COURT: Mr. Rios, do you also understand that
4 particular charge you're pleading to today is classified as
5 both a violent and a serious offense under the law?

6 MR. RIOS: Yes, sir.

7 THE COURT: You had been able to talk to your
8 lawyer as to the consequences and ramifications of the offense
9 being classified as both violent and serious?

10 MR. RIOS: Yes, sir.

11 THE COURT: Understanding the ramifications of
12 those two classifications, you still wish to enter that plea?

13 MR. RIOS: Yes, sir.

14 THE COURT: Sir, do you understand that on the use
15 and possession of a firearm by a person convicted of a domestic
16 violence charge in the first degree, that you could receive a
17 sentence up to five years and/or a fine up to \$2,000?

18 MR. RIOS: Yes, sir.

19 THE COURT: And understanding the possible sentence
20 on that case, you still wish to enter that plea as well?

21 MR. RIOS: Yes, sir.

22 THE COURT: In regards to the assault and battery
23 of a high and aggravated nature charge, do you believe that the
24 State could produce sufficient evidence to prove your guilt of
25 this charge beyond a reasonable doubt and that, if it went to

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1 trial, a jury would most probably find you guilty of that
2 charge?

3 MR. RIOS: Yes, sir.

4 THE COURT: In regards to the unlawful possession
5 of a firearm by a person convicted of a domestic violence in
6 the first degree charge, do you believe that the State could
7 produce sufficient evidence to prove your guilt of that charge
8 beyond a reasonable doubt and that, if it went to trial, a jury
9 would most probably find you guilty of that charge?

10 MR. RIOS: Yes, sir.

11 THE COURT: Mr. Rios, have all of your answers to
12 my questions today so far, have they been truthful and honest?

13 MR. RIOS: Yes, sir, they have.

14 THE COURT: Thank you, Mr. Rios.

15 Discovery was shared with the defense?

16 MR. HUNTER: Yes, Your Honor.

17 THE COURT: How about prior record?

18 MR. HUNTER: May we approach briefly with one thing
19 before the prior record?

20 THE COURT: Sure.

21 (Off-the-record discussion.)

22 MR. HUNTER: 2013, DV, first offense.

23 2014, resisting arrest. One year resisting arrest,
24 Your Honor. PWID marijuana. PWID marijuana half mile times
25 two. PWID crack. Possession of a stolen pistol. Most of

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1 those at the same time. Received a five-year sentence.

2 In 2018, he picks up two counts of domestic
3 violence, second degree. Resisting arrest with assault.
4 That's ten-year resisting arrest, Your Honor. Assault and
5 battery, third. And escape.

6 2019, escape, and DV, first degree. That was the
7 sentence that he was out on probation for when this offense
8 happened, Your Honor.

9 THE COURT: So the probation matter has been taken
10 care of?

11 MR. HUNTER: It's been taken care of.

12 THE COURT: Is there anything from the victim that
13 I need to hear from?

14 MR. HUNTER: I believe he will speak, Your Honor.

15 THE COURT: Sir, just need to let you know we are
16 making a recording of everything that happens here. Whenever
17 you speak, speak up loud enough so this court reporter and I
18 both can hear you. If you could, just start by giving us your
19 full name.

20 MR. FRANKS: Antonio Franks.

21 THE COURT: Mr. Franks, more than happy to hear
22 from you.

23 MR. FRANKS: Yes, I would like to state today that
24 I would like for the Defendant to get the maximum 20 years
25 because of what I've had to go through with this situation.

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1 Been in the hospital during COVID. Been by myself. I had no
2 family, nobody there but myself. I couldn't talk. My mouth
3 was wired down. And it's just a lot of things that I was
4 dealing with, with this situation, PTSD. All of it.

5 I'm sorry, Your Honor.

6 THE COURT: That's all right.

7 MR. FRANKS: Like my mother, my niece, they saw me
8 in that manner with me bleeding from my face. That's something
9 they have never been able to get over. That's something I have
10 to deal with for the rest of my life. That's all I would like
11 to say, Your Honor.

12 I've had like four or five surgeries. Last one I
13 come up with this year in April. So I'm still not fully
14 recovered from the injuries I sustained. My tongue still
15 swells up, and my jaw is not all the way correct either. I'm
16 still dealing with things prior to two years ago from the
17 incident.

18 THE COURT: Thank you, sir.

19 MR. FRANKS: You're welcome.

20 THE COURT: Yes, sir.

21 MR. HUNTER: Briefly, Your Honor. This case was on
22 the trial docket. This is the next case up behind the case
23 that you are currently trying. I was not assigned the case
24 until, I believe, late July. Realized at that time that he was
25 eligible for life without parole based on his record. We did

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1 serve that. However, it would not be perfected until next
2 week.

3 So if this came to trial this week, he would not be
4 eligible. He would be eligible for life if it was not reached
5 this week. We are withdrawing that notice based on the plea.
6 I just wanted to let The Court be aware of that. He would've
7 been eligible for both this charge as well as the DV that we're
8 dismissing in a separate case, Your Honor.

9 THE COURT: Anything that I need to know from the
10 domestic violence case?

11 MR. HUNTER: I believe the victim is here and is
12 likely going to speak on his behalf because she does have a
13 child with him. She recanted -- she also gave a statement in
14 this case, the attempted murder case. It was her vehicle that
15 we allege was used. She recanted that statement, and she is
16 recanting the DV as well, Your Honor.

17 THE COURT: Anything else from the State?

18 MR. HUNTER: Nothing else from the State.

19 THE COURT: Yes, ma'am, or sir.

20 MS. JONES: Your Honor, I'll start first. I'll
21 handle the mechanics and the classification issues in this.
22 Your Honor, I began representing Mr. Rios within a week or two
23 of this event in May of '20.

24 Your Honor, I'll go ahead and deal with the issue
25 of credit. It is our position that, between the date of arrest

1 which was May 13th of 2020, and today's date, Mr. Rios is
2 entitled to 566 days of credit. There is a contention by the
3 State that 270 of those days, which encompass January 9, '22 to
4 9-8-22, he is ineligible to receive those as they were the time
5 period he was in jail, unbonded on the DV charge, which is
6 being dismissed as part of this plea.

7 He was also in jail on a home detention violation,
8 on a violation of probation revocation sentence. And as I
9 stated, it's 270 days. I think it's important. Briefly, I'll
10 tell Your Honor my position as to why he's entitled.

11 He did not get a bond on the DV charge until
12 September. And immediately bonded out thereafter. He was
13 ineligible for release so he was not just there because of a
14 home detention violation that was never, technically, by a
15 court converted to an active sentence. He was only in on a
16 violation.

17 Your Honor, it's our position he is entitled to the
18 total of 566, including that 270.

19 Also, mechanically, Your Honor, when the DV charge
20 was levied against Mr. Rios, I additionally undertook
21 representation of him. As I stated, eventually we did a bond
22 hearing that got him out on -- got him released on home
23 detention.

24 Your Honor, I have, in representing him for
25 two-and-a-half years almost now, have gotten to know Mr. Rios.

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1 I've recently gotten to know a good bit of his family. I've
2 known more about them, just never met them until recently.

3 Until recently, Mr. Rios was employed with a new
4 employer called Meva. It's a manufacturing concern. I think
5 there is an individual here who may speak on his behalf who is
6 his -- was his last supervisor at that employment.

7 And also at this time, Your Honor, from Your
8 Honor's left to right, I'll tell you who is there supporting
9 him. That's his mother Sonia Rios. His sister, Shekinah. Her
10 boyfriend. There is Ashley Lindsay, the mother of his oldest
11 child. His brother Terrell Rios. I'm certain Terrell wants to
12 speak to The Court on his behalf.

13 Seated next to Terrell is the other sister,
14 Kelvina. In front of Kelvina is Leah McGregor, the DV victim.
15 Your Honor, I'm not sure of the two ladies that are mothers of
16 his children, if either of them wish to speak. I do know that
17 Terrell, his brother, wishes to speak, and the supervisor may
18 wish to at the appropriate time.

19 Your Honor, also, as Mr. Hunter stated, I have
20 known from probably the very beginning when I first got the
21 first rap on Mr. Rios that he probably at some point might have
22 an LWOP notice filed on him. Frankly, I was surprised it took
23 until two months prior to this trial to, over two years later
24 for that to be done. It was done. As he stated, it's not been
25 perfected because of the date, until next week.

1 However, Mr. Rios was served with that document the
2 same day I was. We had a conversation about it. He understood
3 this week, if he was tried, he would not be subjected to it.
4 But as it looked like it might not be reached, this case, he
5 was very much in jeopardy because of that.

6 Yesterday Mr. Hunter and I began having our
7 discussions. I never had negotiations with the previous
8 Solicitor who had it for over two years. Only Mr. Hunter that
9 engaged with me in those conversations. We were able to work
10 on this all afternoon. I think about 5:00 is when we finally
11 finalized the plea in the case.

12 Mr. Rios was in the jail room all day yesterday and
13 was party to every conversation we had. He understands the
14 significance of resolving this matter. He understood from my
15 discussions with him that even at a trial, with an LWOP notice,
16 if he was only convicted of what he's being allowed to plea to,
17 he would also be subjected to LWOP because of the
18 classifications of his prior convictions and the classification
19 of both attempted murder and ABHAN.

20 Your Honor, his decision is very knowing.
21 Mr. Cheek was with me for most of the day as well, in an active
22 role. We do have a difference of opinion on some of the facts;
23 hence the Alford plea.

24 However, Mr. Rios is very clearly stating to me and
25 to The Court he understands that the State and believes the

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1 State could present sufficient facts that place him in a
2 substantial risk of a conviction of an offense; one or the
3 other, which would trigger an LWOP if tried once that notice is
4 active.

5 Your Honor, at this point, I'll defer to Mr. Cheek
6 or to Your Honor as to what order you would rather have the
7 family members or Mr. Cheek with his remarks. Which first?

8 THE COURT: Let's get the family members first,
9 then we'll let Mr. Cheek go.

10 Sir, just need to let you know we are making a
11 recording of everything that happens here. When you speak,
12 speak up loud enough so both the court reporter and I can hear
13 you. If you would just start by giving us your full name.

14 MR. TERRELL RIOS: My full name is Terrell Rasheem
15 Rios. Your Honor, Rios family, we humbly come before This
16 Court. We understand the serious of the actions that were
17 committed by our loved one, and we just asking that The Court
18 find mercy, leniency, and forgiveness not just from The Court,
19 also from the victim as well.

20 We deeply regret that these matters, it even took
21 this much time to even get this resolved. We've spoken with
22 our loved one, we spoke with Jamal Rios, and we've come to
23 agreement that this matter needs to be resolved. And that we
24 are willing to, you know, take the opportunity to resolve it in
25 this manner such as a plea. We ask that, once again, you find

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1 mercy and leniency. Thank you.

2 THE COURT: Thank you, sir.

3 MS. JONES: I believe the individual from the
4 manufacturing company is here.

5 THE COURT: Stand up here beside the police
6 officer. Sir, we are making a recording of everything
7 happening. Speak up loud enough so both the court reporter and
8 I can hear you. Start by giving us your full name.

9 MR. MITCHELL: My name is William Mitchell.
10 Mr. Rios is currently employed under my direct supervision as a
11 material handler at Meva Formwork Systems. During his
12 employment he has proven himself to be punctual, hard working,
13 and dedicated. He has thrived in his position with the company
14 and has shown a desire to move up. His honesty and disclosure
15 of his past along with his willingness to overcome and pursue a
16 better way of life has guaranteed his present and future
17 employment with Meva.

18 I'd just like to say from what I know, he's overall
19 a good guy. I mean, from what I've seen from him.

20 THE COURT: Thank you, sir.

21 MS. JONES: Thank you, Mr. Mitchell.

22 THE COURT: Yes, sir, Mr. Cheek.

23 MR. CHEEK: May it please The Court, Your Honor. I
24 would just ask The Court to consider that, in my conversations
25 with Mr. Rios over the period of time that he's been

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1 incarcerated and sometimes not incarcerated, because the family
2 will tell you that I take a privilege of going by the home,
3 checking on things and checking on him.

4 At one point, he was without the privilege of
5 having his father in the home and without having his older
6 brother living in the same home with him. For a period of time
7 not having the resource of their support, I took it upon myself
8 to try to see if he was staying on the path that he promised me
9 he would be on when he was released from the California Avenue
10 facility, then later from the Department of Corrections.

11 Your Honor, staying away from drugs. Staying away
12 from other people that he had in his life that were provocative
13 in the sense of trying to tear him down. He was doing a good
14 job of that.

15 I was just very much surprised when he came back
16 into the facility. My first conversations with him, he
17 indicated that he had been provoked by someone else. That he
18 didn't want to blame anybody else because he listened to
19 someone else, who I think did not appreciate the respect that
20 my client had for Mr. Franks and his family and the
21 interactions the families had together. So he listened to
22 someone else.

23 He's going to maybe be upset that I'm sharing it
24 with The Court. Because he's been very upset. I said: Why
25 did you let someone interfere in your friendship and your

1 family's relationship that go back over ten years, bringing
2 something up that would've been in a threatening nature. If
3 you thought that someone had issued a threat against you or
4 said something negative about you, why did you go over there
5 that night?

6 Your Honor, I think initially he went over there --
7 he will never admit that he had some desire to try to resolve
8 things and put everything at rest. He had a gun on him, which
9 he should not have had. I don't think he took it, Your Honor,
10 with the thought I'm going to shoot anybody.

11 What I can discern, what I get from the family, my
12 conversations with him and my discernment of that, he went over
13 there to resolve the matter about what someone said he did or
14 said he said which he didn't say.

15 I'm just asking The Court to take into
16 consideration he went over there for a good reason with the
17 wrong device with him. And he should've never had a gun to
18 start with. He should've never gone over there to confront
19 Mr. Franks.

20 Your Honor, the only issue he had all along -- I
21 did not go over there with the thought in mind of shooting
22 Mr. Franks. I just wanted to have something on me in case
23 things got out of hand.

24 He hates it happened. He is at a point where he
25 was very much concerned about going forward with the trial,

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1 trying to use a defense of self-defense would not have been
2 successful. Had he gone to trial, he would've argued he was
3 not even there based upon some suggestions that others had in
4 his life.

5 He's come forward now, Your Honor, standing flat
6 foot, and I commend him forward. He's going to address The
7 Court about his thoughts, about his plans.

8 Here's a young man who came out of prison with very
9 little support other than what he could build for himself. He
10 got two good jobs; one at the pork rind factory and then with
11 Meva. He was taking care of his responsibilities, respecting
12 both of the women in his life, not engaged in kind of behavior
13 that he was involved in that led to those convictions of
14 domestic violence.

15 Your Honor, I just ask The Court to take into
16 consideration that he allowed his emotions to get involved. He
17 may or may not address The Court today. I'm asking The Court
18 to consider that's what I discerned happened in all of this. I
19 just hate it happened. He was on such a good path.

20 Someone brought him information that he found it
21 difficult to process and be peaceful in resolving with his own
22 self before going out that day. All having a good time over in
23 the Highland community that day. It was Mother's Day
24 celebration that they have annual over there. He was over with
25 family and friends.

1 While at the height of enjoying himself, being
2 respectful of his mother and respectful of other women in his
3 life, some other female brought him some information that I
4 think just threw him for a loop. And given all of that, Your
5 Honor, ask The Court to take that into consideration.

6 We're certainly very sorry for what happened to the
7 victim in this case, not trying to make light of that, Your
8 Honor. Really aren't.

9 Ask The Court to consider that he does have the
10 opportunity to be a father to the two children, the youngest
11 one and, hopefully, any others in his life that he can be
12 involved with in very powerful way. Ask The Court to consider
13 the children, that everything has ramifications and
14 consequences. He's ready to face some consequences here today,
15 Your Honor.

16 I don't believe he went over there -- I hope The
17 Court does not believe and I hope the victim does not believe
18 he came over there with the intent I'm going to walk up on you
19 and shoot you. That's not what happened, Your Honor. Ask The
20 Court to take that into consideration.

