

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from York County  
Lee S. Alford, Circuit Court Judge

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OCT 23 2013

S.C. Supreme Court

MONTEZ L. RUTLEDGE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000630

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APPENDIX

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1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against- 2012-GS-46-0453

7 MONTEZ L. RUTLEDGE, AUDRA CUNNINGHAM, 2012-GS-46-427-423

8 ET AL,

9 Defendant,

10 -----x

11 February 8, 2012

12 York, S.C.

13

14 B E F O R E:

15 HONORABLE MICHAEL G. NETTLES, Judge.

16

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

18 Kevin Brackett, Esquire

19 Attorney for the Plaintiff

20 Steven Schusterman, Esquire

21 Attorney for Defendant, Rutledge

22 TYLER BURNS, Esquire

23 Attorney for Defendant Cunningham

24 Aileen Butler

25 Official Court Reporter

1 THE CLERK: Do you swear to tell the truth, the  
2 whole truth, and nothing but the truth, so help you  
3 God?

4 DEFENDANTS: I do.

5 THE COURT: Mr. Brackett, you are recognized.

6 MR. BRACKETT: If it please the Court.

7 Your Honor, standing before you, from your left to  
8 right, as they just introduced themselves, are Mr.  
9 Montez Rutledge, who is represented by his attorney Mr.  
10 Steve Schusterman of the York County Bar. To his  
11 right, Mr. Denzel Rashard McClinton, who is represented  
12 by Mr. Josh Vann of York County Bar. To his right --  
13 and I have to work on the pronunciation, I believe it  
14 is Aretayvious Markee Govan who is represented by Mr.  
15 Dave Cook of the York County and Chester County Bars.  
16 And to the right of Mr. Govan and Mr. Cook, Mr.  
17 Jonathan Jones who is represented by Dan Hall of the  
18 York County Public Defender's Office. And finally to  
19 your far right Ms. Audra Nicole Cunningham who is  
20 represented by Mr. Tyler Burns, of the York County  
21 Bar.

22 Each of these individuals has been charged in  
23 relation to one incident back in July 20th of 2011 and  
24 each of these individuals were charged with a variety  
25 of offenses. Starting with I will go to Miss

1 Cunningham first. Was charged on Indictment 2012-424  
2 with murder. 424-A with possession of a firearm  
3 during the commission of a violent crime that being  
4 murder. 425 and 426 attempted murder. 427 burglary  
5 first degree. 428 kidnapping. 429 attempted armed  
6 robbery and 430 criminal conspiracy.

7 Miss Cunningham and her attorney have entered into  
8 negotiations with the State and the State is  
9 recommending -- is accepting pleas to burglary in the  
10 second degree on 427, kidnapping on 428, attempted  
11 armed robbery on 429 and criminal conspiracy on  
12 indictment 430. Dismissing the remaining Indictments  
13 and there is a negotiated sentence of 20 to 35 years  
14 without parole on the charges that you have in front  
15 of you that she is pleading too.

16 The next individual -- and I am going a little bit  
17 out of order. I have them on my list. I will follow  
18 the list on my paper.

19 Mr. Govan was charged on 431 with accessory before  
20 the fact of a felony. 432 accessory before the fact of  
21 a felony. That being attempted armed robbery. 433  
22 criminal conspiracy. 434 possession of a firearm  
23 during the commission of a crime of violence by a  
24 person convicted of a crime of violence. 435  
25 accessory after the fact. 436 accessory after the fact

1 and 437 possession of a stolen vehicle.

2 Mr. Govan is pleading guilty to accessory before  
3 the fact of a felony, attempted armed robbery. 433  
4 criminal conspiracy and 437 possession of a stolen  
5 vehicle. On the charge of accessory before the fact  
6 of a felony, attempted armed robbery, the State and  
7 his attorney Mr. Cook have negotiated a sentence of  
8 time served and a negotiated sentence of five years on  
9 the other two charges.

10 Next on the list, Mr. Jonathan Garrett Jones. To  
11 the right of Mr. Govan, represented by Mr. Hall. He  
12 was charged on Indictment 2012-438 with murder. 438-A

13 --

14 THE COURT: Who is this now?

15 MR. BRACKETT: Mr. Jonathan Jones, represented by  
16 Mr. Dan Hall.

17 438 murder. 438-A possession of a firearm during  
18 the commission of a violent crime. 439 attempted  
19 murder. 440 attempted murder. 441 burglary in the  
20 first degree. 442 kidnapping. 443 attempted armed  
21 robbery. 443A possession of firearm during the  
22 commission of a violent crime, that being armed  
23 robbery. And 444 criminal conspiracy.

24 He is pleading guilty to Indictments 441 which is  
25 being reduced to burglary second, violent. 442

1 kidnapping. 443 attempted armed robbery. 443-A  
2 possession of firearm during the commission of a  
3 violent crime. And 444 conspiracy with the other  
4 Indictments being dismissed upon the successful  
5 completion of this plea.

6 He is pleading guilty to a negotiating sentencing  
7 range of 15 years to 25 years without parole.

8 Next, Mr. Denzel Rashard McClinton represented by  
9 Mr. Vann was charged by Indictment 2012-445 and 445-A  
10 with murder and possession of firearm during the  
11 commission of a violent crime. 446 attempted murder.  
12 447 attempted murder. 448 burglary in the first  
13 degree. 449 kidnapping. 450 attempted armed robbery.  
14 450-A possession of a firearm during commission of a  
15 violent crime being attempted armed robbery. 451  
16 criminal conspiracy and 452 possession of a stolen  
17 pistol.

18 He is pleading guilty to 2012-448 burglary which is  
19 reduced from first to second, violent. 450 attempted  
20 armed robbery and 451 criminal conspiracy for a  
21 negotiated sentencing range of 10 to 20 years without  
22 parole. The balance of his pending charges will be  
23 dismissed upon the successful completion of the  
24 plea.

25 Mr. Montez Rutledge to your far left represented by

1 Mr. Schusterman is charged with Indictments 2012-453  
2 murder. 453-A possession of a firearm during the  
3 commission of a violent crime, that being murder. 454  
4 attempted murder. 455 attempted murder. 456 burglary  
5 in the first degree. 457 kidnapping. 458 attempted  
6 armed robbery. 458-A possession of a firearm during  
7 the commission of a violent crime, attempted armed  
8 robbery. And 459 criminal conspiracy and finally 460  
9 possession of a stolen pistol.

10 He is pleading guilty to all of these charges, Your  
11 Honor. The only negotiation is that we are dropping  
12 the burglary first from a first degree to a second  
13 degree violent. Other than that he faces the full  
14 range of sentences for the murder charge of 30 to life  
15 in the Court's discretion.

16 The victims in this case have been notified and are  
17 present in the courtroom and at the appropriate time  
18 would request permission to speak to the Court and  
19 some of them would like to come up and address the  
20 Court.