21 He was provoked by other people. I really feel
22 under the circumstances, a proper investigation might have
23 resulted in this other person being arrested who was running
24 her mouth and stirring up something because she lost the
25 affection of a good man.

STATE OF SOUTH CAROLINA vs. JAMAL K. RIOS

1 Thank you, Your Honor.

2 THE COURT: Do you agree with the statements made
3 by your two lawyers?

4 MR. RIOS: Yes, sir.

5 THE COURT: Is there anything that you want to say
6 or want me to know or consider?

7 MR. RIOS: Yes, sir, I do.

8 THE COURT: More than happy to hear from you.

9 MR. RIOS: First off, sir, I would like to take the
10 time to apologize to the victim and the family for the
11 hardships and heartache that they went through 'cause nobody
12 deserves to go through nothing that they went through and
13 during the times.

14 And second thing I would like to do, I would like
15 to apologize to my family. I know that when I'm going through
16 this and I'm being taken away, it's like y'all feeling the
17 same thing. And I really do apologize for even bringing y'all
18 through this.

19 And I don't want to single out one, but I would
20 like to apologize to my 10-year old son. My son, he's ten
21 years old. And I can't name more than a year that I've been
22 inside his life. I can't name more than a year at a time that
23 I could actually be a father to him. He's ten years old.
24 That's ten years gone that he will never get back.

25 Then I got a two-year-old and a nine-month old. I

STATE OF SOUTH CAROLINA vs. JAMAL K. RIOS

1 got to be a better example, yes. As they spoke, as my
2 supervisor and them spoke, I've been changing; I'm a different
3 person. Sometimes your past come back and haunt you. I wish
4 it wasn't that way. Sometimes that's how it goes.

5 So I want to accept responsibility for my actions
6 in the past, now. I accept all responsibilities for my
7 actions. And, Your Honor, today I ask that, you and The Court
8 should know, y'all just take into consideration my family.

9 And I ask you, Your Honor, that when you, you know,
10 sentence me or you look at me, you don't look at me as my past,
11 my history, my past history. Look at me as Jamal today.
12 Jamal, the father. Jamal, the hard worker. That's all I ask,
13 Your Honor.

14 THE COURT: Thank you, Mr. Rios.

15 (A pause transpired.)

16 THE COURT: I find there is a substantial factual
17 basis for the plea. I find the Defendant's decision to enter
18 the plea was made freely, voluntarily, knowingly, and
19 intellectually by him. Therefore, I will accept the plea.

20 On these cases, these are to be concurrent
21 sentences. On the assault and battery of a high and aggravated
22 nature case, that will be a 20-year sentence at the State
23 Department of Corrections; credit for 566 days.

24 And that will run concurrent with a five-year
25 sentence on the unlawful possession of a firearm case by a

STATE OF SOUTH CAROLINA vs. JAMAL K. RIOS

1 person convicted of a domestic violence of first degree, to
2 which he will receive credit of 566 days.

3 I've indicated on the sentencing sheet there's not
4 to be any contact with the victim. Sir, good luck to you.

5 (The hearing was concluded at 1:56 p.m.)

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STATE OF SOUTH CAROLINA vs. JAMAL K. RIOS

CERTIFICATE OF REPORTER

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

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

Witness my hand, I have hereunto affixed my official
seal this 25th day of February, 2024 at Spartanburg,
Spartanburg County, South Carolina.



Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

FORM 5

STATE OF SOUTH CAROLINA)

County of Spartanburg)Jamal Rios #351915)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

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 Spartanburg County Detention Ctr.
950 California Ave, Spartanburg, S.C. 29303
2. Name and location of Court which imposed sentence Spartanburg County
Court house, 180 Magnolia St, P.O. Box 3483, Spartanburg, S.C. 29304
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Attempted murder
 - (b) 2022G54204777 (2022A4210200170)
2020G54204899 (2020A4210202404)
2020G54204898 (2020A4210202379)
2020G54204817 (2020A4210201114)
2022G54204945

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) OCTOBER 11, 2022 SENTENCES WAS IMPOSED BY
- (b) COURT WHICH SENTENCE APPLICANT TO 20 YEARS
- (c) IMPRISONMENT.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) COUNSEL FAILED TO FILE FOR APPEAL
- (b) _____

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62-16271-62

- (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) SEE ATTACHMENT TO PCR APPLICATION *
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) HILL V. LOCKHART, 104 S. CT 366
- (b) BOYKIN V. ALABAMA, 89 S. CT 1709
- (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. _____

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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) COUNSEL FAILED TO FILE FOR DIRECT APPEAL
 (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? _____
 (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. ATTORNEY(S) MR. CREEKS AND MS. JONES ESQ.
366 NORTH CHURCH ST. #3000, SPARTANBURG S.C. 29303

ii. _____
 iii. _____

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

i. ARRAIGNMENT AND PLEA AND SENTENCING

ii. _____
 iii. _____

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63-013-0002

(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. _____

STATE OF
NEW YORK
COUNTY OF
SARATOGA

STATE OF
NEW YORK
COUNTY OF
SARATOGA

Revised 3/2003

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

VACATE CONVICTION AND SENTENCE

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

No

STATE OF SOUTH CAROLINA)

County of Ridgeville, S.C.)

VERIFICATION

I, JAMAL RIOS # 351915, 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.

Jamal Rios

SWORN to and subscribed before me this 31st
day of July, 2023.

Luduan Bryant (L.S.)
Notary Public

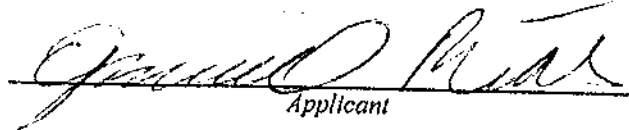
My Commission Expires: March 31, 2031

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

I, JAMAL Rios #1351915, 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
31st day of July, 2023.


Notary Public

My Commission Expires: March 31, 2031

34
ATTACHMENT TO POST-CONVICTION RELIEF APPLICATION

THE APPLICANT ASSERTS THAT COUNSEL THAT REPRESENTED HIM FAILED TO HAVE HIM (THE APPLICANT) MENTALLY EVALUATED PRIOR TO HIM ENTERING A GUILTY PLEA WHICH VIOLATED THE APPLICANTS RIGHTS UNDER THE 6TH & 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION. THE APPLICANT HAS A VERY LOW I.Q. AND DROPE OUT OF SCHOOL AT A VERY YOUNG AGE AND DID NOT UNDERSTAND WHAT HE WAS PLEADING TO.

APPLICANT
[Signature]
[Signature]
[Signature]
[Signature]

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Jamal Khalid Rios, #00351915,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)

) CASE NO. 2023-CP-42-03678
)

) **RETURN**
)

) **(Counsel Appointed)**
)
)
)

In response to Jamal K. Rios's (Applicant) application for post-conviction relief (PCR) commenced on September 29, 2023, Respondent, the State of South Carolina, makes the following Return:¹

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections (SCDC). During its July 2021 term, the Spartanburg County Grand Jury indicted Applicant for use of vehicle without permission (2020-GS-42-04897); assault/attempted murder and possession of a firearm during the commission to commit a violent crime (2020-GS-42-04898); and resisting/resisting arrest; oppose or resist law enforcement officer serving process or making

¹ Respondent's return was due to be filed within sixty days of receipt of Applicant's instant post-conviction relief application. 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."); *Quinyard 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.).

arrest (2020-GS-42-04899). During its September 2022 term, the Spartanburg County Grand Jury indicted Applicant for domestic violence – 1st degree (2022-GS-42-04777). During its July 2022 term, the Spartanburg County Grand Jury indicted Applicant for unlawful possession of a firearm by a person convicted of domestic violence – 1st degree (2022-GS-42-03943). Applicant was represented by Beverley Dorine Jones, Esquire. Deputy Solicitor James Edward Hunter of the Seventh Circuit Solicitor's Office prosecuted the case.

On October 11, 2022, Applicant appeared before the Honorable J. Mark Hayes, II, circuit court judge, and pled guilty under Alford² as indicted to unlawful possession of a firearm by a person convicted of domestic violence – 1st degree (2022-GS-42-03943) and the lesser included offense of assault and battery of a high and aggravated nature (2020-GS-42-04898).³ Judge Hayes sentenced Applicant to five years' imprisonment for unlawful possession of a firearm, and twenty years' imprisonment for assault and battery of a high and aggravated nature, to run concurrently.

Applicant did not appeal his convictions or sentences.

FACTS FROM WHICH APPLICANT'S CHARGES ARISE

The facts from which Applicant's charge for use of vehicle without permission (2020-GS-42-04897) arise were taken from the Spartanburg Police Duty Report for Incident C20040542 as follows:

I officer Ejolund responded via telephone on 04/26/2020 at 0850 hours to a theft of auto that occurred at 1061 Fernwood Glendale rd. [Clean] [Laundry] within the city limits of Spartanburg. The victim {McGriger, Leah} states that the listed suspect {Rios, Jamal} took her vehicle without permission after she broke up with him due to previous abuse. Rios had permission to drive the vehicle on 04/25/2020 at 1500 after dropping McGriger off at the

² North Carolina v. Alford, 400 U.S. 25 (1970).

³ The remainder of Applicant's charges were *Nolle Prossed* following his entrance into this plea.

incident location. Rios was supposed to bring it back at 2000 hours but never showed up. McGriger states that Rios told her that he wasn't bringing the vehicle back because he paid to repair it and that he was going to drive it off a bridge. Rios also stated that if the police get behind him he will get into a high speed chase. Rios has multiple priors for burglary, armed robbery and other violent offenses. He also has an active probation warrant according to Spillman. The vehicle that was taken without owners consent was a white 2012 Nissan Sentra SC tag RKB140.

(Narrative).

The facts from which Applicant's charge for assault/attempted murder and possession of a firearm during the commission to commit a violent crime (2020-GS-42-04898) arise were taken from the Spartanburg Police Duty Report for Incident C20050207 as follows:

On 5/10/20, I Officer Shell at approximately 2329 hours responded to a shooting at 100 Prince Hall Lane, apartment 8 building 4 in the city limits of Spartanburg. Upon my arrival, I helped secure the scene, collected photos of the apartment, and a statement from Ms. Ethel Franks, who is the victim's [Antonio Franks] mother. I wrote Ms. Franks statement for her due to her having high stress and anxiety at the moment. Ms. Franks did not wish to receive any medical treatment while on scene. Ms. Franks informed me that she did not witness the shooting but she heard a gun shots (sic) Ms. Franks stated as she was about to walk outside her son, Mr. Franks came into the residence with blood on his persons, falling on the floor. Ms. Franks stated he then got up and went down the hallway to look for his sister, Ms. Shadrius Franks and she was not there. Ms. Franks stated Mr. Franks ran out the (sic) Apartment and down stairs to a neighbors house to get help. Ms. Franks stated "Roxie" had taken Mr. Franks to the hospital in her vehicle.

(Narrative).

On this date, 5/12/20, I generated a photo line up, A5326, and Inv. C. Wright and myself went to Spartanburg Regional Medical Center, 101 E. Wood St. located in the City of Spartanburg, Spartanburg County, to speak with Victim Antonio Franks. Once in his room he was awake and holding paper and pen. I did advise him of who I was and Inv. C. Wright and what we were there for. I asked him if he knew who shot him. He responded by writing the name Rios. He indicated with both arms that led me to believe that they were fighting. I asked him if he could tell me what the gun looked like, he wrote a silver 9mm. I informed him that a photo line up would be shown to him I read the instructions to him and

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Inv. C. Wright showed the pictures. She informed me that he identified photo number one [Jamal Khalid Rios] as the person who shot him. Nurses (sic) Madison Morris was present in the room during this process. Inv. C. Wright took photos of the papers that Antonio wrote on for evidence and control of the paper to place into evidence. I will place the lineup shown into evidence. Based on this positive identification by the victim on who shot him I will speak with a Magistrate for the charge of Attempted Murder, Possession of a Weapon during a violent Crime.

(Supplement Horn RD; Investigative Supplemental).

The facts from which Applicant's charge for resisting/resisting arrest; oppose or resist law enforcement officer serving process or making arrest (2020-GS-42-04899) arise were taken from the Spartanburg County Sheriff's Office Report for Incident #20050544 as follows:

On 05/13/2020 at approximately 1000 hours, Deputy B. Roper, Dep. L. Smith, Dep. S. Coats, Dep. Welch, Dep. A. Daniels, Spartanburg city officers, and I responded to 216 Cotton ridge Ln; Apt 21 F, In Spartanburg County, in reference to serving a warrant on Mr. Jamal Rios DOB 10/08/1994, who was wanted for Attempted Murder (Warrant # 2020A4210202379). Once we arrived at the apartment building, I went to the rear of the building and heard what sounded like a sliding door open. As I got closer to the apartment, I saw a black male come out of the rear of apartment 21 F. I yelled, "Don't you do it" and the black male turned around and looked at me. I immediately recognized the subject to be Mr. Rios whom I knew from previous incidents. Mr. Rios took off running on foot and I ran after Mr. Rios. Mr. Rios ran towards, W. Croft Cir. And then back towards 224 Cotton Ridge Ln. Once he saw police on W. Croft Cir. Mr. Rios then jumped over a porch railing in front of the apartment building and then ran back into Apt. 21 F., using the front door. I then ran back to the rear of the apartment once I observed Dep. Roper and Dep. Smith were going into the front of the apartment in hot pursuit of Mr. Rios. Once at the rear, I went into the rear of the apartment and assisted in searching the apartment for Mr. Rios, due to Dep. Smith and Dep. Roper losing sight of Mr. Rios. Mr. Rios was then located hiding inside a maintenance closet. I then pulled my duty weapon and pointed my weapon at Mr. Rios. I could not see Mr. Rios hands due to him hiding his right hand behind an air-condition unit and his left hand was behind his left leg. I gave a verbal command "Let me see your hands." Mr. Rios refused and stated "don't touch me." I then grabbed Mr. Rios right arm and

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began to pull on him, attempting to pull him out of the closet. I then got Mr. Rios right arm and holstered my weapon. I then told Mr. Rios "get on the ground" and Mr. Rios refused. I then took Mr. Rios to the ground with assistance of other deputies. Mr. Rios still refused to give us his hands, placing them under his person. I then pulled my other county issued taser and pointed it at Mr. Rios. I yelled taser, taser, taser, and Mr. Rios began to comply, stretching out his arms, before I pulled the trigger on my taser. I then forced Mr. Rios left arm to the rear of his person and placed a cuff on his left wrist. Other deputies placed his right arm behind his back and placed the second cuff on his right wrist. I then double lock the handcuffs. I assisted Mr. Rios off the ground and Mr. Rios was placed in the rear of Dep. Smith's patrol car. I then was informed by Dep. Smith that Mr. Rios was becoming belligerent and kicking his door. I went to the vehicle and assisted Dep. Smith with restraining Mr. Rios legs with a hobble. Once Mr. Rios was restrained, Dep. Smith transported Mr. Rios to the county jail where he was booked. This concludes my involvement in this case.

(Narrative).

... While in the back seat of my patrol vehicle Mr. Rios made several attempts to break the rear passenger side window out of my patrol vehicle. Mr. Rios struck the window with his head and his feet. Due to Mr. Rios continuing his violent behavior he was hobbled. While en route to the jail Mr. Rios continued to make several violent threats to harm himself or act out. Mr. Rios stated he was going to set himself and the backseat on fire, "light this Bitch up." I observed Mr. Rios setting his shirt on fire with a lighter that he had hidden in his possession. Mr. Rios shirt began to catch fire and I immediately pulled my vehicle over with Deputy Junkins following. I advised via radio that he had a lighter in his possession and I immediately pulled over and opened the rear door observing Mr. Rios shirt on fire in a light burn. I made an attempt to put the fire out and was successful in my attempt. Mr. Rios was researched and re-secured. I continued to Spartanburg County Detention Center without further incident. The detention center was notified we were en route. I observed damage to the rear passenger side door of the patrol vehicle. I made contact with SCSC [who] informed me that photos would be uploaded into Spillman.