21 I also have for your convenience, I have what I had  
22 marked as State's Exhibits One, Two, Three and four,  
23 which are statements given by some of the defendants  
24 in front of you. State's exhibit Two, is a report of  
25 an interview. It is not an actual statement so I

1 will withdraw that and hand up State's One, Three and  
2 Four which are the statements respectfully of Mr.  
3 Rutledge, Miss Cunningham and Mr. Jones for your  
4 consideration during the plea. And the State will  
5 request that we go through the qualification of each  
6 of these individuals guilty plea up through the giving  
7 of the facts and in order for the convenience of the  
8 victims rather than having them come up five times to  
9 address five separate sentences we would just ask that  
10 they come up at one time, address the court while all  
11 five are present in the courtroom and then we will ask  
12 for four of the defendants to be taken back to the  
13 holding cell and address the sentences one at a time.  
14 As we finish one we will send that individual back and  
15 bring out the next defendant.

16 THE COURT: Mr. Schusterman you represent Mr.  
17 Rutledge?

18 MR. SCHUSTERMAN: I do.

19 THE COURT: Have you explained to him the offense  
20 of possession of a stolen pistol and the fact that he  
21 can be incarcerated for a period of up to five years?

22 MR. SCHUSTERMAN: Yes, sir.

23 THE COURT: Conspiracy up to five years?

24 MR. SCHUSTERMAN: Yes, sir.

25 THE COURT: Possession of a weapon during the

1 commission of a violent crime up to five years?

2 MR. SCHUSTERMAN: Yes, sir.

3 THE COURT: Attempted armed robbery up to 20 years?

4 MR. SCHUSTERMAN: Yes, sir.

5 THE COURT: Kidnapping up to 30 years?

6 MR. SCHUSTERMAN: Yes, sir.

7 THE COURT: Burglary second degree, violent up to  
8 15 years?

9 MR. SCHUSTERMAN: Yes, sir.

10 THE COURT: Attempted murder up to thirty years?

11 MR. SCHUSTERMAN: Yes, sir.

12 THE COURT: Attempted murder up to 30 years?

13 MR. SCHUSTERMAN: Yes, sir.

14 THE COURT: Possession of a weapon during the  
15 commission of a violent crime yet another offense up  
16 to five years?

17 MR. SCHUSTERMAN: Yes, sir.

18 THE COURT: And murder, minimum mandatory 30 years  
19 to life?

20 MR. SCHUSTERMAN: I have sir.

21 THE COURT: All right. Does he understand that  
22 some of these offenses fall within the very special  
23 category of offenses known as violent offenses which  
24 adversely effect his custody status and most serious  
25 offenses which are subject to the two and three

1 strike rule. Does he understand the collateral  
2 ramifications of these please.

3 MR. SCHUSTERMAN: Yes, he does sir.

4 THE COURT: All right. Does he understand by  
5 that by entering a plea that the very minimal amount  
6 that he could get as a result of this plea would be a  
7 thirty-year sentence. Does he understand that?

8 MR. SCHUSTERMAN: Yes, he does.

9 THE COURT: All right. And a number of these  
10 charges are violent; most serious. He knows which  
11 once are categorized as that and how that effects him  
12 in the future?

13 MR. SCHUSTERMAN: Yes, sir.

14 THE COURT: How does he wish to plead?

15 MR. SCHUSTERMAN: He has indicated to me that he  
16 would like to tender a plea of guilty to all the  
17 charges.

18 THE COURT: Do you agree with his decision to do  
19 so?

20 MR. SCHUSTERMAN: I do.

21 THE COURT: If called upon to do so do you  
22 believe the State could prove him guilty beyond a  
23 reasonable doubt?

24 MR. SCHUSTERMAN: I do believe so.

25 THE COURT: All right.

1 THE COURT: Mr. Vann do you represent Mr.  
2 McClinton?

3 MR. VANN: Yes, Your Honor.

4 THE COURT: Do you plain to him the offense of  
5 burglary first and incarcerated for a period of up to  
6 15 years, attempted armed robbery, up to 20 years and  
7 again criminal conspiracy up to five years?

8 MR. VANN: Yes, sir, Your Honor.

9 THE COURT: Does he understand the burglary second  
10 degree is a serious offense and violent offense? The  
11 fact that it is violent adversely effects his custody  
12 status and serious is subject to the two of the three  
13 strike rule. Does he understand that?

14 MR. VANN: Yes, Your Honor.

15 THE COURT: Does he understand that attempted armed  
16 robbery is a most serious offense subject to the two  
17 strike rule? It is also a violent offense.

18 MR. VANN: Yes, sir, Your Honor we talked about the  
19 strike rule.

20 THE COURT: All right. And he understood the  
21 collateral ramifications of the plea?

22 MR. VANN: Yes.

23 THE COURT: And how does he wish to plead?

24 MR. VANN: He indicated to me he wishes to plead  
25 guilty.

1 THE COURT: Do you agree with his decision to do  
2 so?

3 MR. VANN: I do.

4 THE COURT: Do you think if called upon to do the  
5 State could prove him guilt beyond a reasonable doubt.

6 MR. VANN: I do.

7 THE COURT: Very good. All right.

8 Mr. Cook, do you represent Mr. Govan?

9 MR. COOK: Yes, sir, Your Honor.

10 THE COURT: Have you explained to him the offense  
11 of accessory before the fact of a felony? The fact  
12 that under these circumstances he could be  
13 incarcerated for a period of up to 20 years, general  
14 criminal conspiracy up to five years, and possession  
15 of a stolen vehicle for which he can receive up to  
16 five years?

17 MR. COOK: Yes, sir, Your Honor.

18 THE COURT: Does he understand the accessory  
19 before the fact of a violent felony, which would have  
20 been attempted armed robbery is indeed a violent  
21 offense and a most serious offense subject to the two  
22 strike rule and the fact it is a violent offense.  
23 adversely effects his custody status. Does he  
24 understand all the collateral consequences of these  
25 pleas?

1 MR. COOK: Yes, sir, Your Honor he does.

2 THE COURT: And how does he wish to plead?

3 MR. COOK: He wishes to plead guilty on all counts,  
4 Your Honor.

5 THE COURT: Do you agree with his decision to do  
6 so?

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

8 THE COURT: Do you feel if called upon to do the  
9 State could prove him guilty beyond a reasonable  
10 doubt?

11 MR. COOK: Yes, sir, Your Honor.

12 THE COURT: All right.

13 Mr. Hall do you represent Mr. Jones?

14 MR. HALL: I do, Your Honor.

15 THE COURT: Have you explained to him the offense  
16 of burglary second degree, violent, and the fact he  
17 can be incarcerated for a period of up to 15 years,  
18 kidnapping to 30 years, attempted armed robbery up to  
19 20 years, possession of a weapon during the commission  
20 of a violent crime up to five years and general  
21 criminal conspiracy?

22 Does he understand each of these offenses,  
23 potential defenses and his constitutional rights?

24 MR. HALL: He does.

25 THE COURT: And how does he wish to plead?

1 MR. HALL: Guilty.

2 THE COURT: Do you agree with his decision to do  
3 so?

4 MR. HALL: I do.

5 THE COURT: Does he understand the nature of a  
6 violent offense and how that adversely effects his  
7 custody status and the fact that he is pleading to  
8 both a serious and a most serious offense or two most  
9 serious offenses and how that effects his future  
10 criminal activity with regard to the three and two  
11 strike rule?