(Supplemental Narrative; Smith, Laurent).

The facts from which Applicant's charge for domestic violence – 1st degree (2022-GS-42-04777) arise were taken from the Spartanburg County Sheriff's Office Report for Incident

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#22010370 as follows:⁴

I On 1/09/2022 I was dispatched to 103 E. Wood St. (SRMC) in reference to a domestic disturbance that occurred at 460 E. Blackstock Rd. Apartment K93 (Quail Point Apartments) which is located within Spartanburg County. Upon arrival, I made contact with Leah McGriger in the Labor and Delivery room 1 due to her being nine months pregnant. She advised that while at her apartment her boyfriend, Jamal Rios, had become extremely intoxicated because he was having a hard time with personal issues. Leah stated due to his high level of intoxication he became angry with her and began hitting her arms, head, face, and stomach. She stated Jamal told her that he did not believe that the child she is pregnant with is his and that he would kill both her and the baby. Leah advised that she attempted to curl up in a ball to protect herself but Jamal kept pulling her arms away so that he could hit her. In conjunction with his fists, Leah said he also struck her with a shoe several times and pulled her hair. Leah added that at that at one point Jamal even attempted urinated on her. She stated that Jamal eventually stopped attacking her and fell asleep. Leah said once he was asleep she left the apartment and got a neighbor to drive her to the hospital to make sure her unborn child was alright. Leah did provide a voluntary written statement. Leah advised she was going to be in the hospital for the next several hours but I explained that she would be provided a safe place if she needed that resource once discharged from the hospital. I observed swelling and redness on both of Leah's forearms. There was a small cut or abrasion on her knuckle by her left hand that was bleeding slightly. Leah also stated Jamal bit her on her left hand but I did not see any indications of a bite mark. ID Inv. K. Tyler arrived and took photographs of Leah's injuries. I was notified by hospital staff that the child did have a heartbeat and everything seemed fine but they would not know for sure if there was any damage until the bloodwork comes back which could take several hours. Deputy Bowen was dispatched to the apartment to make contact with Jamal. See his supplemental report for further. Due to the two parties cohabitating and being engaged in an intimate relationship, they qualify as household members making this incident domestic violence.

(Original Narrative).

These facts from which Applicant's charge for unlawful possession of a firearm by a person
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This Offense Occurred while Applicant was out on bond for charges 2020-GS-42-04897, 2020-GS-42-04898, and 2020-GS-42-04899.

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convicted of dv 1st degree (2022-GS-42-03943) arise were taken from the Applicant's Indictment on that charge as follows:⁵

That defendant, Jamal Rios, did in Spartanburg County on or about May 10, 2020, unlawfully ship, transport, receive or possess a firearm or ammunition, and the defendant was previously convicted of [domestic violence].

CURRENT APPLICATION

In his PCR application, Applicant, through PCR Counsel, alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. Ineffective Assistance of Counsel
 - a. "Hill v. Lockhart, 106 S.Ct. 366"
 - b. "The Applicant asserts that Counsel that represented him failed to have him (the Applicant) mentally evaluated prior to him entering a guilty plea which violated the Applicants rights under the 6th, 8th, and 14th Amendments of the United States Constitution. The Applicant has a very low I.Q. and dropped out of school at a very young age and did not understand what he was pleading to.
2. Involuntary Guilty Plea
 - a. "Boykin v. Alabama, 87 S. CT 1709"
3. "Counsel Failed to File for Direct Appeal"

Applicant requests relief in the form of vacating his conviction and sentence.

Attached to this return and incorporated by reference are the Spartanburg County Clerk of Court records regarding the subject's conviction and sentence, Applicant's records from the SCDC; the guilty plea transcript, and the records of the current PCR action. The State reserves the right to amend this return upon receiving any relevant materials.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

The Sixth and Fourteenth Amendments to the United States Constitution guarantee

Applicant—like all other defendants—the right to "assist[ance] by an attorney, whether retained

This Office received while Applicant was out on bond for charges 2020-GS-42-04897, 2020-GS-42-04898, 2020-GS-42-04899, and 2022-GS-42-04777.

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or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668, 685 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an assertion that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice due to counsel's deficient performance. Id. at 687–88; Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

As aforementioned, the applicant has the burden of establishing both deficiency and

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prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that "in light of all the circumstances, the identified acts or omissions [complained of] were outside the wide range of" competence demanded of attorneys in criminal cases. Strickland, 466 U.S. at 690. To prove prejudice, the applicant must establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Id. However, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696.

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the defendant,' and '[i]t should go without saying that the absence of evidence cannot overcome [i]t.'" Dunn v. Reeves, 594 U.S. 731, 739 (2021) (alteration in original) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that *no competent lawyer would have chosen*." Id. (alteration in original) (emphasis added) (quoting Titlow, 571 U.S. at 23–24). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversarial proceeding").

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart, 474 U.S. 52 (1985) extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

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

This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, the applicant must convince the court that a decision to reject the plea bargain would have been rational, under the circumstances. Padilla, 559 U.S. at 372. Judges must "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Lee, 582 U.S.

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at 369. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Surmounting the Strickland high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. at 368-369 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." Lee, 582 U.S. at 369. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." Id. If it is easier to dispose of an ineffectiveness claim on the grounds of lack of sufficient prejudice, the court may evaluate the

prejudice prong only. Id.

In the present case, Applicant has asserted various allegations that Plea Counsel provided

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ineffective assistance of counsel. Because these allegations likely raise questions of fact not conclusively refuted by the record, the State requests an evidentiary hearing to fully resolve the issues. Accordingly, Respondent requests an evidentiary hearing to resolve this issue fully. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

RESPONSE TO ALLEGATION OF FAILURE TO OBTAIN COMPETENCY EVALUATION

Applicant asserts that Plea Counsel was constitutionally ineffective for failing to have him evaluated for competency prior to his plea. "[W]hen establishing Strickland prejudice in the context of plea counsel's failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the plea." Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017) (internal marks omitted) (quoting Jeter v. State, 308 S.C. 230, 233, 417 S.E.2d 594, 596 (1992)). Accordingly, to prevail on this claim, Applicant must show that there was a reasonable probability that he was incompetent at the time of his plea. See Garren v. State, 423 S.C. 1, 13, 813 S.E.2d 704, 710–11 (2018) (reversing the grant of post-conviction relief where the petitioner failed to introduce evidence of incompetency and plea counsel testified that he felt petitioner was competent based on his interactions with his client); Jeter, 308 S.C. at 232–33, 417 S.E.2d at 596 (finding counsel acted reasonably in relying on his own perceptions of a defendant's competency); Ramirez, 419 S.C. at 22–23, 795 S.E.2d at 845–46 (finding plea counsel was deficient in failing to seek an independent competency evaluation). Where plea counsel was "clearly on notice" the defendant had mental health issues based on his own personal interactions with the defendant, as well as a previous psychological

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evaluation identifying several mental health issues).

Respondent submits Applicant can satisfy neither requirement of the Strickland or Hill tests. However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

RESPONSE TO ALLEGATION OF INVOLUNTARY GUILTY PLEA

Applicant claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)). Applicant presented no reasons to show that he should be allowed to depart from the

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truth of the statements he made during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

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

RESPONSE TO ALLEGATION OF MENTAL INCOMPETENCY

One of Applicant's ineffective assistance allegations raises a question of mental competence. Due process prohibits the conviction of a person who is mentally incompetent, and that right cannot be waived by a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (citing Bishop v. U.S., 350 U.S. 961 (1956); Pate v. Robinson, 383 U.S. 375 (1966)).

The test of competency to enter a plea is the same as required to stand trial: the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against

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him. Id., 417 S.E.2d at 596 (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980)). An applicant alleging incompetence in fact must show by a preponderance of the evidence he was incompetent at the time of his plea. Id.

An applicant alleging ineffective assistance of counsel for failure to seek a mental health evaluation, however, must still satisfy the two prongs of Strickland, though considered in reverse as a practical necessity: applicant must demonstrate (1) a ‘reasonable probability’ that he was not competent at the time of the crime or at the time of the plea, and (2) that counsel’s failure to seek an evaluation was unreasonable. Id. at 233, 417 S.E.2d at 596. Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

This allegation regarding a direct appeal may raise a question of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

RESPONSE TO ALLEGATION OF FAILURE TO FILE APPEAL

Applicant alleges that he was denied the right to a direct appeal of his plea and sentence. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 580 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (citations omitted); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (imposing the duty to consult when there is reason to think either that a rational defendant would want to appeal or that the particular defendant

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reasonably demonstrated interest in doing so); contra Frazer v. South Carolina, 430 F.3d 696 (4th Cir. 2005) (reading Flores-Ortega to mean counsel generally has a duty to consult with his client regarding whether to pursue an appeal). Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 596, 677 S.E.2d 20, 23-24 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Where an Applicant reasonably demonstrates an interest in appealing, or where there is a reason to think a rational defendant would want to appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, "White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served." Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

This allegation regarding a direct appeal may raise a question of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

RESPONSE TO APPLICANT'S REQUESTED RELIEF

In his prayer for relief, Applicant requests his sentences and convictions be vacated. This relief is only part of the relief available in a post-conviction relief action. If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on *all* of the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969); see also Grant v. MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964) (relief of absolute release not

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available). Where an applicant seeks only relief to which he or she is not entitled, "it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to." Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968). For these reasons, if the application is not otherwise amended before the evidentiary hearing to reflect a desire for appropriate relief, Respondent would respectfully request this Court engage in a thorough colloquy with Applicant to apprise her of the relief available in a PCR. If, at the evidentiary hearing, Applicant indicates no desire for appropriate relief but a desire to proceed, Respondent will then move to dismiss the Application.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

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

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss these allegations or claims. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP; see also Rules 15(a)-(b),

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SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice against the State. See Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice against the State.

[CONCLUSION PAGE FOLLOWS]

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SPARTANBURG COUNTY

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CONCLUSION AND ACTION REQUESTED

Respondent submits Applicant cannot satisfy the requirements of Strickland. However, the record likely does not refute or disprove all of Applicant's allegations. Therefore, Respondent requests an evidentiary hearing to resolve the issues fully. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

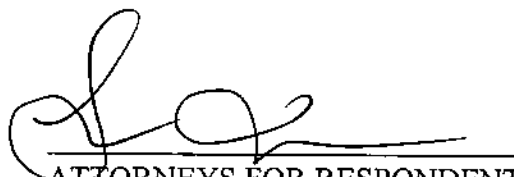
Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

SHAYLA J. FLORES
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

July 22, 2024

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Jamal Khalid Rios, #351915

Applicant,

vs

State of South Carolina,

Respondent,

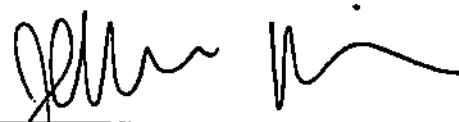
IN THE COURT OF COMMON PLEAS

2023-CP-42-03678

CERTIFICATE OF SERVICE BY MAIL

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

Mr. Rodney W. Richey, Esquire.
 Richey & Richey, PA
 P.O. Box 10916
 Greenville, SC 29603-0916

DATED this 22nd day of July 2024.


 Jordan Hickman, Legal Assistant
 For Respondent

CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)
)

Jamal Khalid Rios,
S.C.D.C. No: 391210

) Case No: 2024-CP-42-03678

Applicant,

AMENDMENTS TO PCR APPLICATIONS

vs.

STATE OF SOUTH CAROLINA,

Respondent.

The Applicant through his undersigned attorney amends his Application for Post-Conviction relief. The Application was filed on September 29, 2023. The Applicant amends the Application as follows:

1. Trial Counsel was ineffective for using a life sentence as an inducement for Applicant pleading guilty.
2. Trial Counsel was ineffective for not investigating the facts and circumstances of the Applicant case.
3. Trial Counsel was ineffective for not interviewing the Applicant's alibi witness.
4. Trial Counsel was ineffective for not reviewing the discovery with the Applicant
5. Trial Counsel was ineffective for not proceeding with a jury trial.

Wherefore, the Applicant amends his Post Conviction Relief application as stated above.

Respectfully submitted,

Rodney Richey /
Richey and Richey, P.A.
Post Office Box 10916
Greenville, SC 29603
(864) 467-0503
Attorney for the Applicant

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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Dated: August 19, 2024

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 JAMAL K. RIOS,)
5 APPLICANT,) TRANSCRIPT
6 VS.) OF
7 STATE OF SOUTH CAROLINA,) RECORD
8 RESPONDENT.) 2023-CP-42-3678

9
10 September 3rd, 2024

11
12 B E F O R E:

13 THE HONORABLE R. LAWTON MCINTOSH, Judge.
14

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

16 RODNEY W. RICHEY
17 ESQ.
Attorney for the Applicant

18 SHAYLA J. FLORES
19 ASSISTANT ATTORNEY GENERAL
20 Attorney for the Respondent

21
22 Pamela E. Green
23 CIRCUIT COURT REPORTER
24
25

I N D E XWITNESSESPAGE

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Direct examination by Mr. Richey

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Redirect examination by Mr. Richey

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ASHLEY LINDSEY

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BEVERLY D. JONES

Direct examination by Ms. Flores

44

Cross-examination by Mr. Richey

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Redirect examination by Ms. Flores

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Certificate

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P R O C E E D I N G S

MS. FLORES: May it please the Court.

Shayla Flores on behalf of the State of South Carolina.

This is the post-conviction relief matter of Jamal K. Rios versus the State. Case Number 2023-CP-42-03678 out of Spartanburg County.

During its July, 2021 term, the Spartanburg County Grand Jury indicted applicant for use of a vehicle without permission, 2020-GS-42-04897, assault/attempted murder, and possession of a firearm during the commission of a violent crime, 2020-GS-42-04898, and resisting arrest of opposition to arrest law enforcement officer serving process or making arrest, 2020-GS-42-4899.

During its September of 2020 term, the Spartanburg County Grand Jury indicted applicant for domestic violence first degree, 2022-GS-42-04777, firearm by a person -- possession of a firearm by a person convicted of domestic violence first degree, 2022-GS-42-03943.

Applicant was represented by Beverly Doreen Jones and Deputy Solicitor James Edward Hunter of the Seventh Circuit Solicitor's Office prosecuted the case.

On October 11th, 2022, applicant appeared before the Honorable J. Mark Hayes, III, circuit court judge, and

1 pled guilty pursuant to Alford as indicted to unlawful
2 possession of a firearm by a person convicted of domestic
3 violence first degree and a lesser included offense of
4 assault and battery of a high and aggravated nature.

5 Judge Hayes sentenced applicant to five years
6 imprisonment for the unlawful possession of a firearm and
7 20 years imprisonment for assault and battery of a high
8 and aggravated nature to run concurrently. Applicant did
9 not appeal his conviction or sentences.

10 Applicant timely commenced this PCR action on
11 September 29th, 2023, raising various allegations of
12 ineffective assistance of counsel. Applicant raised the
13 following -- a number of additional allegations in an
14 amended application received by respondent on August 26th,
15 2024.

16 Applicant requests relief in the form of vacating his
17 conviction and sentence.

18 Before this Court are the Spartanburg County Clerk of
19 Court records regarding the subject convictions and
20 sentences, applicant's records from the SCDC, applicant's
21 plea transcript, and the records of the current PCR
22 action.

23 At this time we would ask Mr. Richey to state for the
24 record which allegation he intends, intends on proceeding
25 forward with.

1 MR. RICHEY: Thank you, Your Honor.

2 The -- we did an amended, amended application
3 basically set forth the issues in this case and, Mr. Rios,
4 I've talked to him about the dangers of going through with
5 this cause he's LWOP eligible on, on top of all the rest
6 of it.

7 And so I discussed with him that, if he went back, he
8 could be facing life without parole. But it's his
9 intention to go forward with the hearing.

10 THE COURT: All right, sir. Would you raise your
11 right-hand?

12 (WHEREUPON, Mr. Rios was placed under oath at this
13 time.)

14 THE COURT: All right. You heard your -- Mr. Richey
15 say that -- you can put your hand down. That if you win,
16 you may just lose cause you may get life without
17 possibility of parole.

18 MR. RIOS: Yes, sir.

19 THE COURT: Knowing that, you still want to go
20 forward?

21 MR. RIOS: Yes, sir.

22 THE COURT: Which you know and you could receive a
23 sentence -- even if you don't get life without possibility
24 of parole, you could get a higher sentencing which you
25 have now?

1 MR. RIOS: Yes, sir.

2 THE COURT: All right. Very good. Thank you, sir.

3 MR. RICHEY: Thank you, Your Honor.

4 We'd, we'd call Ms. Beverly Jones please.

5 THE COURT: Sit down and raise your right-hand
6 please.

7 BEVERLY JONES, being first duly
8 sworn, testified as follows:

9 THE COURT: Would you state your full name for the
10 record and spell your last?

11 THE WITNESS: My name is Beverly Jones. Last name is
12 J-O-N-E-S.

13 DIRECT EXAMINATION

14 BY MR. RICHEY:

15 Q. Ms. Jones, where are you employed?

16 A. I work for the Spartanburg Public Defender's Office.

17 Q. And on October 11th, 2022, were you employed there?

18 A. Yes, I was.

19 Q. Okay. And, and during that employment, did you
20 represent Mr. Rios?

21 A. Yes, I did.

22 Q. Okay. And, and do you recall -- do you recall the
23 facts and circumstances of your representation?

24 A. I do.

25 Q. Okay. What charges did you represent him on?

1 Do you recall?

2 A. I represented him on all of the charge -- pending
3 charges that the attorney general read out.

4 Q. Uh-huh. (Affirmative).

5 A. Plus, during the course of that same time period, I
6 represented him on a violation of probation that he
7 incurred.

8 Q. Okay. And this aggravated assault and weapons
9 charges that he's serving time for, you represented him on
10 those cases too, correct?

11 A. I did.

12 Q. And was this a shooting that happened?

13 A. It was.

14 Q. Okay. And did Mr. Rios say that, say that he
15 actually shot the guy?

16 A. No, he denied it.

17 Q. Okay. And based off the, the evidence in the case,
18 Mr. Rios wanted to go to trial, correct?

19 A. He did at times but then ultimately decided to plead
20 guilty as is evidenced by the transcript.

21 Q. Okay. And, and---

22 A. Well, let me correct myself.

23 Q. Okay.

24 A. He actually entered a guilty plea under Alford.

25 Q. Okay. And, and do you believe that this was a case

1 that -- well, let me ask you this.

2 At the time of the case, was he subjected to a life
3 sentence?

4 A. He was.

5 Q. Okay.

6 A. He had actually been served -- it was an odd
7 circumstance. As I stated on the record, you can see in
8 the transcript, from the very beginning I knew, based on
9 his record, that he was in danger of being served with a
10 LWOP notice.

11 Q. Right.

12 A. I have, as I stated again in the transcript, I was
13 surprised that we didn't get that until the very last
14 minute. But there was also a change in solicitor at -- in
15 the last few months of, of the case before it was
16 resolved.

17 After that point when Mr. Hunter came onboard, that's
18 when the LWOP was filed. But I don't, I don't know if you
19 want me to go into any more detail about the LWOP---

20 Q. Well---

21 A. ---and its time.

22 Q. Well, let me just ask you this.

23 At the time he pled, the, the LWOP notice was not --
24 it was defective meaning they could not get the automatic
25 life because they -- you were not within the window time,

1 correct?

2 A. That is correct and that's the reference in the
3 transcript. I think I call it not perfected yet.

4 Q. Right.

5 A. Because it had been filed only at the point he pled
6 by -- I think it had only been served on him five or six
7 days earlier when the notice in the statute requires 10
8 days. However, that did not take the sting out of it.

9 Q. Right.

10 And so the day that he pled, he was not on the trial
11 roster the day he pled, right, this --?

12 A. He was on the trial roster for that week.

13 Q. Right.

14 A. However, it was my belief he was probably not in
15 imminent threat of being called to trial. But in our
16 discussions with the solicitor, the solicitor was
17 promising that if it was not resolved during that week, he
18 would be on another trial docket coming quickly. And, by
19 then, the LWOP would have been perfected.

20 And so the solicitor agreed, which she didn't really
21 have to agree cause it was not perfected yet, it wasn't a
22 direct threat at the time he pled. But it was going to be
23 if it was not resolved before it came perfected.

24 Q. Okay. And, and from your review of the facts and
25 discovery, was there any -- did you have any evidence that

1 he wasn't on the scene at the time this occurred?

2 well, let me go back and ask you this way.

3 what -- do you recall what actually happened?

4 A. I do.

5 Q. Okay.

6 A. There---

7 Q. Can you---

8 A. Yeah, this happened on Mother's Day evening and I
9 didn't know this up until this case. But apparently in
10 one of the -- at, at Prince Hall Apartments, which is a
11 housing complex in Spartanburg, there was always a big
12 block party on Mother's Day that ran into the evening.

13 The facts, as set forth in the State's case, were
14 there was a party -- this party was going on --

15 Q. Uh-huh. (Affirmative).

16 A. -- and that the victim was present at Prince Hall.
17 Mr. Rios was alleged to have come over probably because
18 someone had told him something that the victim had
19 allegedly said about him and a girl prior. And he had
20 come over to confront the person about, about it.

21 That led to a shooting. The victim was shot in the
22 face or neck -- and/or neck area. He, thankfully, he
23 survived. And when the police interviewed Mr. Rios later,
24 he denied even -- he denied, denied ever being in the
25 apartment project. He denied ever having a gun. He

1 denied having been seen later that night or at points that
2 night with blood on him.

3 He denied having a cellphone they knew they had
4 recovered at the apartment when they arrested him. He
5 denied everything. But that's generally the facts.

6 Q. Okay. And so it was a shooting. He denied it all,
7 all this stuff.

8 Okay. During the course of the case, did he ever
9 present any type of alibi or witness to you?

10 A. He did.

11 Q. And do you recall who that witness was?

12 A. Yes. I, I -- her name -- her last name is Lindsey --
13 if I can find the document.

14 Q. Was it Ashley Lindsey?

15 A. Ashley, yes.

16 Q. Does that make -- okay.

17 A. She -- if I can say this, and I don't mean this in a
18 derogatory way, Jamal has got children I think with three
19 different women. She -- at least two. She was the mother
20 of I think two of his children.

21 She came in and spoke to me and told me that Jamal
22 had been with her that night and she never saw any blood
23 on him that night. And that she was gonna try to be his
24 complete -- she didn't, she didn't state it this way. But
25 she was, in essence, presenting herself as an alibi

1 defense.

2 He had already given me her name multiple times. I
3 actually prepared an alibi notice --

4 Q. Uh-huh. (Affirmative).

5 A. -- sent it out and even issued a subpoena. As I
6 reviewed from our computer database, I -- what I can not
7 find is what -- an affidavit of service, whether she was
8 actually served, and I may have not done that at that
9 point because we weren't realistically thinking at the --
10 on the day we pled that we were up for trial. But I may
11 have just prepared it in preparation of needing it later.

12 But I did interview her the -- and I'll stop there.

13 Q. Okay. Now -- and in terms of preparing the subpoena
14 and all that, it, it -- at, at that -- at that point there
15 was some legitimacy to this, correct?

16 A. Well, it seemed though as, as such on its face if you
17 didn't know about some of the other discovery like I knew
18 about.

19 Q. Well, let me ask you this.

20 This, this block party, it was a -- it was an all day
21 thing meaning they didn't start at 12:00 and quit at 2:00,
22 right?

23 A. Yeah, I assume it went on. It sounded like it went
24 on forever.

25 Q. And, and people came in at different times during

1 this party, correct?

2 A. I, I would assume so. I didn't go there.

3 Q. And so, so, in theory, he could of came to a -- to
4 this party and left. But he was there but not been there
5 when the actual shooting took place?

6 A. Well -- and that -- I, I agree with that.

7 Q. Okay. And, and you discussed that with him?

8 A. I did.

9 Q. Okay. And did you talk to him about going to trial
10 versus pleading guilty with this alibi?

11 A. I'm certain I did --

12 Q. Okay.

13 A. -- because I knew for existence he was so insistent
14 that I talk to her. I need to also seg-way in and say if
15 you reak -- I'm sure you've read the trial transcript.

16 Q. Yeah.

17 A. The way the discussions immediately happened about
18 the plea were that, for the two years probably two or
19 three months prior to the plea that the case had been
20 pending, they'd been another solicitor and---

21 Q. Uh-huh. (Affirmative).

22 A. ---whose name is not important at this point. But he
23 had never dis -- you know, approached me at all about what
24 are you gonna do with this, this, that. You know, all
25 he'd done was shown up for the various bond hearings and

1 home detention---

2 Q. Right.

3 A. ---reinstatements and all the things that we file.

4 However, when Mr. Hunter got it, and especially when it

5 got close, it was on the published trial docket. But,

6 again, far enough down that we didn't think it was

7 realistically gonna be tried.

8 Mr. Hunter had come to me and also another attorney

9 in your office, James Cheek, who if you're aware of how

10 our office works, for years, probably 20 now, I think he's

11 coming up on his 20 year anniversary with the county,

12 Mr. Cheek's job is to facilitate jail pleas if possible.

13 Often times they're people assigned to me that Mr. Cheek

14 meets with and pleads out before I ever even know they're

15 my client --

16 Q. Uh-huh. (Affirmative).

17 A. -- cause he's so efficient when contacted by people

18 who either the State have an offer for or they want a

19 quick resolution, he will handle that.

20 Q. Uh-huh. (Affirmative).

21 A. Mr. Cheek got involved with me because he's known Mr.

22 Rios and his family for years. He had been involved with

23 him for years, and as the transcript reflects, he had

24 actually even been in their home before.

25 Q. Okay.

1 A. He had handled cases before with Jamal and tried, in
2 various ways, to not, you know, be a father cause Mr. Rios
3 has a father I think --

4 Q. Okay.

5 A. -- but to lend support when he could.

6 So, this day that we were negotiating this case prior
7 to pleading it the next morning, Mr. Cheek was involved
8 with me the whole time and the original question was what?

9 I'm sorry.

10 Q. Okay. Well, let me just -- well, this question we're
11 gonna have is, during the, during the majority of this
12 case, Mr. Rios wanted a trial for the majority of this
13 case?

14 A. He did.

15 Q. Okay. And, and for the majority of this case, he had
16 talked about this alibi witness a lot, correct?

17 A. He had --

18 Q. Okay.

19 A. -- and I'll go back and I'll -- now, this is the
20 point I have to bring in some other---

21 Q. Yes.

22 A. ---information.

23 Part of the discovery that was given to me, and I
24 knew about it from the very beginning and so did he cause
25 he got his discovery within the first few months of, of

1 our representation, was the statement of another one of
2 the mothers of his children, Aliah McGregor, who had
3 directly stated she also saw him the night of the
4 shooting.

5 He was bloody and he talked to her about being sorry
6 that he had to shoot somebody and there was a written
7 statement to that effect that kind of didn't -- the two,
8 the two alibis or the two girlfriends' statements didn't
9 jive up like a wheel was gonna need to to assist him.

10 They were gonna get -- they were gonna collide with
11 each other, and in talking to him about what, what he --
12 what choice he should make, and the pros and cons of the
13 offer before him, we had to discuss whether the alibi
14 really was gonna be a complete alibi in light of what the
15 other person said in her statement.

16 Q. And did the other young lady that gave this
17 statement, are you aware that she recanted that statement?

18 A. I am aware that she was also the victim of one of his
19 domestic violence cases.

20 Q. Uh-huh. (Affirmative).

21 A. He was Court ordered to be away from her. But the
22 State was not going to let enough be enough. Miss
23 McGregor lived with her mother --

24 Q. Uh-huh. (Affirmative).

25 A. -- and, at times during the investigation of the

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1 homicide, her mother had a great deal of control over Ms.
2 McGregor.

3 Q. Uh-huh. (Affirmative).

4 A. I, I believe, because I've seen it before in cases of
5 my own, that the State, the Solicitor's Office here, they
6 will subpoena a witness even if they think they're not
7 cooperative especially a witness that's given a written
8 statement that helps them.

9 Q. Right.

10 A. Because they believe they have methods or manners
11 that they can try to get some of that in.

12 Q. And, and they would also have to present that she
13 recanted the, the story too, correct?

14 A. If they were aware of that, yes---

15 Q. Okay.

16 A. ---and I'm not sure exactly how, how much of the
17 recantation was of her domestic violence allegations --

18 Q. Uh-huh. (Affirmative).

19 A. -- versus the statement on the homicide cause she was
20 in a video, recorded -- an actual video interview telling
21 him about the -- not those events around the shooting.

22 Q. Okay. Thank you, ma'am. Answer any questions the
23 attorney general will have.

24 CROSS-EXAMINATION

25 BY MS. FLORES:

1 Q. Good afternoon, Ms. Jones.

2 A. Hi.

3 Q. So, in case I missed it earlier, about how long have
4 you been practicing law?

5 A. Oh, over 30 years. Let's just leave it at that.

6 Q. And the majority of that being with the PD's office?

7 A. No, no, no. I was a prosecutor for 15 years. Then I
8 was in private practice for five years here locally and
9 then I went to the Public Defender's Office. I've been
10 there about 14 or 15 years now. Just don't add all those
11 years up. You'll realize it's, it's a lot.

12 Q. And do recall about how many times you met with Mr.
13 Rios?

14 A. Probably -- I would say at least eight. Like I said,
15 there were a lot of times where -- well, he was in jail
16 for an extended period of time when we couldn't get him a
17 bond. Then he was out on bond. Then got some -- into
18 something, had to go back into jail. So, I was, I was
19 talking to him a good bit.

20 Q. And during those meetings, did he seem to have a good
21 understanding of everything that you guys discussed?

22 A. Oh, yeah. I had no concerns about whether he could
23 follow our conversations. This, this was not his first
24 time through the system.

25 Q. And just circling back to earlier in your testimony

1 about the alibi witness, now you said some of the
2 discovery you had, it might -- the alibi witness may have
3 seemed reasonable in her testimony if you didn't know
4 about some of the discovery that you had.

5 Were you referring to the other statement or is
6 there---

7 A. Right.

8 Q. ---anything else?

9 A. I was referring to the statement of Aliah McGregor
10 given about give -- what he had said about shooting
11 someone and seeing him in that night in bloody clothes.

12 Q. And did your client ever -- at what point did your
13 client indicate that he wanted to plead guilty?

14 A. Well, as I've corrected other counsel earlier, we
15 really, or maybe it was you, we -- he didn't actually
16 plead guilty. He pled under Alford.

17 Q. Absolutely.

18 And at what point did he make the decision to plead
19 under Alford?

20 A. That would of been the day before the plea when, when
21 Mr. Cheek and I were in -- and I'll admit it was
22 protracted discussion with him. We talked to him, because
23 you'll have to understand, he not only had the two charges
24 he pled to but he had like three or four others. I think
25 it was three and those became encompassed in the overall

1 agreement for the plea.

2 And so, there was a little back -- back and forth
3 between myself and, and the prosecutor and then with
4 myself and the client with Mr. Cheek for that day. We --
5 I know because I've -- y'all didn't subpoena Mr. Cheek.
6 But I had a conversation with him earlier today about this
7 and he---

8 MR. RICHEY: I'm gonna object to the hearsay.

9 THE WITNESS: Okay.

10 Our concern -- my concern, I'll leave him out, my
11 concern in this was I knew what the evidence was that
12 could convict Mr. Rios. I knew and know now how old he is
13 and I don't take an LWOP lightly.

14 I've never, thank God, I'll never be -- hope I'll
15 never be served with one. But when you are not 30 years
16 old, an LWOP is a darn serious thing and what we undertook
17 to do was to talk to him, instead of letting him convince
18 us these -- what he thought was his alibi that was gonna
19 win the day for him, might not be enough to overcome the
20 I -- the ID of the victim. The -- I mean he picked him
21 out of a lineup and was gonna identify him in a courtroom.