12 MR. HALL: He does, Your Honor. In fact I would  
13 like to pass up to the Court, Courts Exhibit One which  
14 is a plea affidavit that my client and I executed  
15 where it goes through a complete litany of his rights.

16 THE COURT: We will make that a part of the record.  
17 All right. Mr. Burns, do you represent Mr.  
18 Cunningham?

19 MR. BURNS: I do, Your Honor.

20 THE COURT: Have you explained to him the offense  
21 of burglary second degree, violent, the fact that he  
22 could be incarcerated for a period of to up 15 years,  
23 kidnapping up to 30 years, robbery -- attempted armed  
24 robbery, the fact that he could be incarcerated for  
25 a period of up to 20 years, general criminal

1 conspiracy up to five years.

2 Does he understand the elements of each of these  
3 offenses, potential defenses as his constitutional  
4 rights?

5 MR. BURNS: Yes, Your Honor, she understands.

6 THE COURT: All right. And does she also  
7 understand the two and three strike rule and how a  
8 violent offense adversely effects her custody status?

9 MR. BURNS: Yes, Your Honor.

10 THE COURT: And she understands the burglary is a  
11 violent serious offense and the kidnapping is a most  
12 serious offense, and violent offense, and attempted  
13 armed robbery is violent most serious offense? She  
14 understands all of that?

15 MR. BURNS: Yes, Your Honor.

16 THE COURT: All right. Very good.

17 All right, Mr. Brackett, you are recognized. You  
18 may give us the facts. I want each of the defendants  
19 to pay very close attention to the fact that have been  
20 given to the Court because I will ask each of you  
21 individually about the facts and whether or not you  
22 agree with them.

23 Mr. Brackett, you are recognized.

24 MR. BRACKETT: If it please the Court. This  
25 incident occurred on July 20th in the City of Rock

1 Hill, in County of York and it started when Miss  
2 Cunningham and Mr. Jones were together at, I believe,  
3 her cousins or sister-in-laws house and they began  
4 discussing a fellow that Miss Cunningham knew. She  
5 knew him as the meat man. She met him when he was  
6 selling meat out of the back of a truck. And in the  
7 course of talking to this individual at an earlier  
8 occasion she says that he had told her that in  
9 addition to selling meat he also sold some marijuana  
10 on the side and that if she should ever need some that  
11 she should give him a call. She had his number and  
12 give him a call and he would be glad to deliver some  
13 to her.

14 So, she told Mr. Jones about this and suggested to  
15 Mr. Jones that perhaps they should perhaps lure this  
16 individual down to Rock Hill under the pretense of  
17 buying some marijuana. As it later developed the  
18 individual she was talking about, the meat man was Mr.  
19 Chance Pate.

20 They left that location and went over to the home  
21 of Mr. Govan where they ultimately ended up meeting  
22 with both Mr. Rutledge and Mr. McClinton who joined  
23 them there at that location and while there they  
24 discussed and continue discussing this plan to lure  
25 Mr. Pate down here and rob him of the marijuana that

1 he was suppose to be bringing them as well as any  
2 money that he might have on him. While there they  
3 were exchanging texts from their cell phones between  
4 Miss Cunningham's cell phone and Mr. Pate's cell phone  
5 arranging the details of where to meet, when to meet,  
6 how much to bring and so forth.

7 During the course of this there was one text and  
8 I will tell Your Honor, that there was one text that  
9 Mr. Pate sent back in the course of negotiating the  
10 price and discussing this and that and the details of  
11 it, he indicated that they had better have the money.  
12 He didn't want have to pop anyone. So there was some  
13 clear reference to a sale. There was also slang used  
14 to describe what we now know as marijuana, they called  
15 it loud, which is a particular type of marijuana. And  
16 so clearly there was some sort of drug deal being  
17 arranged as well as reference to a weapon in one  
18 text. So I will tell the Court that.

19 Mr. Govan at one point after this last text had  
20 been sent, they became concerned that maybe they  
21 should be armed for this robbery rather than just  
22 have numbers and Mr. Govan offered to provide a weapon  
23 and ultimately did provide a weapon to Mr. Jones. And  
24 in addition to that Mr. McClinton had a 380  
25 semi-automatic handgun which he gave to Mr. Montez

1 Rutledge either at Mr. Govan's house or on there way  
2 to the location where they were to meet Mr. Pate to  
3 rob him.

4 While they were planning all this Mr. Govan was  
5 present in the room and had actually suggested to them  
6 the location that they should go. An empty apartment  
7 that was nearby. Suggested that that would be a good  
8 place for them to do this transaction and it would  
9 be a good place for them to rob them. There wouldn't  
10 be anybody there. The apartment was empty and the  
11 back door was unlocked. That was Mr. Govan's  
12 involvement as an accessory before the fact. He knew  
13 at the time that they were planning an armed robbery  
14 and he knew that he the was the one that actually  
15 provided a weapon even though the weapon that he  
16 provided was not the weapon that was ultimately used  
17 to shoot Mr. Pate.

18 The four of them went to that location over at  
19 Amelia Avenue in Rock Hill and waited. More texts was  
20 exchanged as Mr. Pate worked his way down to Rock  
21 Hill. They gave him directions on how to get there.  
22 The plan was for Miss Cunningham to come out of the  
23 front of the apartment. To be waiting out in the  
24 front on the street to flag him down and waving him  
25 into the apartment and get him out and then one of the

1 other co-conspirators would come out behind and as  
2 they got up to the door he would force Mr. Pate into  
3 the house where they would close the door over power  
4 him. Rob him of his marijuana and whatever money he  
5 had before fleeing.

6 Well, when Mr. Pate arrived there he arrived in a  
7 car and he was not alone. He had two cousins with  
8 him, Mr. Josh and Mr. Jamar Lee and they were in the  
9 vehicle and Mr. Pate got out of the vehicle by  
10 himself. Walked up to the front of the apartment.  
11 Saw Miss Cunningham. Started talking to her. Mr.  
12 Rutledge walked out from the side of the house and  
13 came up with him. Started talking as if he was aware  
14 of the deal. Miss Cunningham suggested that they  
15 needed to go inside to exchange the money and the  
16 marijuana because they didn't want to do it out on the  
17 open street. According to Miss Cunningham's statement  
18 as they arrived at the door of the apartment Mr. Pate  
19 looked in and realized the apartment was empty.  
20 Became suspicious. Stopped and said what is going on  
21 here? At that point Mr. Rutledge pushed Mr. Pate and  
22 attempted to seize him and force him into the house,  
23 holding him there. And Mr. Rutledge pulled his  
24 weapon, the 380 that had been given to him previously  
25 by Mr. McClinton and began firing.

1           Mr. Pate was struck once in the shoulder. It was a  
2 non-fatal wound. Once in the arm that went through  
3 and inside into his cavity there striking him in the  
4 stomach, the top of his liver and his spleen. This  
5 would have been a fatal wound if it had been  
6 untreated. The struggle kept going. Mr. Pate was  
7 able to free himself from their grasp, turn and start  
8 to run back to the car that he had come in where his  
9 two cousins were waiting. They were stopped. They  
10 were still inside the car at that point and Mr. Pate  
11 began running. During the course of his running from  
12 the front of the apartment Mr. Rutledge continued to  
13 fire the 380. Two of the bullets that he fired went  
14 into the car and through the car narrowly missing Mr.  
15 Lee who was inside the car. One of the bullets which  
16 proved to be the fatal almost instantaneously fatal,  
17 struck Mr. Pate in the the back as he was running back  
18 to the car, severing his spine and his aorta resulting  
19 in massive internal hemorrhaging which if not  
20 immediately fatal, was fatal in a minute or two due to  
21 the devastating injury inflicted by that bullet.

22           The co-conspirators fled the scene at that point.  
23 No marijuana was recovered at the scene. The cousins  
24 were able to open the door. Mr. Pate was close enough  
25 that the one in the back seat could reach out pick,

1 him up and pull him partially into the car. The other  
2 cousin got behind the wheel and gassed it. Went  
3 around the corner and stopped long enough to get out  
4 and push his legs into the car. They went to another  
5 location and the police were called and an  
6 investigation ensued ultimately leading first to Miss  
7 Cunningham and then through her to the other co-  
8 defendants and as I indicated to you previously,  
9 statements were obtained from all of the co-defendants  
10 with the exception of Mr. Govan. With the other --  
11 the four of the co-defendants gave statements. Three  
12 of them written and sworn, which you have in your  
13 possession. One of them was just a statement,  
14 unsigned statement.

15 Those are the material facts in this case Your  
16 Honor. Throughout the course of the robbery, of  
17 course Miss Cunningham meet him out front. Mr.  
18 Rutledge came and pushed them in. Mr. Johnson, his  
19 position -- or Mr. Jones, I am sorry. Mr. Jonathan  
20 Jones was inside the house armed with the gun Mr.  
21 Govan had given him. He was behind the door at that  
22 particular time with that gun, but he never came out  
23 from behind the door. Never got involved in the  
24 fight, but he was right there at the door behind it  
25 while laying in wait. And then Mr. McClinton's

1 position was in the house but in a back room. He also  
2 was not present outside the house or at the door and  
3 did not lay hands on Mr. Pate.

4 They all went back to Mr. Govan's house. Gave him  
5 back the gun that was unused and separated from that  
6 point after discussing it briefly there at Mr. Govan's  
7 house. And will I say for the record, Your Honor, so  
8 that we don't forget, the individuals who are pleading  
9 guilty to kidnapping the State stipulates this is a  
10 non-sexual related kidnapping and would not require  
11 registry on the sex offender registry.

12 One moment, Your Honor.

13 Mr. Thompson just pointed out I failed to tell  
14 you, in the course of going back to Mr. Govan's house  
15 in the investigation of this murder they discovered a  
16 motorcycle inside the house which ultimately proved to  
17 be stolen. It had a license plate from a different  
18 motorcycle on it. It proved to stolen. The gun that  
19 he provided them, that Mr. McClinton provided to Mr.  
20 Rutledge also proved to be stolen. That gun was  
21 linked -- ultimately was located at another  
22 location -- that gun was linked to this crime because  
23 the shell cases found at the scene of the crime  
24 matched the weapon that was recovered, the 380 later  
25 on.

1 THE COURT: Very good.

2 Mr. Rutledge, you heard that rendition of facts.

3 Are those facts true?

4 DEFENDANT RUTLEDGE: Partially.

5 THE COURT: Okay. Specifically, are you indeed

6 guilty of being in possession of stolen pistol?

7 DEFENDANT DEFENDANT yes, sir.

8 THE COURT: Are you guilty of general criminal

9 conspiracy?

10 DEFENDANT RUTLEDGE: Yes, sir.

11 THE COURT: All right. Are you guilty of

12 possession of weapon during the commission of a

13 violent crime?

14 DEFENDANT RUTLEDGE: Yes, sir.

15 THE COURT: Are you guilty of the attempted armed

16 robbery?

17 DEFENDANT RUTLEDGE: Yes, sir.

18 THE COURT: Are you guilty of kidnapping?

19 DEFENDANT RUTLEDGE: Yes, sir.

20 THE COURT: Are you guilty of burglary second

21 degree?

22 DEFENDANT RUTLEDGE: Yes, sir.

23 THE COURT: Are you guilty of the attempted murder?

24 DEFENDANT RUTLEDGE: Yes, sir.

25 THE COURT: Are you guilty of another attempted

1 murder?

2 DEFENDANT RUTLEDGE: Yes, sir.

3 THE COURT: Are you guilty of a possession of a  
4 weapon during the commission of a crime?

5 DEFENDANT RUTLEDGE: Yes, sir.

6 THE COURT: Are you guilty of murder?

7 DEFENDANT RUTLEDGE: Yes, sir.

8 THE COURT: All right. You had mentioned that the  
9 facts are partially correct. Are the -- tell me what  
10 you don't agree with that Mr. Brackett said.

11 DEFENDANT RUTLEDGE: What I don't agree with was  
12 that the shooting, the shots were not cold blood. It  
13 wasn't our intention to kill. That the back side of  
14 him I continue to fire at Mr. Pate. I wasn't  
15 continuously firing at Mr. Pate. Two cousins that  
16 were supposedly in the car, they got out with a  
17 weapon. I was shooting at the car to scare them off.

18 So, it it wasn't never cold blooded.

19 THE COURT: Well, of course you talked to your  
20 lawyer with regard to the issue of self defense. By  
21 entering this you are waiving any defense of self  
22 defense and given the facts that have been render to  
23 this Court, are you guilty of the charges that are  
24 pending against you?

25 DEFENDANT RUTLEDGE: Yes, sir.

1 THE COURT: All right. And you understand by  
2 entering this plea you are waiving any argument that  
3 you might have or any defense that you might have for  
4 self defense; is that correct?

5 DEFENDANT RUTLEDGE: Yes, sir.

6 THE COURT: All right. Mr. McClinton, are you in  
7 indeed guilty of burglary second degree, violent?

8 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

9 THE COURT: Are you guilty of attempted armed  
10 robbery?

11 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

12 THE COURT: Are you guilty of criminal conspiracy?

13 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

14 THE COURT: Are the facts that Mr. Brackett has  
15 given to this Court, are they true?

16 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

17 THE COURT: All right. Very good.

18 All right. Mr. Govan, you heard the facts that  
19 have been given to the Court. Are they true?

20 Defendant GOVAN: Yes, sir, Your Honor.

21 THE COURT: Are you in fact guilty of accessory  
22 before the fact of attempted armed robbery?

23 Defendant GOVAN: Yes, sir, Your Honor.

24 THE COURT: Are you guilty of general criminal  
25 conspiracy?

1 DEFENDANT GOVAN: Yes, sir, Your Honor.

2 THE COURT: Are you guilty of being in possession  
3 a stolen vehicle?

4 DEFENDANT GOVAN: Yes, sir, Your Honor.

5 THE COURT: All right.

6 Mr. Jones, are the facts that Mr. Brackett has  
7 given to the Court are they true and accurate?

8 DEFENDANT JONES: Yes, sir.

9 Are you indeed guilty of burglary second degree,  
10 violent?

11 DEFENDANT JONES: Yes, sir.

12 THE COURT: Are you guilty of kidnapping?

13 DEFENDANT JONES: Yes, sir.

14 THE COURT: Are you guilty of attempted armed  
15 robbery?

16 DEFENDANT JONES: Yes, sir.

17 THE COURT: Are you guilty of possession of a  
18 weapon during the commission of a violent crime?

19 DEFENDANT JONES: Yes, sir.

20 THE COURT: Are you guilty of general criminal  
21 conspiracy?

22 THE COURT: Yes, sir.

23 All right. Miss Cunningham, are those facts that  
24 have been given to the Court by Mr. Brackett are they  
25 true?