22 There were other -- there was other facts and
23 evidence. Peep -- at least one other person who'd seen
24 him at the scene.

25 There was a -- there was evidence that could have

1 convicted him at a trial, and if he didn't take advantage
2 of the offer by the State to pull that notice or, you
3 know, accept a plea when it was not perfected, but then,
4 later on, give him his trial and refuse to, to withdraw
5 the notice, then he was, and he got convicted, he was
6 going to prison for life.

7 And I know 20 years -- and it -- let's, let's go
8 ahead and remind ourselves in -- that it was a zero to 20
9 plea. He went in with a chance he could of gotten less
10 than 20, which was a far cry from going in knowing, if you
11 lose, it's not maybe you'll get life. You are getting
12 life if you're convicted.

13 Q. Absolutely.

14 And just to make sure we directly state it, did you,
15 in any way, coerce or threaten the applicant into entering
16 this plea?

17 A. No. Because -- no, I did not. That's never been the
18 way I do business. But also, if you know anything about
19 Jamal Rios, you don't make him do anything he doesn't want
20 to.

21 He's very -- he can be very strong minded. He's very
22 impulsive, and, you know, you're not gonna get somebody
23 who doesn't want to do what they're doing to go into a
24 courtroom and answer as many questions that have to be
25 answered exactly right and enter a plea if they don't want

1 to do it.

2 Q. And did you think that pleading was in his best
3 interest?

4 A. Oh, definitely. Definitely.

5 Q. And did you inform applicant of all of the rights
6 that he was waiving in entering this plea?

7 A. We did, yes. I did and Mr. Cheek did too in my
8 presence.

9 Q. And I know you've already stated this, but did you
10 review all of the discovery that you had with applicant?

11 A. Yes.

12 Q. And do you stand by the representation that you
13 provided applicant?

14 A. I do.

15 MS. FLORES: No further questions, Your Honor.

16 MR. RICHEY: No other questions.

17 We'll call Mr. -- no other questions, Your Honor.

18 THE COURT: Thank you.

19 May this witness be excused?

20 MR. RICHEY: Yes, sir.

21 THE COURT: Ma'am---

22 MS. FLORES: We would just ask that she stick around
23 for a little bit just until we see what other witnesses
24 are gonna be called and their testimony.

25 THE COURT: Ms. Jones, you mind sticking around for

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1 just a little bit?

2 THE WITNESS: Not at all. Thank you, judge.

3 MR. RICHEY: We'd call Mr. Rios.

4 THE COURT: All right, sir. Raise your right-hand.

5 JAMAL RIOS, being first duly
6 sworn, testified as follows:

7 THE COURT: Have a seat. State your name and spell
8 your last name please.

9 THE WITNESS: Yes, sir.

10 Jamal Rios. Rios, R-I-O-S.

11 DIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q. Mr. Rios, are you currently in the Department of
14 Corrections?

15 A. Yes, sir.

16 Q. And what are you in there for?

17 A. Assault and battery high and aggravated nature and
18 misuse of vehicle.

19 Q. Okay. Okay. Do you have a weapons conviction?

20 A. Oh, yes, sir.

21 Q. Okay. And did Ms. Jones represent you?

22 A. Yes, sir.

23 Q. And you were in the courtroom during her testimony,
24 correct?

25 A. Yes, sir.

1 Q. And at this -- in this case, is this a case you
2 wanted to plead guilty?

3 A. No.

4 Q. Excuse me.

5 Plead pursuant to Alford.

6 A. I mean no, I didn't want to plead guilty. But I
7 believed that I got the definition of the Alford plea. I
8 guess the way that she explained it to me I really didn't
9 understand it until I actually looked it up.

10 Q. Okay.

11 A. But --.

12 Q. Hold on. Sorry. Excuse me for interrupting you but
13 what is your definition of an Alford plea?

14 A. I thought it meant that I was pleading guilty only
15 because I felt that the State could -- had enough evidence
16 to convict me if that's correct.

17 Q. Okay. Is that what you thought at the, at the time?

18 A. Yes, sir.

19 Q. Okay. So you got another definition now?

20 A. I mean when I actually looked into it -- the case, a
21 guy actually committed a crime. He was just drunk to the
22 point that he didn't remember he committed that crime and
23 that's not the case with me.

24 Q. Okay. So, so, she ex -- she and the judge explained
25 to you that, that you believed the State had enough

1 evidence, if you went to trial, you could very well be
2 convicted?

3 A. I was convinced to it.

4 Q. Okay. And did you believe that?

5 A. At the time I didn't want to believe it because I
6 felt I had all different type of ways to beat it as far as
7 like my alibi. Me knowing where I was at during that time
8 of the crime, I felt that that was enough because it's
9 impossible for me to be in two places at once physically.

10 Q. Okay. Well, tell me where was this party at.

11 A. The party was in Highland.

12 Q. Okay. And where were you at?

13 A. I went to that party for a little bit but I left and
14 I went back to Tobe's --

15 Q. Okay.

16 A. -- Apartment.

17 Q. You were at the -- do you know what time this party
18 started?

19 It's all day, right?

20 A. Yeah, it---

21 Q. What time does it start?

22 A. I went there like around 3:00---

23 Q. Okay.

24 A. ---and I left around 8:30, nine o'clock.

25 Q. And, and this shooting happened after that, correct?

1 A. Yeah, that shooting happened like at eleven, twelve
2 o'clock at night.

3 Q. Okay. And, and at eleven, twelve o'clock at night,
4 where were you?

5 A. On her couch.

6 Q. On --?

7 A. Ashley Lindsey couch.

8 Q. Okay. What address is that?

9 A. I don't know the exact address.

10 Q. Okay. But it's a -- away from the party, correct?

11 A. Yes, sir.

12 Q. And when you were there, did you talk to -- did you
13 talk to Mr. Lindsey, right?

14 A. Uh-huh. (Affirmative).

15 Q. And she -- how'd you get to her house?

16 A. Leah McGregor dropped me off.

17 Q. Okay. And, and who is that?

18 A. That's my other baby mother.

19 Q. Okay. And is that the lady that Ms. Jones was
20 talking about?

21 A. Yes, sir.

22 Q. Okay. And she dropped you off at the second woman's
23 house, correct?

24 A. Yes, sir.

25 Q. And there was some testimony by Ms. Jones that she

1 gave a statement that implicated you in this.

2 Is that correct?

3 A. Yes, sir.

4 Q. And, and what do you know about her giving that
5 statement?

6 A. She said that she gave this statement because she was
7 mad about me and Ashley's dealings. She felt that me and
8 Ashley dealing was more than just sharing a child
9 together.

10 Q. Okay. So she thought you were involved with her
11 also?

12 A. She thought that we was sexually involved which we
13 wasn't.

14 Q. And did she take any actions about that statement?

15 Did she go to law enforcement, Solicitor's Office, or
16 anybody that you know of?

17 A. Yeah, she recanted it. She recanted the statement.
18 She went to the Solicitor Office. At the time Jennifer
19 wells was my solicitor.

20 Q. Okay. And so, so, at that point, you believed that,
21 that hers -- the original statement.

22 Is that correct?

23 A. That's what I was believing but --

24 Q. Okay.

25 A. -- I just -- I knew she wasn't telling the truth. So

1 I wasn't too much worried about it.

2 Q. Okay. But tell me why -- you wanted to go to trial.

3 why you just go to trial?

4 Just tell, just tell me why.

5 A. I mean I -- honestly, I was persuaded not to, and
6 like she said, life without parole and I'm not even 30
7 yet, that's a long time. So, I mean I'm so used to always
8 pleading guilty even if I know I'm right. It's several
9 cases I just pledded (sic) guilty.

10 And so I weighed my odds and I was persuaded not to
11 when you got the attorney that I'm feeling like suppose to
12 fight for me giving me every reason not to go. And then
13 you got somebody else coming in. Then you bringing my
14 family in.

15 The day of that I took the plea, it wasn't just her
16 and Cheeks. They brought my brother in. It was my
17 brother, her, and Cheeks, and everybody but oh, you too
18 young. Oh, you'll still have time and zero to 20, like
19 she said, that sound way better than life without parole
20 if they find circumstantial evidence to make me guilty for
21 a trial.

22 So, I'm like zero to 20, I'm hoping for the lesser
23 end. Not the whole 20.

24 Q. So, you essentially have 14 more years in jail,
25 correct?

1 A. Yes, sir.

2 Q. And how old will you be then?

3 A. I'll be 43.

4 Q. Forty-three years old.

5 And, and so -- but you understand that at the --

6 you're asking to go back and have to make the same

7 decision.

8 You understand that?

9 A. Yeah.

10 Q. That's what you're -- you're asking the judge right

11 now to give you the opportunity to go back into a room

12 here and make that same decision.

13 You understand that?

14 A. Yes, sir.

15 Q. Okay.

16 A. But I won't second guess it.

17 Q. Okay. So -- and -- so it's your position the next

18 time you gon' go forward with the trial---

19 A. Yes, sir.

20 Q. ---and not make the same decisions -- decision you

21 made---

22 A. Yes, sir.

23 Q. ---right?

24 Okay. And your basis is you believe that you would

25 win at trial by the alibi witness?

1 A. Yes, sir. But that's not the only thing.

2 Q. Okay. Well, why do you think you'll win at trial?

3 A. I mean, from my understanding as far as my motion
4 goes me going over it because she stated that we went over
5 it together. I never went over my motion with her. I
6 didn't even know -- cause a motion is more than just
7 paperwork. You got audio, video, all of that.

8 I never seen no video of nobody testimony, nobody's
9 statements. I didn't do all of that and that's part of
10 going over my motion with me by actually letting me know
11 the parts that I couldn't see when I was in the county
12 jail cause I actually was out.

13 I, I stayed in the county jail for nine months---

14 Q. Uh-huh. (Affirmative).

15 A. ---and I got out on bond and I wasn't on house
16 arrest. No nothing.

17 She could of called me up to her office and it was
18 plenty of times I done called up to the office and left
19 voice mails because, of course, she's busy. She's in
20 court that I -- you wanted to go over my motions. I
21 wanted to see them parts that I couldn't see when I was in
22 the county. And then I got several messages on the kiosk
23 with me writing about my case.

24 It wasn't to go over---

25 Q. Well, let's talk about -- why don't you talk about

1 the evidence that you believe, other than this alibi
2 witness, that would of acquitted you?

3 A. Okay. No DNA. I didn't have no DNA on that scene.
4 They found shell casings and actually did the
5 fingerprinting on the shell casings and it was no positive
6 match for me from my understanding. Wasn't no positive
7 match.

8 They did have one other eye witness. But the eye
9 witness stated they couldn't tell who it was because they
10 both stated that the shooter had a mask on to cover the
11 bottom half of his face. It was all different identity
12 issues in the case that I know for a fact that you have to
13 actually have real evidence.

14 Only thing you have is this person pointing me out of
15 a lineup, which I'm the first person in the lineup, and me
16 and him have a well known little beef or altercation going
17 on. So, it's easy to say okay, the guy I'm beefing with,
18 yeah, he the one that shot me---

19 Q. And have you---

20 A. ---assuming --.

21 Q. Go ahead.

22 The guy, the guy -- the gentleman that got shot, why
23 do you think he identified you?

24 Is that because y'all had a beef?

25 Is that what you're saying?

1 A. Because months prior to the shooting, he was going
2 around him -- to correct her, it was nothing about no
3 female. I don't know where they get that from. He was
4 going around telling people that me and him had an
5 argument and an altercation or whatever and he pulled out
6 a gun on me. That's what he was going around telling
7 everybody.

8 Q. And that---

9 A. He should---

10 Q. ---didn't happen?

11 A. No.

12 Q. Okay.

13 A. I actually seen him, like I said, months prior to the
14 altercation and I confronted him and asked him about it
15 and he stated that he never said that.

16 MS. FLORES: Objection, Your Honor. Hearsay.

17 THE COURT: Sustained.

18 Q. Don't tell me about what somebody said.

19 okay?

20 A. Yes, sir.

21 Q. But as a result of your conversation with him, there
22 was no beef between you and him?

23 A. No more beef --

24 Q. Okay. And so---

25 A. -- from my knowledge.

1 Q. So you believe, at trial, that would of been
2 favorable evidence to you?

3 A. I feel like---

4 Q. Yeah. Okay.

5 A. ---to my knowledge.

6 Q. So it's your position that that would be favorable
7 evidence, the alibi'd be favorable evidence, right?

8 A. Yes, sir.

9 Q. Okay. And with those combined, that you would have a
10 chance to be found not guilty?

11 A. Yes, sir.

12 Q. And you discussed all that with your attorney?

13 A. Yes, sir.

14 Q. And after the discussions with the lawyer, you made
15 the decision to enter this Alford plea because it seemed
16 like the right thing to do?

17 Is that, is that a best way of putting it?

18 At the time. I'm not saying now. But I'm saying at
19 the time.

20 A. I wouldn't put it that way.

21 I'd put it like that's just like me going into a
22 battle with the gun pointed at myself if this person
23 suppose to be for me---

24 Q. Okay.

25 A. ---but they finding every reason not to be, why would

1 I go to trial with them?

2 Q. So, so you believed -- and this, this LWOP notice,
3 you knew about that too, right?

4 A. Yeah, I knew about it---

5 Q. Oh.

6 A. ---before they served me.

7 Q. Okay. And so that's the kind of -- so, so I'll put
8 it this way.

9 You did believe that your lawyer's gon' assist you.
10 Your -- Mr. Cheeks and your mom and all them were telling
11 you to do it, correct, cause your age?

12 A. Yes, sir.

13 Q. You got to speak up.

14 A. Yes, sir.

15 Q. And so, so all that put together is the reason why
16 you pled?

17 A. Yes, sir.

18 Q. Okay. Answer any questions the attorney general has.

19 CROSS-EXAMINATION

20 BY MS. FLORES:

21 Q. Good afternoon, Mr. Rios.

22 A. Good afternoon.

23 Q. Do you recall telling the Court that you were
24 satisfied with your attorney?

25 A. Yes, ma'am.

1 Q. Do you recall telling the Court that no one
2 threatened you or coerced you in any way to taking your
3 plea?

4 A. Yes, ma'am.

5 Q. Do you recall telling the Court that your plea was
6 free, voluntary, and completely your own decision?

7 A. Can I say something?

8 THE COURT: Answer the question.

9 A. Yes, ma'am, I do remember saying that. But that
10 wasn't the whole case. I tried to stop that be --
11 especially after the other attorney's testimony that I
12 didn't agree with because it was a complete lie. And when
13 I tried to mention it to her, she told me don't say
14 nothing.

15 Q. But you pled under Alford, correct?

16 A. Yes, ma'am.

17 Q. So, you explicitly stated that you weren't agreeing
18 to those facts but you were still -- you still agreed that
19 the State had enough evidence to prove guilt against you?