1                   DEFENDANT CUNNINGHAM: Yes, sir.

2                   THE COURT: Are you indeed guilty of burglary  
3 second degree, violent?

4                   DEFENDANT CUNNINGHAM: Yes, sir.

5                   THE COURT: Are you guilty of kidnapping?

6                   DEFENDANT CUNNINGHAM: Yes, sir.

7                   THE COURT: Are you guilty of attempted armed  
8 robbery?

9                   DEFENDANT CUNNINGHAM: Yes, sir.

10                  THE COURT: Are you guilty of criminal conspiracy?

11                  DEFENDANT CUNNINGHAM: Yes, sir.

12                  THE COURT: All right.

13                  I want each of you to pay very close attention as I  
14 explain to you your jury trial rights. Each of you  
15 are standing before me pleading guilty. But you don't  
16 have to plead guilty to anything. You could exercise  
17 your right to a jury trial. In that process the jury  
18 would determine whether or not the State could  
19 actually prove you guilty beyond a reasonable doubt.  
20 I would charge the jury as a matter of law that you  
21 are presumed to be innocent. No one could require  
22 that you take the witness stand. However, if you  
23 wanted too you could. You could subpoena witnesses on  
24 your own behalf. In addition to that you and your  
25 lawyer can cross examination the State's witnesses.

1 Have a opportunity to eye-ball them and confront them  
2 as they testify against you.

3 Do you realize by pleading guilty you are giving up  
4 your jury trial rights. Mr. Rutledge?

5 DEFENDANT RUTLEDGE: Yes, sir.

6 THE COURT: Mr. McClinton?

7 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

8 THE COURT: Mr. Govan?

9 DEFENDANT GOVAN: Yes, sir.

10 THE COURT: Mr. Jones?

11 DEFENDANT JONES: Yes, sir.

12 THE COURT: Mr. Cunningham?

13 DEFENDANT CUNNINGHAM: Yes, sir.

14 THE COURT: Do each of you still want to plead  
15 guilty? Mr. Rutledge?

16 DEFENDANT RUTLEDGE: Yes, sir.

17 THE COURT: And are you indeed guilty?

18 DEFENDANT RUTLEDGE: Yes, sir.

19 THE COURT: All right. Do you still wish to  
20 plead guilty, Mr. McClinton?

21 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

22 THE COURT: Are you indeed guilty?

23 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

24 THE COURT: All right. Mr. Govan, do you still  
25 wish to plead guilty?

1 DEFENDANT GOVAN: I do.

2 THE COURT: Are you indeed guilty?

3 DEFENDANT GOVAN: Yes, sir.

4 THE COURT: Mr. Jones, do you still wish to plead  
5 guilty?

6 DEFENDANT JONES: Yes, sir.

7 THE COURT: Are you indeed guilty?

8 DEFENDANT JONES: Yes, sir.

9 THE COURT: All right. Miss Cunningham, do you  
10 still wish to plead guilty?

11 DEFENDANT CUNNINGHAM: Yes, sir.

12 THE COURT: Are you indeed guilty?

13 DEFENDANT CUNNINGHAM: Yes, sir.

14 THE COURT: All right.

15 Mr. Brackett, if I recall correctly, the plea  
16 negotiation with regard to Mr. Rutledge are minimum  
17 mandatory 30 years to life?

18 MR. BRACKETT: That is correct, Your Honor.

19 THE COURT: All right. Is that your understanding  
20 Mr. Schusterman?

21 MR. SCHUSTERMAN: It is, Your Honor.

22 THE COURT: Is that your understanding, Mr.  
23 Rutledge?

24 DEFENDANT RUTLEDGE: Yes, sir.

25 THE COURT: All right. With regard to Mr.

1 McClinton, the plea negotiation is a minimum 10 years  
2 maximum 20 years. Is that correct?

3 MR. BRACKETT: Yes, sir. No parole. It would be  
4 based on the conviction. For the attempted armed  
5 robbery it would be a minimum 10 years no parole up to  
6 20 years.

7 THE COURT: And is that your understanding Mr.  
8 Vann?

9 MR. VANN: Yes, sir, Your Honor.

10 THE COURT: Is that your understanding Mr.  
11 McClinton?

12 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

13 THE COURT: With regard to Mr. Govan, I understand  
14 that there is a negotiated time served and negotiated  
15 five year sentence.

16  
17 MR. BRACKETT: Yes, Your Honor.

18 THE COURT: Time served is with regard to which  
19 offense?

20 MR. BRACKETT: Attempted armed robbery. The  
21 accessory before the fact of attempted armed robbery  
22 and the five year sentence would be on the criminal  
23 conspiracy and the possession of an stolen vehicle.

24 In other words, the parole eligible time, his would  
25 be the only sentence out of all the defendants, that

1 would involve getting parole eligible time.

2 THE COURT: Is that your understanding Mr. Vann --  
3 I mean Mr. Cook?

4 MR. COOK: Yes, sir. That is my understanding.

5 THE COURT: Is that your understanding Mr. Govan?

6 DEFENDANT GOVAN: Yes, sir, Your Honor.

7 THE COURT: All right.

8 With regard to Mr. Jones I understand the  
9 negotiation is a minimum mandatory 15, maximum 25; is  
10 that correct?

11 MR. BRACKETT: Yes, sir.

12 THE COURT: Is that your understanding Mr. Hall?

13 MR. HALL: That's correct, Your Honor.

14 THE COURT: Is that your understanding Mr. Jones?

15 DEFENDANT JONES: Yes, sir.

16 THE COURT: All right. And with regard to the Miss  
17 Cunningham I understand that it is a negotiated low of  
18 minimum of 20, maximum 35?

19 MR. BRACKETT: That is correct, Your Honor.

20 THE COURT: Is that your understanding Mr. Burns?

21 MR. BURNS: Yes, Your Honor.

22 THE COURT: Is that your understanding Miss  
23 Cunningham?

24 DEFENDANT CUNNINGHAM: Yes, sir.

25 THE COURT: All right. All right. Mr.

1 Schusterman, have you explained to your client his  
2 sentence will be served for all practical purposes day  
3 for day.

4 MR. SCHUSTERMAN: Yes.

5 THE COURT: And non parolable.

6 MR. SCHUSTERMAN: Non parolable. Whatever sentence  
7 he receives will be day for day on that sentence.

8 THE COURT: And Mr. Vann, have you explained to Mr.  
9 McClinton these are non parolable offenses?

10 MR. VANN: Yes, sir, Your Honor.

11 THE COURT: And he understands he will serve  
12 day for day for all practical purposes?

13 MR. VANN: Yes, sir, Your Honor.

14 THE COURT: And Mr. Cook, your -- he understands  
15 that his is indeed parole eligible?

16 MR. COOK: Yes, sir, Your Honor, with the exception  
17 of the accessory for the attempted armed robbery.

18 THE COURT: Which is going to be a time served.

19 MR. COOK: Yes, sir and I explained to my client  
20 that that still will be a strike on his record.

21 THE COURT: Very good.

22 Mr. Hall, have you explained to your client that  
23 these offenses are non-parolable and that he will  
24 serve these sentences for all practical purposes,  
25 day for day?

1 MR. HALL: Your Honor, I did explain to him that he  
2 would serve a minimum 85 percent, which would be 85  
3 percent up to the potential maximum.

4 THE COURT: All right. But with regard to 85  
5 percent rule there is no way we can guarantee that it  
6 would be that so for his understanding here today he  
7 needs to understand that there is a very real  
8 possibility it will be day for day. He understands  
9 that?

10 MR. HALL: That's correct, Your Honor.

11 THE COURT: And Mr. Burns, does Miss Cunningham  
12 understand the offenses to which she is pleading  
13 guilty too are non parolable offenses.

14 MR. BURNS: Yes, Your Honor, she understands.

15 THE COURT: And is that correct, Miss Cunningham,  
16 you understand that?

17 DEFENDANT CUNNINGHAM: Yes, sir.

18 THE COURT: All right. Mr. Rutledge, are you  
19 satisfied with your lawyer Mr. Schusterman?

20 DEFENDANT RUTLEDGE: Yes, sir.

21 THE COURT: Have you understood all your  
22 conversations with him particularly those having to do  
23 with constitutional rights, elements of these offense,  
24 potential defenses and your constitutional rights?

25 DEFENDANT RUTLEDGE: Yes, sir.

1 THE COURT: Do you need any additional time to  
2 confer with him?

3 DEFENDANT RUTLEDGE: No, sir.

4 THE COURT: Any Complaint with him whatsoever?

5 DEFENDANT RUTLEDGE: No, sir.

6 THE COURT: Has he done everything that you asked  
7 him to do?

8 DEFENDANT RUTLEDGE: Yes, sir.

9 THE COURT: Has he not done anything that you asked  
10 him to do?

11 DEFENDANT RUTLEDGE: He has done everything I asked  
12 him to do.

13 THE COURT: And you are satisfied with him?

14 DEFENDANT RUTLEDGE: Yes, sir.

15 THE COURT: Has he done a good job?

16 DEFENDANT RUTLEDGE: Very well.

17 THE COURT: Very good.

18 Mr. McClinton, are you satisfied with your lawyer?

19 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

20 THE COURT: You have understood all of your  
21 conversations with him particularly those having to do  
22 with the elements of offense, potential defenses, and  
23 your constitutional rights?

24 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

25 THE COURT: All right. And do you need any

1 additional time to confer with him?

2 DEFENDANT MCCLINTON: NO, sir, Your Honor.

3 THE COURT: You have understood all your  
4 conversations with him?

5 DEFENDANT MCCLINTON: Yes, sir.

6 THE COURT: Any complaints with him whatsoever?

7 DEFENDANT MCCLINTON: No, sir, Your Honor.

8 THE COURT: Has done everything you asked him to  
9 do?

10 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

11 THE COURT: Has he not done anything you asked him  
12 to do?

13 DEFENDANT MCCLINTON: No, sir, Your Honor.

14 THE COURT: Are you completely satisfied with Mr.  
15 Vann?

16 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

17 THE COURT: All right. Mr. Govan are you satisfied  
18 with your lawyer Mr. Cook.

19 DEFENDANT GOVAN: Yes, sir, Your Honor.

20 THE COURT: Has he done everything that you asked  
21 him to do?

22 DEFENDANT GOVAN: Yes, sir.

23 THE COURT: Have you understood all your  
24 conversations with regard to elements of these  
25 offenses, potential defenses and your constitutional

1 rights?

2 DEFENDANT GOVAN: Yes, sir.

3 THE COURT: And do you need any additional time to  
4 confer with him?

5 DEFENDANT GOVAN: No, sir.

6 THE COURT: Any Complaint whatsoever?

7 DEFENDANT GOVAN: No, sir.

8 THE COURT: Has he done a good job?

9 DEFENDANT GOVAN: Yes, sir.

10 THE COURT: Very good. All right.

11 Mr. Jones, are you satisfied with your lawyer Mr.  
12 Hall?

13 DEFENDANT JONES: Yes, sir.

14 THE COURT: Have you understood all your  
15 conversations with him having to do with each of these  
16 offenses, potential defenses, constitutional rights  
17 and the collateral consequences of these offenses?  
18 Have you understood all those conversations?

19 DEFENDANT JONES: Yes, sir.

20 THE COURT: Do you need any additional time to  
21 confer with him?

22 DEFENDANT JONES: No, sir.

23 THE COURT: Any complaints whatsoever?

24 DEFENDANT JONES: No, sir.

25 THE COURT: Has he done everything that you asked

1 him to do?

2 DEFENDANT JONES: Yes, sir.

3 THE COURT: Has he not done anything that you asked  
4 him to do?

5 DEFENDANT JONES: No, sir.

6 THE COURT: Miss Cunningham, are you satisfied with  
7 your lawyer Mr. Burns?

8 DEFENDANT CUNNINGHAM: Yes, sir.

9 THE COURT: Has he done everything that you asked  
10 him to do?

11 DEFENDANT CUNNINGHAM: Yes, sir.

12 THE COURT: Has he not done anything that you asked  
13 him to do?

14 DEFENDANT CUNNINGHAM: No, sir.

15 THE COURT: Have you understood all of your  
16 conversations with him having to do with each of these  
17 offenses, potential offenses, the elements of the  
18 offenses and your constitutional rights?

19 DEFENDANT CUNNINGHAM: Yes, sir.

20 THE COURT: All right. Do you need any additional  
21 time to confer with him?

22 DEFENDANT CUNNINGHAM: No, sir.

23 THE COURT: Any complaints whatsoever.

24 DEFENDANT CUNNINGHAM: No, sir.

25 THE COURT: Has he done a good job?

1 DEFENDANT CUNNINGHAM: Yes, sir.

2 THE COURT: All right. If any of the defendants  
3 have any complaints with their lawyers now is the time  
4 to speak. Does anybody have any complaint whatsoever?  
5 Let the record reflect there has been no response.

6 All right. Has anyone promised you anything,  
7 threatened, pressured or mistreated you in any way;  
8 shape or form in effort to get you to plead guilty  
9 today, Mr. Rutledge.