20 A. Yes, ma'am, at the time.

21 Q. So, if you didn't believe in what you were saying,
22 why did you not bring those issues up to the Court?

23 A. Like I said, I was about to but they -- she said no.
24 She told me not to say nothing---

25 Q. And when you---

1 A. ---because --.

2 Q. And when you say she, you're referring to your plea
3 counsel?

4 A. Beverly Jones cause it was a lot of statements made
5 that I didn't agree with like James Cheeks coming to my
6 house. Never. I don't -- I ain't never -- he never been
7 to my house. That was a lie. I never admitted to him---

8 Q. Okay. If you just stick to answering questions for
9 me---

10 A. Yeah.

11 Q. ---please.

12 A. Yes, ma'am.

13 Q. And did you ever inform your attorney that you wanted
14 to appeal your plea?

15 A. Her?

16 Q. Uh-huh. (Affirmative).

17 Yes, sir.

18 A. I mean I didn't have a chance to tell her I want to
19 appeal it.

20 MS. FLORES: No further questions, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. RICHEY:

23 Q. So, you, you don't agree with all the statements that
24 your attorney made?

25 A. No, sir.

1 Q. Okay. Thank you.

2 THE COURT: All right. Thank you, sir. You can step
3 down.

4 THE WITNESS: Yes, sir.

5 MR. RICHEY: We'd call Miss Ashley Lindsey.

6 MS. FLORES: Your Honor, we would request a brief
7 recess so that we could run an NCIC on this witness.

8 THE COURT: How long has she been noticed as a
9 witness?

10 MS. FLORES: We weren't sure if she was going to
11 provide the Court or not---

12 MR. RICHEY: I---

13 MS. FLORES: ---until today.

14 MR. RICHEY: That's correct. I knew she was a
15 witness. But I couldn't get in contact with her.

16 THE COURT: Can't you get your party to go out and
17 run one while you're up here doing this?

18 MS. FLORES: Yes, Your Honor.

19 THE COURT: Let's do that.

20 Mr. Richey, y'all ready to go?

21 MR. RICHEY: Yeah, we, we ready.

22 THE COURT: Okay.

23 MR. RICHEY: Yeah, we're ready.

24 THE COURT: All right. Call your witness.

25 MR. RICHEY: Okay. Come on, ma'am.

1 THE COURT: Would you raise your right-hand?

2 ASHLEY LINDSEY, being first duly
3 sworn, testified as follows:

4 THE COURT: And would you have a seat and state your
5 full name and spell your last name please.

6 THE WITNESS: Ashley Lindsey. Lindsey is
7 L-I-N-D-S-E-Y.

8 DIRECT EXAMINATION

9 BY MR. RICHEY:

10 Q. Ma'am, do you know Mr. Rios?

11 A. Yes.

12 Q. How do you know him?

13 A. We share my first child -- our first child together.

14 Q. Okay. How old's the child?

15 A. He's 12.

16 Q. Okay. And on the night that this happened, do you
17 recall seeing or speaking with Mr. Rios?

18 A. Yes.

19 Q. And what do you recall about the incident?

20 A. He had been at my house prior to going to the party.

21 Q. Is that the block party then?

22 A. Yeah.

23 Q. Okay.

24 A. It's the block party.

25 Q. Okay.

1 A. He told me that he was gonna go for a little while.
2 He was gonna come back because he had some issues with
3 Leah. So he had---

4 Q. With who?

5 A. With Leah.

6 Q. And who is that?

7 A. That's the third baby mama.

8 Q. Okay. All right.

9 A. So he had been staying at my house for a couple days
10 till they -- to go do over. He said he was going to the
11 block party and he'll be back and I told him okay, to be
12 safe, and he left.

13 Q. And do you know how he got there?

14 A. I believe Leah took him.

15 Q. Okay. And how far was that from your apartment?

16 A. I would say like five, six minutes away from my
17 house.

18 Q. Okay. And so you didn't see how he got there?

19 You just knew he was gone?

20 A. Yes.

21 Q. Okay. Go ahead.

22 A. So, when he got back, I was in the shower. Our son
23 opened the door for him and he came into the shower and
24 asked to use my phone. I told him like why did you need
25 to use my phone. He said that he needed to call someone

1 and, you know, didn't hesi -- you know, didn't hesitate
2 letting him use my phone and he left out the show -- out
3 the bathroom and the rest of that night we had been, you
4 know, talking, chilling.

5 Q. What time was it when he got back?

6 A. I could not tell you. But it was, it was way before
7 the incident happened.

8 Q. Was it dark, light outside?

9 Do you recall?

10 A. It was like it was getting, it was getting dark.

11 Q. Okay. All right. And this happened around 11:00 or
12 so, correct?

13 A. Yes, sir.

14 Q. Okay. And do you know who brought him back to your
15 house?

16 A. Leah.

17 Q. Leah brought him back?

18 A. Yes.

19 Q. And that's, that's the lady that you're familiar gave
20 the police a statement?

21 A. Yes, sir.

22 Q. And, and she -- so, what she said in that statement,
23 would you have been able to observe it when he came back?

24 A. With --?

25 Q. Huh?

1 A. with the blood on him?

2 Q. Yeah.

3 would -- at, at -- when he came to your house, she
4 dropped him off, right?

5 A. Uh-huh. (Affirmative).

6 Q. And when he got to your house, did you observe any of
7 the stuff that she said blood and all this?

8 A. No, I just realize -- and he just had on the same
9 clothes that he had on. But I didn't see any blood.

10 Q. Okay. And did you talk to his attorney?

11 A. Yes.

12 Q. And what -- do you recall what you told her?

13 A. Not all of it because it's been so long. But I do
14 remember the same stuff I'm telling you I told her.

15 Q. And told her that, that he was at your house when
16 this shooting occurred?

17 A. Yes.

18 Q. And how do you know that he was at your house when
19 the shooting occurred?

20 what -- how do you know that?

21 A. Um.

22 Q. Was there any -- anything specific that happened that
23 you knew that when this -- cause this is an all day party,
24 correct?

25 A. Yes.

1 Q. And so it just went on and on and on?

2 A. Uh-huh. (Affirmative).

3 Q. What, what -- did anything happen or -- to make you
4 think okay, he was at my house when this shooting
5 occurred?

6 A. Well, we were in the living room on the couch and,
7 like I said, talking, you know, chilling, and I happened
8 to go on Facebook. And Facebook has, you know, the News
9 Channel 7 posts and everything that lets everybody know
10 what's going on.

11 I clicked that post -- I clicked that article and it
12 said the time and I was like, no, I'm not the smartest
13 person but it sounds like you. And he was like nah, it's
14 not me and, at the time I looked at the time, and he was
15 with me at that time.

16 Q. You looked at the time that it happened?

17 A. Yes.

18 Q. Based off a news article?

19 A. Yes, sir.

20 Q. Okay. Thank you. Answer any questions the attorney
21 general will have for you.

22 THE COURT: I'm gon' give you a minute and let him
23 check and see.

24 MS. FLORES: Thank you. Thank you, Your Honor.

25 THE COURT: All right.

Ashley Lindsey - Direct examination
By Mr. Richey

1 (Pause.)

2 MS. FLORES: My apologies for the delay. We're ready
3 to proceed, Your Honor.

4 THE COURT: Okay.

5 CROSS-EXAMINATION

6 BY MS. FLORES:

7 Q. Just briefly, Miss Lindsey.

8 So you said you were in the shower at the time Mr.
9 Rios arrived at your home?

10 A. Yes, ma'am.

11 Q. So you didn't get the opportunity to directly see him
12 when he walked in the door, correct?

13 A. No.

14 MS. FLORES: Okay. No further questions, Your Honor.

15 MR. RICHEY: No other questions.

16 THE COURT: Thank you, ma'am. You may step down.

17 THE WITNESS: You welcome.

18 THE COURT: Any more witnesses?

19 MR. RICHEY: No, sir.

20 THE COURT: Thank you, sir.

21 MS. FLORES: Your Honor, we would just briefly recall
22 Ms. Beverly Jones.

23 THE COURT: All right. Ms. Jones, if you'd come back
24 around and you're still under oath.

25 BEVERLY JONES, having been

1 previously sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. FLORES:

4 Q. Thank you for sticking around, Ms. Jones. I'm sorry
5 about that.

6 Just briefly, you were in the courtroom for the
7 applicant's testimony, correct?

8 A. I was.

9 Q. He mentioned that, during the plea, he attempted to
10 raise concerns to the judge and you stopped him from doing
11 so.

12 Do you have any recollection of that?

13 A. I do not. I think I, I -- let me say this.

14 I don't -- didn't see anything like that reflected in
15 the transcript. I don't remember that happening.

16 Generally, with Judge Hayes, if some kind of exchange
17 like that happens, he will quickly say to the parties
18 involved or to the, to the client, do you need to speak to
19 your attorney and let you do that in privacy. But I don't
20 remember anything happening like that.

21 Q. And is it your general practice to inform your
22 clients not to raise concerns about your representation to
23 the Court?

24 A. Oh, no. I don't tell them they can't speak out
25 because it -- it's their plea. If they don't want to

1 plead, they've got to be able to voice it somehow.

2 Q. And did you in any way evade conversations with
3 applicant after the plea so as he -- to not give him the
4 opportunity to ask about an appeal?

5 A. No, I didn't.

6 But there was a unique experience at the very end of
7 that plea that prevented me from having a conversation
8 with him immediately after the plea like I do with my
9 clients, usually with my clients.

10 After Mr. Rios had been sentenced, the -- he was
11 being led out of the courtroom by the deputies. I -- I'm
12 not sure that they had him yet by the arms because they
13 were still inside the courtroom door. But Leah McGregor,
14 his girlfriend, or -- well, she was the third of the baby
15 mamas was sitting on the front row edge seat of one side
16 of the pews. And as he went to pass her, he broke away
17 from the deputies, said something like I love you, baby,
18 or something to that effect and reached down and grabbed
19 her to hug her and the -- I do remember that the two
20 deputies in the courtroom reacted very quickly and
21 forcefully they basically duck walked him out of the
22 courtroom.

23 He didn't even stop at the jail room and he went
24 straight downstairs. And, within two days, he was shipped
25 to the Department of Corrections. I did, when I found out

1 about this hearing, I did look at our message kiosk system
2 that we have set up with the jail, he made reference to it
3 when testifying, to see if anytime during those two days
4 before he was shipped off he had sent me a message and I
5 had forgotten it to appeal and he sent me no message
6 aft -- after the plea.

7 As a matter of fact, the last kiosk I got from him
8 was before he had been rearrested on his home detention
9 violation about 10 days before the plea.

10 Q. Thank you.

11 And just, just for clarifying purposes, and I promise
12 this will be my last question, Miss Leah McGregor, she was
13 the victim in the domestic violence case that was a part
14 of this, right?

15 A. Correct. It was actually one of the pending charges
16 that got dismissed as part of this global plea
17 arrangement.

18 Q. And you were here for the testimony of Miss Lindsey,
19 correct?

20 A. I was.

21 Q. Do you -- would -- sorry -- Court's indulge --
22 indulgence.

23 (Pause.)

24 Q. So, when you spoke to her, were you under the
25 impression that her testimony would have served in the way

1 that applicant testified to be a complete and total alibi?
2 A. Well, I know that's what the hope was. But, again, I
3 have to go back and say I know what Miss McGregor said in
4 her statement. She actually even acknowledged, when she
5 testified, that she knew Miss McGregor was part of his
6 transportation for that day.

7 Now, she didn't directly tell me that, that she saw
8 her. She told me that she asked her son how did your
9 daddy get here and he described Miss, Miss McGregor's car.
10 But she wanted it -- and, and I don't -- you know, Miss
11 Lindsey's a fine young lady. I appreciated her
12 cooperation. I have fond memories of the family.

13 It's just, you know, what, what they -- their
14 intention was with that alibi was not going to line up
15 with what McGregor said in her statement.

16 MS. FLORES: No further questions, Your Honor.

17 MR. RICHEY: Just one question.

18 CROSS-EXAMINATION

19 BY MR. RICHEY:

20 Q. So the son was in the house when he came back too,
21 right?

22 A. Pardon me?

23 Q. The son -- the child was in the house when he came
24 back from this, this---

25 A. Right.

1 Q. ---party?

2 A. Yeah, that's, that's correct.

3 Q. And so the son was available too to be a witness,
4 correct?

5 A. Right.

6 Q. Thank you.

7 A. But -- okay. That's fine.

8 MS. FLORES: Your, Your Honor, just brief redirect.

9 REDIRECT EXAMINATION

10 BY MS. FLORES:

11 Q. Do you know about the age of the son?

12 A. At the time he was 10 years old --

13 Q. Okay. So would you have called---

14 A. -- according to my notes.

15 Q. Did you see any validity or any need to call him as a
16 witness?

17 A. I generally avoid using kids that young especially in
18 emotional cases like this. But I think the timing issue
19 was the bigger element here.

20 Q. Thank you.

21 No further questions, Your Honor.

22 MR. RICHEY: No more. No questions.

23 THE COURT: All right. Thank you. You are excused.

24 THE WITNESS: Thank you, judge.

25 THE COURT: All right. Anything further from the

1 applicant?

2 MR. RICHEY: No, Your Honor.

3 THE COURT: From the State?

4 MS. FLORES: We just thank you for your patience,
5 Your Honor.

6 THE COURT: Thank you and I'll go through your
7 submissions and issue an order.

8 MR. RICHEY: Thank you, Your Honor.

9 THE COURT: All right. Take care.

10

11 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 3rd day of September, 2024.

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

October 21st, 2024



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Jamal Khalid Rios, #00351915,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT

) CASE NO. 2023-CP-42-03678

**ORDER OF DISMISSAL
WITH PREJUDICE**

FILED
2024 DEC 19 PM 2:44
CLERK OF COURT
SPARTANBURG COUNTY
A. J. W. COX

Presiding Judge: Hon. R. Lawton McIntosh
Applicant's Attorney: Rodney W. Richey, Esq.
Respondent's Attorney: Shayla J. Flores, Esq.
Plea Counsel: Beverly D. Jones, Esq.
Date of Hearing: September 3, 2024
Court Reporter: Pamela E. Green

This matter comes before the Court by way of Jamal K. Rios' (Applicant) application for post-conviction relief (PCR) filed on September 29, 2023. Respondent, the State of South Carolina, filed its Return on July 25, 2024. On August 23, 2024, Applicant, through counsel, filed his amended PCR application.

On September 3, 2024, an evidentiary hearing was held at the Spartanburg County Courthouse before the Honorable R. Lawton McIntosh. Assistant Attorney General Shayla J. Flores represented Respondent. Applicant was present and represented by Rodney W. Richey, Esquire (PCR Counsel). At the hearing, Applicant proceeded on the claims in his amended application for PCR. In support of these claims, Applicant testified on his own behalf, and presented testimony from Ashley Lindsey and Beverly D. Jones, Esq. (Plea Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any

constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently incarcerated according to an order of commitment of the Spartanburg County Clerk of Court. During its July 2021 term, the Spartanburg County Grand Jury indicted Applicant for use of vehicle without permission (2020-GS-42-04897); assault/attempted murder and possession of a firearm during the commission to commit a violent crime (2020-GS-42-04898); and resisting/resisting arrest; oppose or resist law enforcement officer serving process or making arrest (2020-GS-42-04899). During its September 2022 term, the Spartanburg County Grand Jury indicted Applicant for domestic violence – 1st degree (2022-GS-42-04777). During its July 2022 term, the Spartanburg County Grand Jury indicted Applicant for unlawful possession of a firearm by a person convicted of dv 1st degree (2022-GS-42-03943). Applicant was represented by Beverley Dorine Jones, Esquire. Deputy Solicitor James Edward Hunter of the Seventh Circuit Solicitor's Office prosecuted the case.

On October 11, 2022, Applicant appeared before the Honorable J. Mark Hayes, II, circuit court judge, and pled guilty under Alford¹ as indicted to unlawful possession of a firearm by a person convicted of dv 1st degree (2022-GS-42-03943) and the lesser included offense of assault and battery of a high and aggravated nature (2020-GS-42-04898).² Judge Hayes sentenced Applicant to five years' imprisonment for unlawful possession of a firearm, and twenty years' imprisonment for assault and battery of a high and aggravated nature, sentences to run concurrently.

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

² The remainder of Applicant's charges were *Nolle Prossed* following his entrance into this plea.

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SPARTANBURG COUNTY
SOUTH CAROLINA

Applicant did not appeal his convictions or sentences.