10 DEFENDANT RUTLEDGE: No, sir.

11 THE COURT: Mr. McClinton?

12 DEFENDANT MCCLINTON: No, sir, Your Honor.

13 THE COURT: Mr. Govan?

14 DEFENDANT GOVAN: No, sir.

15 THE COURT: Mr. Jones?

16 DEFENDANT JONES: No, sir.

17 THE COURT: Miss Cunningham?

18 DEFENDANT CUNNINGHAM: No, sir.

19 THE COURT: All right. Have each of you understood  
20 all my questions, Mr. Rutledge?

21 DEFENDANT RUTLEDGE: Yes, sir.

22 THE COURT: Mr. McClinton:

23 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

24 THE COURT: Mr. Govan?

25 DEFENDANT GOVAN: Yes, sir.

1 THE COURT: Mr. Jones?  
2 DEFENDANT JONES: Yes, sir.  
3 THE COURT: Miss Cunningham?  
4 DEFENDANT CUNNINGHAM: Yes, sir.  
5 THE COURT: Have your answers been truthful, Mr.  
6 Rutledge?  
7 DEFENDANT RUTLEDGE: Yes, sir.  
8 THE COURT: Mr. McClinton?  
9 DEFENDANT MCCLINTON: Yes, sir, Your Honor.  
10 THE COURT: Mr. Govan?  
11 DEFENDANT GOVAN: Yes, sir.  
12 THE COURT: Mr. Jones?  
13 DEFENDANT JONES: Yes, sir.  
14 THE COURT: Miss Cunningham?  
15 DEFENDANT CUNNINGHAM: Yes, sir.  
16 THE COURT: Are each of you pleading guilty  
17 because you are guilty, Mr. Rutledge?  
18 DEFENDANT RUTLEDGE: Yes, sir.  
19 THE COURT: Mr. McClinton?  
20 DEFENDANT MCCLINTON: Yes, sir, Your Honor.  
21 THE COURT: Mr. Govan.  
22 DEFENDANT GOVAN: Yes, sir?  
23 THE COURT: Mr. Jones?  
24 DEFENDANT JONES: Yes, sir.  
25 THE COURT: Miss Cunningham?

1 DEFENDANT JONES: Yes, sir.

2 THE COURT: All right.

3 Do each of you understand that you have ten days to  
4 appeal any decision I might render here today. Mr.  
5 Rutledge?

6 DEFENDANT RUTLEDGE: Yes, sir.

7 THE COURT: Mr. McClinton:

8 DEFENDANT MCCLINTON: Yes, sir, Your Honor.

9 THE COURT: Mr. Govan?

10 DEFENDANT GOVAN: Yes, sir.

11 THE COURT: Mr. Jones?

12 DEFENDANT JONES: Yes, sir.

13 THE COURT: Miss Cunningham?

14 DEFENDANT CUNNINGHAM: Yes, sir.

15 THE COURT: All right. Based on the testimony of  
16 each of you I find there is a substantial factual  
17 basis for your plea. Your decision was made freely  
18 and voluntarily, knowingly and intelligently with  
19 consent of competent counsel with whom you say you are  
20 satisfied. And in an abundance of caution, Mr.  
21 Rutledge, are you under the influence of any drugs or  
22 alcohol here today?

23 DEFENDANT RUTLEDGE: No, sir.

24 THE COURT: Are you experiencing any kind of  
25 physical or mental problem that prevents you from

1 understanding anything that is going on here today?

2 DEFENDANT RUTLEDGE: No, sir.

3 THE COURT: All right. Mr. McClinton, are you  
4 under the influence of any drugs or alcohol here  
5 today.

6 DEFENDANT MCCLINTON: No, sir, Your Honor.

7 THE COURT: Are you experiencing any kind of  
8 physical or mental problem that would prevent you from  
9 understanding what is going on here today?

10 DEFENDANT MCCLINTON: No, sir, Your Honor.

11 THE COURT: Mr. Govan, are you under the influence  
12 of any drugs or alcohol here today?

13 DEFENDANT GOVAN: No, sir.

14 THE COURT: Are you experiencing any kind of  
15 physical or mental problem that would prevent you  
16 from understanding what is going on here today?

17 DEFENDANT GOVAN: No, sir.

18 THE COURT: Mr. Jones, are you under the influence  
19 of any drugs or alcohol here today?

20 DEFENDANT JONES: No, sir.

21 THE COURT: Are you experiencing any kind of  
22 physical or mental problem that would prevent you from  
23 understanding what is going on here today?.

24 DEFENDANT JONES: No, sir.

25 THE COURT: Miss Cunningham, are you under the

1 influence of any drugs or alcohol here today?

2 DEFENDANT CUNNINGHAM: No, sir.

3 THE COURT: Are you experiencing any kind of  
4 physical or mental problem that would prevent you from  
5 understanding what is going on here today?

6 DEFENDANT CUNNINGHAM: No, sir.

7 THE COURT: Very good. I will accept your plea.  
8 And at this time I be glad to hear from the victim's  
9 family.

10 MR. BRACKETT: Thank you, Your Honor. First I  
11 would ask Mr. Brian Davis. This is the uncle of Mr.  
12 Chance Pate.

13 THE COURT: Your full name, sir?

14 MR. DAVIS: Brian Lamont Davis.

15 THE COURT: Mr. Davis, I know it is very difficult  
16 time for you and I want thank you for being here and I  
17 want to hear what you got to say. And I am going to  
18 ask in a situation like this it is a very difficult  
19 and I am going to ask the defendants not address the  
20 family and the family not address the defendant. That  
21 any comments that you have be directed directly to the  
22 Court. I find it works out better that way.

23 Does that sound fair enough?

24 MR. DAVIS: Yes, sir.

25 THE COURT: Be glad to hear anything you got to

1 say. Yes, sir.

2 MR. DAVIS: Well, Your Honor, first of all thank  
3 you for this opportunity. I want to begin by saying I  
4 noticed when the defendants came in that some of them  
5 looked at their families and I am sure their families  
6 looked at them. I only wish that we could have looked  
7 at Chance and that we could have that same privilege,  
8 but of course we can't.

9 I also understand this is a bad day for everybody.  
10 It is not just my family but their families as well.  
11 Nobody is going to win today. It is going to be all  
12 losers. I am very aware of that. I am a Christian.  
13 My family Christian. On Sunday we pray for their  
14 families because we understand again everybody is  
15 hurting here.

16 No matter what you charge or what sentence you give  
17 them Chance is still not going to be with us. We  
18 understand that. I am sorry that there that their  
19 lives are wasted as well. Again, no winners here.  
20 But when you give them their sentence, they are still  
21 going to be free one day. They are still going to go  
22 back to their families. Fortunately for them because  
23 of their ages their lives will still be in front of  
24 them. They will come out forty or fifty. They will  
25 still have a life. They can can start again and I

1 don't begrudge them that.

2 I just ask Your Honor that a message be set that  
3 forfeiting someone's life whether it was a mistake,  
4 whether. Whether it was purposely done doesn't change  
5 the fact that a life is gone. It is hard to justify  
6 extinguishing someone's life for money or for drugs or  
7 for any reason. Once a life is gone it is  
8 irreversible. Nothing can be done for it. So the  
9 permanent losers today are my family because there is  
10 nothing we can do.