FACTS GIVING RISE TO THE CONVICTION

The facts giving rise to the convictions were articulated by the Solicitor at Applicant's plea hearing as follows:

Your Honor, first, like to note that, at the time of this offense, which was on May 10th of 2020, the Defendant was on probation; an active probation warrant for his arrest. On that day, May 10th, which was Mother's Day in 2020, this happened at Prince Hall Apartments here in the city and County of Spartanburg. On that date we allege the facts would show the Defendant pulled up to Prince Hall Apartments. The victim, Antonio Franks, who is seated back there, was at his mother's apartment, was out talking to a friend. Defendant pulled up and went into the apartment complex, came back out, confronted Mr. Franks about something Mr. Franks had allegedly said. At that time he pulled out a gun, threatened to kill Mr. Franks. Ultimately, Mr. Franks, fearing for his life, tried to fight him off. Mr. Franks tried to fight him off but was unsuccessful. And this Defendant did shoot Mr. Franks in the face, entering his cheek and kind of going out towards his neck. Multiple witnesses on scene identified this -- Mr. Franks identified this Defendant in the hospital immediately after police showed up. Other people on the scene identified the vehicle as a Nissan, light colored Nissan. In fact, one of them said between the years 2008 and 2013. At the time, the Defendant was dating, now engaged, to Leah McGregor. That is the type of car she drives, Your Honor. He shot him in the face. Mr. Franks then gets into a vehicle driven by Roxy Hardison and is taken to the hospital. Ultimately, it's likely if she had not been able to take him to the hospital, he likely would have bled out there at Prince Hall, Your Honor. The shot went through his face, through his tongue. Doctors were afraid he was never going to be able to talk again. You will hear from him shortly. He was in the hospital for almost a month. It's interesting. He went in on Mother's Day, released right around on Father's Day in June, Your Honor. His mouth was wired shut for a long time. Had to be fed through a tube before going to a liquid diet. Again, we're quite lucky that he is here and present with us. Ultimately, the short facts are this: He did shoot the victim in the face here in the city and county of Spartanburg.

(Plea Tr. pp. 6, l. 21 – 8, l. 14).

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2024 DEC 19 PM 2:44

CLERK OF COURT
SPARTANBURG COUNTY

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons (excerpts verbatim):

1. Ineffective Assistance of Counsel
 - a. "Hill v. Lockhart, 106 S.C.T. 366"
 - b. "The Applicant asserts that Counsel that represented him failed to have him (the Applicant) mentally evaluated prior to him entering a guilty plea which violated the Applicants rights under the 6th, 8th, and 14th Amendments of the United States Constitution. The Applicant has a very low I.Q. and dropped out of school at a very young age and did not understand what he was pleading to.
2. Involuntary Guilty Plea
 - a. "Boykin v. Alabama, 87 S. CT 1709"
3. "Counsel Failed to File for Direct Appeal."

On August 23, 2024, Applicant, through PCR Counsel, amended his application for post-conviction relief to include the following allegations:

1. Ineffective Assistance of Plea Counsel
 - a. Trial Counsel was ineffective for using a life sentence as inducement for Applicant pleading guilty.
 - b. Trial Counsel was ineffective for not investigating the facts and circumstances of the Applicant's case.
 - c. Trial Counsel was ineffective for not interviewing the Applicant's alibi witness.
 - d. Trial Counsel was ineffective for not reviewing the discovery with the Applicant.
 - e. Trial Counsel was ineffective for not proceeding with a jury trial.

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

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SPARTANBURG COUNTY
JAMAL KHALID RIOS

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act³ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

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

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d

³ S.C. Code Ann. §§ 17-27-10 to -160.

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

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of Strickland remains unchanged, the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. The second, or "prejudice" prong, however,

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"focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* at 58-59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. *See* Rule 71.1(e), SCRCP (stating that in a post-conviction

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relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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

INITIAL FINDINGS

This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

This Court makes the following findings from the record: 1. Applicant intended to enter a plea to the charges he faced at his plea hearing (Plea Tr. p. 3, ll. 9-11); 2. Applicant was not under

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the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 4, ll. 12-15); 3. Applicant understood the sentencing range (Plea Tr. pp. 8, l. 23 – 9, l. 21); 4. Understanding the sentencing ranges he faced, Applicant Still wished to enter a plea to the charges he faced at his plea hearing (Plea Tr. pp. 8, l. 23 – 9, l. 21); 5. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 5, l. 14 – 6, l. 16); 6. Applicant clearly indicated he was satisfied with Plea Counsel (Plea Tr. p. 5, ll. 2-4); 7. Applicant indicated he had enough time to discuss the ramifications of pleading guilty to a charge classified as a violent and serious offense with Plea Counsel (Plea Tr. p. 9, ll. 7-10); 8. Applicant indicated no one was forcing him to plead guilty, and his decision to plead guilty was voluntary (Plea Tr. p. 5, ll. 5-13); 9. Applicant testified to his belief that the state could produce sufficient evidence to support the charges against him beyond a reasonable doubt if he proceeded to trial and a jury would most probably find him guilty of those charges (Plea Tr. pp. 9, l. 22 – 10, l. 10); 10. Applicant confirmed that all the answers he gave to the court during his plea hearing were truthful and honest (Plea Tr. p. 10, ll. 11-13). 11. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 24, ll. 16-19).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS

Allegation: Plea Counsel Failed to Investigate

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate the facts and circumstances of his case. This Court finds this allegation is without merit.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular

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investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

PCR Evidentiary Hearing

At the evidentiary hearing, on cross examination, Plea Counsel testified that she did not in any way coerce or threaten Applicant into entering his plea. (PCR Tr. p. 21, ll. 14-19). Plea Counsel testified that Applicant made the decision to plead under Alford the day before the plea occurred. (PCR Tr. p. 19, ll. 18-20). Plea Counsel testified that she and Applicant discussed the plea

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agreement because the Solicitor was willing to encompass three additional charges Applicant was facing in addition to the two to which he pled within the plea agreement. (PCR Tr. pp. 19, l. 21 – 20, l. 1).

Plea Counsel testified to her belief that pleading was in Applicant's best interest. (PCR Tr. p. 22, ll. 2-4). Plea Counsel testified to her knowledge of what the evidence was that could convict Applicant and that she did not take the possibility of Applicant being sentenced to life without parole lightly, especially considering his youth. (PCR Tr. p. 20, ll. 10-17). Plea Counsel testified that she had to discuss with Applicant that what he thought was an alibi might not be enough to overcome the fact that the victim had identified him in a photo lineup and was going to identify him in the courtroom. (PCR Tr. p. 20, ll. 18-21). Plea Counsel testified that there were other facts in evidence that could have convicted Applicant at trial, including at least one other eyewitness who saw Applicant at the crime scene. (PCR Tr. pp. 20, l. 22 – 21, l. 1).

Findings

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Applicant presented no evidence to this Court as to what Plea Counsel could have discovered or what other defenses could have been pursued had Plea Counsel been more fully prepared. The record before this Court provides Applicant was aware of the sentencing range, that no one promised him anything, and that it was a twenty-year negotiated sentence. Without presenting further proof of Plea Counsel's alleged failure to investigate, this Court finds Applicant has failed to overcome the strong presumption that Plea Counsel rendered adequate assistance. See Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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This Court finds through the combination of the record, and Plea Counsel's credible testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective. Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Plea Counsel Failed to Interview Alibi Witnesses

Applicant alleges Plea Counsel was constitutionally ineffective for failing to interview potential alibi witnesses. This Court finds this allegation is without merit.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011); see id. at 457, 710 S.E.2d at 64–65 ("While our case law does provide that defense counsel must, at a minimum, interview potential witnesses, a strict adherence to that rule loses sight of the controlling standard for counsel's duty to investigate: reasonableness. Indeed, it would be an absurdity to require criminal defense lawyers to interview *every* potential witness when they can articulate reasonable grounds not to. When counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client.").

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"In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691; cf. Green v. French, 143 F.3d 865, 892 (4th Cir. 1998) ("Although counsel should conduct a reasonable investigation into potential defenses, Strickland does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client."), abrogated on other grounds by Williams v. Taylor, 529 U.S. 362 (2000).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. See Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation."). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690–91; see id. ("In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014). "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

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In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Additionally, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Here, Applicant has alleged that Plea Counsel was ineffective for failing to interview potential alibi witnesses during her representation of Applicant. To establish counsel was ineffective for failing to present an alibi defense, Applicant must first present evidence of an alibi defense in accordance with the rules of evidence at an evidentiary hearing. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995).

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PCR Evidentiary Hearing

At the evidentiary hearing, Applicant presented the testimony of Ashley Lindsey (Lindsey). (PCR Tr. pp. 38, l. 1 – 43, l. 17). Lindsey testified that she and Applicant share their first child in common. (PCR Tr. p. 38, ll. 10-15). Lindsey testified to her recollection of seeing or speaking with Applicant on the night of the shooting. (PCR Tr. p. 38, ll. 16-18). Lindsey testified that Applicant had been staying with her at her home for a couple of days prior to the shooting, as he was having issues with his then girlfriend and the mother of his third child, Leah McGregor. (PCR Tr. p. 39, ll. 2-12). Lindsey testified to her recollection of Applicant being at her house before he attended the block party where the shooting occurred. (PCR Tr. p. 38, ll. 19-25).

Lindsey testified that Applicant informed her that he was going to go to the party for a “little while” before returning to her home. (PCR Tr. p. 39, l. 1-12). Lindsey testified to her belief that Applicant was taken to the party by Leah McGregor but clarified that she did not see Ms. McGregor pick Applicant up. (PCR Tr. p. 39, ll. 13-20). Lindsey testified to being aware that Ms. McGregor gave a police statement about the incident. (PCR Tr. p. 40, ll. 16-21). Lindsey estimated that the party took place approximately five to six minutes away from her apartment. (PCR Tr. p. 39, ll. 15-17).

Lindsey testified to her belief that Ms. McGregor brought Applicant back to her home later that evening. (PCR Tr. p. 40, ll. 14-18). Lindsey testified that she had no recollection of when Applicant returned to her home but believed it to be “way before the incident happened.” (PCR Tr. p. 40, ll. 5-7). Lindsey testified that Applicant returned to her home when it was getting dark. (PCR Tr. p. 40, ll. 8-10). Lindsey testified to being in the shower when Applicant returned from the block party. (PCR Tr. p. 39, ll. 22).

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Lindsey testified that she did not directly see Applicant when he arrived back at her home as she was in the shower. (PCR Tr. p. 43, ll. 7-13). Lindsey testified that her son opened the door to let Applicant into her home. (PCR Tr. p. 39, ll. 22-23). Lindsey testified that Applicant then came into the bathroom while she was in the shower and asked to use her phone to make a call. (PCR Tr. pp. 39, l. 23 – 40, l. 1). Lindsey testified that she did not hesitate to allow Applicant to use her phone, so he took her phone, left the bathroom, and the two of them spent the remainder of the evening together after she finished her shower. (PCR Tr. p. 40, ll. 1-4). Lindsey testified that, when she had the opportunity to observe him, Applicant was wearing the same clothes that he left her home in and she did not observe any blood on them. (PCR Tr. p. 41, ll. 6-9).

Lindsey testified that she became aware of the shooting while in her living room with Applicant on the evening that it occurred. (PCR Tr. p. 42, ll. 3-10). Lindsey testified that she came across an article about the incident on Facebook and asked Applicant if he was involved because he matched the description listed. (PCR Tr. p. 42, ll. 11-13). Lindsey testified that Applicant denied being involved, so she checked the time listed in the article and realized that Applicant had been with her at that time. (PCR Tr. p. 42, ll. 13-19). Lindsey testified that she spoke with Plea Counsel and informed her of the information that she testified to. (PCR Tr. p. 41, ll. 10-17).

At the evidentiary hearing, Plea Counsel testified that she was aware of the contents of the statement that Leah McGregor made to police regarding the incident. (PCR Tr. p. 47, ll. 2-4). Plea Counsel testified that Ms. McGregor's statement was a part of the discovery given to her and she was aware of it from the very beginning of her representation. (PCR Tr. pp. 15, l. 23 – 16, l. 4). Plea Counsel testified to her knowledge that in this written statement Ms. McGregor explained that she saw Applicant on the night of the shooting, and that he was bloody and talked to her about being sorry that he had to shoot someone. (PCR Tr. p. 16, ll. 2-7). Plea Counsel testified that the

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alibi statement and Ms. McGregor's statement were going to collide with one another and therefore the alibi would rise to the level needed to assist him. (PCR Tr. p. 16, ll. 7-11).

Plea Counsel acknowledged in her testimony that, as Lindsey stated during her testimony, Ms. McGregor was a known part of Applicant's transportation to and from the crime scene on the day of the shooting. (PCR Tr. p. 47, ll. 4-6). Plea Counsel testified that during their conversations Lindsey did not inform her that she directly saw Ms. McGregor be involved in the transportation of Applicant, but instead that she had asked her son the question "how did your daddy get here" and her son described Ms. McGregor's car. (PCR Tr. p. 47, ll. 7-12). Plea Counsel testified that after speaking with Lindsey it became clear to her that that the intention of the alibi testimony would not line up with Ms. McGregor's statement to police. (PCR Tr. p. 47, ll. 13-15).

When asked if it was her understanding that Lindsey's son was in the home during the events Lindsey testified to Plea Counsel answered in the affirmative. (PCR Tr. p. 47, ll. 20-25). Plea Counsel testified that, according to her notes, the son was ten years old at the time of the plea in question. (PCR Tr. p. 48, ll. 11-14). Plea Counsel testified that she generally avoids calling children that young as witnesses, especially in emotional cases such as Applicant's. (PCR Tr. p. 48, ll. 15-18). Plea Counsel testified that, regardless of the son's availability to testify, she believed the bigger element causing issue with any potential testimony of this nature was the timing element. (PCR Tr. p. 48, ll. 13-19).

Plea Counsel testified to discussing the viability of the alibi testimony with Applicant while he weighed the pros and cons involved in making the decision whether or not to enter a guilty plea. (PCR Tr. p. 16, ll. 10-15). Plea Counsel testified that she and Applicant had to discuss whether the alibi was really going to be a complete alibi in light of what Ms. McGregor said in her statement to police. (PCR Tr. p. 16, ll. 12-15). Plea Counsel testified that she had to discuss with Applicant

that what he thought was an alibi might not be enough to overcome the fact that the victim had identified him in a photo lineup and was going to identify him in the courtroom. (PCR Tr. p. 20, ll. 18-21). When asked whether she was aware that Ms. McGregor recanted her statement, Plea Counsel answered in the affirmative and testified to her knowledge that Ms. McGregor was also the victim of one of Applicant's domestic violence cases and that Applicant was court ordered to stay away from her. (PCR Tr. p. 16, ll. 16-21). Plea Counsel testified that she was not sure how much of Ms. McGregor's recantation was made in regards to her domestic violence allegations versus the statement in the homicide cause where her statements were video recorded. (PCR Tr. p. 17, ll. 16-21).

Findings

Based on the record before this Court and Plea Counsel's credible testimony, this Court finds that Plea Counsel's investigation was reasonable. See Taylor, 404 S.C. at 364, 745 S.E.2d at 104 (citing Wiggins v. Smith, 539 U.S. 510, 522–23 (2003)). This Court will not credit Applicant's present claim that he would have gone to trial absent Plea Counsel's alleged failure to investigate, as Applicant has failed to present evidence of any discoverable matters or defenses Plea Counsel would have discovered had she been more prepared. This Court further finds Applicant has offered little more than mere speculation, and speculation does not meet Applicant's burden. Therefore, the Court finds Applicant failed to adequately show that he would have opted to go to trial but for Plea Counsel's lack of investigation.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's investigation, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea.

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Accordingly, this Court finds Plea Counsel's representation of Applicant was not deficient, and she performed a reasonable investigation. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation: Ineffective Assistance of Counsel
Allegation: Plea Counsel Failed to Review Discovery

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

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Likewise, in order to prevail on a claim that counsel did not review discovery with applicant, the applicant must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Id.

Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is insufficient to support a relief grant. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Findings

This Court finds the combination of the record, and Plea Counsel's **credible** testimony that Applicant has failed to meet the burden of showing Plea Counsel was constitutionally ineffective.

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See Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (explaining that, where an applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Moreover, to whatever extent Applicant was not entirely satisfied with the amount of time to review discovery and investigate the charges, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea. (Plea Tr. p. 5, ll. 2-4).

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

Allegation:	Involuntary Guilty Plea
Allegation:	Plea Counsel Used Life Sentence as Inducement for Guilty Plea.
Allegation:	Plea Counsel Ineffective for Not Proceeding with Jury Trial

Applicant alleges Plea Counsel was constitutionally ineffective and that his guilty plea was involuntary. Specifically, Applicant alleges Plea Counsel was ineffective for not proceeding with

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a jury trial and using a life sentence as inducement to coerce him into taking a guilty plea. This Court finds these allegations are without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a complete understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 244 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (finding the voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.").

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); Richardson v. State, 310 S.C. 360, 363, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

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CLERK OF COURT
SPARTANBURG COUNTY
ANDY W. COX

As an initial matter, this Court finds the record refutes Applicant's allegations and reflects that Applicant's guilty plea was knowingly and voluntarily entered with a complete understanding of the charges and consequences of the plea. This Court further finds Applicant was fully aware of the minimum and maximum sentencing ranges on all charges that he pleaded guilty to. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)).

PCR Evidentiary Hearing

At the evidentiary hearing, on direct examination, Plea Counsel testified that at the time of the case Applicant was subjected to a life sentence. (PCR Tr. p. 8, ll. 2-4). Plea Counsel testified, and the record reflects, that Applicant had been served notice of the State's intent to seek life without parole. (PCR Tr. p. 8, ll. 2-7). Plea Counsel testified to her knowledge from the beginning of her representation that Applicant was in danger of being served with an LWOP notice because of his prior record. (PCR Tr. p. 8, ll. 6-11). Plea Counsel testified to her surprise that Applicant was not served with the LWOP notice until the last moment but noted that there was a change of Solicitor within the last few months of the case being resolved. (PCR Tr. p. 8, ll. 12-16). Plea Counsel testified that the notice of LWOP was filed when Solicitor Hunter took over the case for the Seventh Circuit Solicitor's Office. (PCR Tr. p. 8, ll. 17-21).

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CLERK OF COURT
SPARTANBURG COUNTY
AMY IV COX

When asked about the deficiencies of the LWOP notice referenced in the plea transcript,⁴ Plea Counsel recalled that in the transcript she noted that the notice had not been perfected yet.⁵ (PCR Tr. pp. 8, l. 22 – 9, l. 3). Plea Counsel testified that the notice was filed five or six days before Applicant entered the plea and the statute required that ten days' notice be given of the State's intent to seek life without parole. (PCR Tr. p. 9, ll. 5-9). Plea Counsel testified that Applicant was on the trial docket for the week he entered his plea, however it did not appear that Applicant was under imminent threat of being called to trial. (PCR Tr. p. 9, ll. 10-15). Plea Counsel testified that in her discussions with the Solicitor leading up to Applicant's plea he promised her that if the case was not resolved during that week, it would be on another trial docket coming quickly, which would allow the State's LWOP notice to become perfected. (PCR Tr. p. 9, ll. 14-19). Plea Counsel testified that the LWOP notice was not a direct threat at the time that Applicant pled, but it was going to become one if Applicant's case was not resolved before the notice became perfected. (PCR Tr. p. 9, ll. 20-23).

At the evidentiary hearing, on cross examination, Plea Counsel testified that she did not in any way coerce or threaten Applicant into entering his plea. (PCR Tr. p. 21, ll. 14-19). Plea Counsel testified that Applicant made the decision to plead under Alford the day before the plea occurred. (PCR Tr. p. 19, ll. 18-20). Plea Counsel testified that she and Applicant discussed the plea agreement because the Solicitor was willing to encompass three additional charges Applicant was facing in addition to the two to which he pled within the plea agreement. (PCR Tr. pp. 19, l. 21 – 20, l. 1).

⁴ Plea Tr. pp. 12, l. 21-13, l. 8.

⁵ Plea Tr. pp. 15, l. 19-17, l. 4.

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SPARTANBURG COUNTY
AMY W. COX

Plea Counsel testified to her belief that pleading was in Applicant's best interest. (PCR Tr. p. 22, ll. 2-4). Plea Counsel testified to her knowledge of what the evidence was that could convict Applicant and that she did not take the possibility of Applicant being sentenced to life without parole lightly, especially considering his youth. (PCR Tr. p. 20, ll. 10-17). Plea Counsel testified that she had to discuss with Applicant that what he thought was an alibi might not be enough to overcome the fact that the victim had identified him in a photo lineup and was going to identify him in the courtroom. (PCR Tr. p. 20, ll. 18-21). Plea Counsel testified that there were other facts in evidence that could have convicted Applicant at trial, including at least one other eyewitness who saw Applicant at the crime scene. (PCR Tr. pp. 20, l. 22 – 21, l. 1).

During the evidentiary hearing on direct examination, Applicant testified that he did not believe that he had the correct definition of the Alford plea. (PCR Tr. p. 24, ll. 6-11). When asked to explain his definition of an Alford plea to the Court, Applicant testified to his belief that an Alford plea meant that he was pleading guilty only because he felt the State had enough evidence to convict him. (PCR Tr. p. 24, ll. 12-16). Applicant clarified that this was the understanding he had of the Alford plea at the time that he pled guilty. (PCR Tr. p. 24, ll. 17-18).

Findings

This Court finds Applicant has failed to show that Plea Counsel's representation fell below an objective standard of reasonableness, and that but for Plea Counsel's alleged errors, Applicant would not have pled guilty and proceeded to trial. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993).

Furthermore, this Court finds the combination of the record and Plea Counsel's credible testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the

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CLERK OF COURT
SPARTANBURG COUNTY
ANDREWS

requirements of Boykin v. Alabama, 395 U.S. 238 (1969) and Roddy v. State, 339 S.C. 29 (2000). Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Notably, Applicant did not allege any facts tending to prove he was prevented from informing the plea court that he allegedly wanted to proceed to a jury trial. In fact, the record refutes Applicant's allegations. Thus, based on the evidence presented at the plea proceeding and the evidentiary hearing, this Court finds Applicant freely, knowingly, and voluntarily pled guilty.

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

[CONCLUSION PAGE FOLLOWS]

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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

CONCLUSION

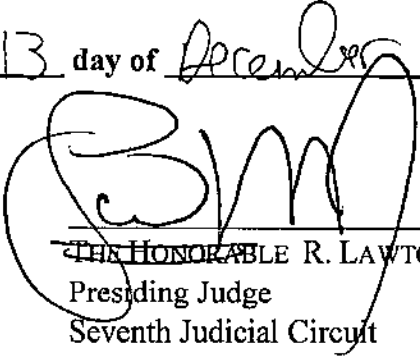
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 13 day of December, 2024.


THE HONORABLE R. LAWTON MCINTOSH
Presiding Judge
Seventh Judicial Circuit

Anderson, South Carolina

2024 DEC 19 PM 2:44
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

WITNESSES

City of Spartanburg

H. O. Hender

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

True Bill

Danielle Woodward

Foreperson of Grand Jury

Date: JUL 22 2022

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

~~22-65-42-3943~~

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 25 2022 TERM

THE STATE

vs.

Jamal Rios

Indictment for

UNLAWFUL POSSESSION OF FIREARM BY
PERSON CONVICTED OF DOMESTIC VIOLENCE
FIRST DEGREE

SC Code: 16-25-30

CDR Code: 3815

Class FEL-F

FILED

2022 AUG -1 PM 3:40

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JUL 22 2022

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

**UNLAWFUL SHIPPING, TRANSPORTING, RECEIPT OR POSSESSION OF A
FIREARM OR AMMUNITION BY A PERSON CONVICTED OF DOMESTIC
VIOLENCE FIRST DEGREE**

That the defendant, Jamal Rios, did, in Spartanburg County on or about May 10, 2020, unlawfully ship, transport, receive or possess a firearm or ammunition, and the defendant was previously convicted of a violation of Section 16-25-20(B); or the defendant has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16-25-20(B);

in violation of Section 16-25-30, *THE 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.


Assistant Solicitor

WITNESSES

Spartanburg Police Department

ARREST WARRANT NUMBER

2020A4210202379 - Count 1
 2020A4210202380 - Count 2

ACTION OF GRAND JURY

True Bill

[Signature]
 Foreperson of Grand Jury JUL 17 2020
 Date:

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO. - **20-GS-42-4898**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 20 2020

TERM

THE STATE
 vs.

Jamal Khalid Rios

Indictment for

ATTEMPTED MURDER - COUNT 1;
 POSSESSION OF FIREARM
 DURING COMMISSION TO COMMIT A
 VIOLENT CRIME - COUNT 2

SC Code: 16-3-0029; 16-23-490
 CDR Code: 3410; 549
 Class FEL-A; FEL-F

NP Court only

Pled to Court F

JUL 16/12/22

SPARTANBURG COURT
AMY W. COX

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUL 17 2020, the
 Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER – COUNT 1

That the defendant, Jamal Khalid Rios, did in Spartanburg County on or about May 10, 2020, with malice aforethought attempt to kill Antonio Franks, by knowingly and willingly shooting Antonio Franks with a handgun, with the intent to kill Antonio Franks, in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

**POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
 OF OR ATTEMPT TO COMMIT A VIOLENT CRIME – COUNT 2**

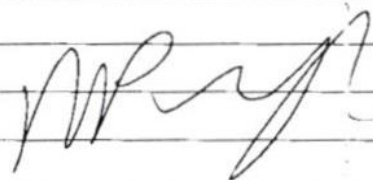
That the defendant, Jamal Khalid Rios in Spartanburg County on or about May 10, 2020, visibly display a firearm and/or knife during the commission or attempted commission of a violent crime, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

s/ Jennifer E. Wells
 ASSISTANT SOLICITOR

WITNESSES

Spartanburg Police Department



ARREST WARRANT NUMBER

2020A4210202114

ACTION OF GRAND JURY

True Bill

JUL 17 2020

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

20-GS-42-4897

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 20 2020

TERM

THE STATE

vs.

Jamel Khalid Rios

Indictment for

USE OF VEHICLE WITHOUT
PERMISSIONSC Code: 16-21-60 (A)
CDR Code: 0756
Class MIS/A

NO
 rec'd to other charges
 2/2/22 JES 10/12/22

SPARTANBURG COUNTY
 JAMAL KHALID RIOS
 2020A4210202114

2020 JUL 12 AM 10:49
 CLERK OF COURT
 SPARTANBURG COUNTY
 JAMAL KHALID RIOS

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUL 17 2020 the

Grand Jurors of Spartanburg County present upon their oath:

USE OF VEHICLE WITHOUT PERMISSION

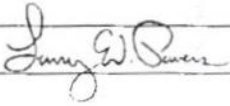
That Jamal Khalid Rios, did, in Spartanburg County on or about April 25, 2020, willfully, unlawfully and without the consent of the owner, [REDACTED], take, use or drive a 2012 Nissan Sentra, with intent to deprive the owner of the vehicle or its possession, all in violation of §16-21-60 (A), *CODE OF 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.

s/ Jennifer E. Wells
ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office



ARREST WARRANT NUMBER

2020A4210202404

ACTION OF GRAND JURY

True Bill

JUL 17 2020

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

20-GS-424899

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 20 2020 TERM

THE STATE
vs.

Jamal Khalid Rios

Indictment for
RESISTING ARRESTSC Code: 16-9-320 (A)
CDR Code: 326
Class MIS-C

NP

Ad to other charges

2/21/21 JAC

10/12/22

SPARTANBURG COUNTY
CLERK OF COURT
AMY W. COX

FILED

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SPARTANBURG COUNTY
CLERK OF COURT
AMY W. COX

STATE OF SCUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUL 17 2020 the
 Grand Jurors of Spartanburg County present upon their oath:

RESISTING ARREST

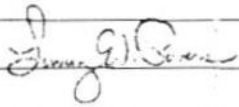
That Jamal Khalid Rios, did, in Spartanburg County, on or about May 13, 2020, knowingly, willfully and unlawfully oppose and/or attempt to resist the effort of Laurent Smith, a law enforcement officer of this State, to make a lawful arrest of the said defendant, in violation of §16-09-320 (A), *THE CODE 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.

s/ Jennifer E. Wells
 ASSISTANT SOLICITOR

WITNESSES

SCSO

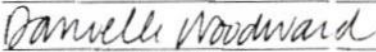


ARREST WARRANT NUMBER

Direct Indictment (2022A4210200170)

ACTION OF GRAND JURY
SEP 16 2022

True Bill


Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:DOCKET NO. **22-63-42-4777**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 26 2022 TERM

THE STATE
VS.

Jamal Khalid Rios

Indictment for
DOMESTIC VIOLENCE - 1ST DEGREESC Code: 16-25-20(B)
CDR Code: 3811
Class FEL E


FILED

2022 SEP 21 PM 2:15

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COXCLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

NP

pled to other charges

2/21/01 HSE
2/21/01 HSE
2/21/01 HSE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

SEP 16 2022

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

DOMESTIC VIOLENCE – 1ST DEGREE

That Jamal Khalid Rios did in Spartanburg County on or about January 9, 2022, cause physical harm or injury or attempt to cause physical harm or injury to Leah McGriger, a household member, causing the victim to fear for her safety, to wit: by injuring the victim; and

- (1) great bodily injury did result or the act was accomplished by means likely to result in great bodily injury; or
- (2) the defendant has two or more prior convictions for domestic violence within the past ten years from the current offense; or
- (3) used a firearm in any manner; or
- (4) in the process of the defendant committing domestic violence in the second degree one of the following also resulted:
 - (a) the defendant violated a protection order;
 - (b) the offense was committed in the presence of, or while being perceived by, a minor;
 - (c) the offense was committed while the victim was pregnant, and the defendant knew or reasonably should have known the victim to be pregnant;
 - (d) the offense was committed during the commission of a robbery, burglary, kidnapping, or theft;
 - (e) the offense was committed by impeding the victim's breathing or air flow; or
 - (f) the offense was committed using physical force or the threatened use of force against the victim to block the victim's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider;

in violation of Section 16-25-20, *THE 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.


 Assistant Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Jamal Khalid Rios

AKA:

Race: BLACK Sex: M Age: 28

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020 - GS - 42 - 04898A/W#: 2020A4210202379Date of Offense: 5/10/2020S.C. Code § 16-03-0029Code #: 3410

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or *A. Ford* ☒ PLEADSTO: Assault/Assault and Battery of a High and Aggravated Nature (0-20)in violation of § 16-03-000(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)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:

[Signature] SCB77517
HUNTER, JAMES EDWARD SC Bar #*[Signature]* DefendantSC Bar # 7913WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for a determinate term of 20 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years
and/or to pay a fine of \$ ____; provided that upon the service of ___ days/months/years/Time Served and or payment
of \$ ____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____

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

The sentence shall run

☒ 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
SCDOC. 560 (days/months)☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or
§ 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Jamal Khalid Rios INDICTMENT/CASE#: 2020 - GS - 42 - 04898

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: no contact with victim

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

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

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

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

§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender FundClerk of Court/ Deputy Clerk: Camp mg Daniel
Court Reporter: _____Presiding Judge: _____
Judge Code: 2132
Sentence Date: 10.11.22

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Jamal Khalid Rios

AKA:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2022 - GS - 42 - 03943A/W#: 2022GS4203943Date of Offense: 5/10/2020C. Code § 16-25-0030(A)(1)R Code #: 3815

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐AlfordIn disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Weapons/Unlawful poss firearm by person convicted of DV 1st degree (0-5 & 10-20-25)in violation of § 16-25-0030(A)(1) of the S.C. Code of Laws, bearing CDR Code # 3815☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)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:

HUNTER, JAMES EDWARD

SCB77517

SC Bar #

Defendant

SC Bar# 7913

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for a determinate term of 5 days/months/years Time Served ☐ Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

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

The sentence shall run

☒ 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
SCDOC. 510 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Jamal Khalid Rios INDICTMENT/CASE#: 2022 - GS - 42 - 03943**SPECIAL CONDITIONS:**☐ PTUP after _____ months/years**And Other Terms Listed Below:**

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

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

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

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

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

\$14-1-206 (Assessments 107.5 %)		\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

\$500 \$

TBD \$

TOTAL \$128.75

Clerk of Court/ Deputy Clerk: _____

Court Reporter: _____

Camp McDaniel

Presiding Judge: _____

Judge Code: 2132Sentence Date: 10.11.22