11 I can see Chance by looking at this T-shirt. I can  
12 open up a photo album but that is it. He is been dead  
13 six and a half months and after six and a half months  
14 I just had to take my wife to the doctor because she  
15 could not stop grieving. She could not stop losing  
16 weight. And so two weeks ago the doctor gave her some  
17 medicine and she doesn't cry as much because the  
18 medication wouldn't allow her to feel the pain. She  
19 can't take that forever and we still don't know if she  
20 stops taking it will the pain return.

21 I want to make it very clear we don't hate anybody  
22 here today. We don't hate the defendants. We don't  
23 hate their family. We are angry. We are hurt. We  
24 are broken, but we don't hate them. I am hoping today  
25 that if mercy is given to anyone it will be Chance and

1 his family. Because again what happened to him is the  
2 only thing that can't be reversed. Their lives are  
3 not over. Their lives at the very most will be  
4 interrupted. Interrupted for thirty years. If  
5 Chance's life was interrupted for fifty years I would  
6 still be okay. I could go and visit him. I could  
7 send him letters. I could see him. I could touch  
8 him. I could feel him. None of that can happen. And  
9 so what we are asking Your Honor, you can't give us  
10 justice today and we are not even looking for it  
11 because you can't bring him back. That is the only  
12 thing that we really make us feel. Okay. We are  
13 justified. We have Chance back. That can not happen.  
14 But what we are asking is that when you sentence that  
15 whatever number you give that it not be a number that  
16 people will say, oh, you know I can do that. I am  
17 hoping that what you sentence them to will not say to  
18 them but to say to their family or friends or others  
19 still out their committing crimes, that this is not  
20 taken lightly through the justice system. And so I am  
21 hoping that they will learn while they are in prison.  
22 But I am hoping that you wouldn't see this many people  
23 in here again. If you could just save one kid through  
24 this sentencing, then maybe something good would have  
25 come out of it. I am just hoping. We can't undo it

1 but maybe something good. I hate that to see that you  
2 you have to do this every day. I don't know how you  
3 do this every day. I could not do it.

4 I am pastor so I deal with people, but it is not  
5 life and death on a daily basis and so I empathize  
6 with you and all the people in this system that have  
7 to deal and see this every day, and I just honor what  
8 you do. But again all I ask is when you sentence them  
9 remember that whatever you give them the very maximum  
10 does not stop their lives.

11 As a matter of fact, when they go to prison it is  
12 probably going to seem like it is the worse thing that  
13 can happened to them. But at some point they are  
14 going to adjust.. At some point they are going to  
15 transition. At some point they are going to start a  
16 new live. Prison isn't the best life, but it is a  
17 life. So at some point between when you sentence them  
18 and when they get out they will have adjusted and it  
19 won't be like prison. It will be like this is what my  
20 life is. And their families will always be there for  
21 them.

22 One day they will walk through a gait and their  
23 loved ones are going to drive up and they are going to  
24 hug them and they are going to have have a big party  
25 waiting and all their friends and loved ones are going

1 to come and their lives are going to be happy. Chance  
2 still be dead.

3 If I want to touch him I have to go touch a cold  
4 headstone. That is the closest I can get is a cold  
5 headstone. Every time I go to my church and I go in  
6 the parking lot when we make the turn to park we look  
7 straight out and see Chance. My little grandson  
8 always says papa Chance out there. Chance out  
9 there papa. Papa I miss Chance. We don't know what  
10 to say. We don't know what to say.

11 Watch television and something can happen on  
12 television and all of sudden we see it is Chance. We  
13 are going to suffer as long as they are. We are going  
14 to suffer longer than they are and like I said I wish  
15 there was a way they wouldn't have to go to jail. I  
16 wish there was a way Chance would not be deed. I wish  
17 a lot of things, but that is not the reality. Reality  
18 is it has happened.

19 I am just hoping that they will learn from this.  
20 Chance's life can't be restored. I still hope after  
21 their prison sentence that maybe they will become  
22 productive citizens. But I do hope that they will get  
23 a sentence that will justify taking someone's life.  
24 The most ultimate thing you can ever do is take  
25 someone's life. You can't do anything greater then to

1 take someone's life and I just feel that it would be  
2 the greatest injustice for Chance paying the ultimate  
3 price and they not even paying the maximum of what the  
4 law says they had to pay for theirs.

5 So Your Honor, please consider Chance today. I  
6 am not being selfish, but he is the only one that  
7 should be considered today. I sure they are going to  
8 say well, Chance did that or Chance did this.  
9 Whatever Chance did he has paid the ultimate price.  
10 He has paid the ultimate. And it would not be fair  
11 for anyone else to not pay the maximum because they  
12 were equally involved.

13 So I thank you for this privilege. Thank you, Your  
14 Honor.

15 THE COURT: Thank you.

16 MR. BRACKETT: Next Your Honor, Mr. And Mrs. Kevin  
17 Pate. Chance's Pate mother and father and I will  
18 hand up to the Court some photographs that they wanted  
19 the Court to see.

20 THE COURT: Yes, sir, your full name.

21 MR. PATE: I am Kevin Pate.

22 THE COURT: All right. Thank you for being here.  
23 I know it a very difficult time and sometimes I know  
24 ~~that you become overwhelmed. So, you take your time.~~

25 I will hear anything you have got to say .

1 MR. PATE: I was a father of three boys and Chance  
2 was my youngest son and I had the privilege of  
3 coaching him and watching him grow and watching him  
4 develop into a fine young man. And Chance and I  
5 had a type of relationship, a father and son  
6 relationship where we were buddies but yet he knew I  
7 was his father. He would talk to me about  
8 any and everything. Chance had goals to finish his  
9 college education. Also he worked for a company  
10 called on Mega Meat Company where he became one of  
11 their top salesman, while also performing on the  
12 weekends with a group called black top boy. That  
13 Chance did begin to prosper in all those areas. He --  
14 after we loss him on July the 20th about two weeks  
15 after that his picture and his singing group came out  
16 in a magazine in December. They did a tribute to his  
17 life. To the Queen City music award. Not only was he  
18 cut short of his success he also was robbed of his  
19 life. And the impact that it has on my family is -- I  
20 can't express it in words. I worked for 27 years to  
21 try and get my family everything that they needed and  
22 most of what they want. And to make them happy and  
23 see the smiles on their face it was just overwhelming.  
24 But since we lost Chance it is like it is nothing I  
25 can say. Nothing I can do. Nothing I can buy them

1 would ever put that happiness back in our family.

2 And just --

3 THE COURT: Hold old was Chance?

4 MRS. PATE: Twenty-one.

5 MR. PATE: And my wife and I we constantly pray to  
6 ask the Lord to forgive those who -- constantly ask  
7 the Lord to forgive those who -- oh, man. And we  
8 also ask the Lord to watch over their family. There  
9 is some people still hurt by this. So many people we  
10 had to talk to in order to tell them that certain  
11 things were not the right type of things to do. For  
12 some people are seeking revenge on the defendants'  
13 family, but my wife and I we had to constantly tell  
14 them that wasn't the way to go. And to hear them and  
15 keep bringing certain things up and seeing Chance's  
16 picture and people constantly telling us he was on his  
17 way to success, but he was cut short. It is just like  
18 unforgettable. An unforgettable dream. And my oldest  
19 son he is taking it real hard. He cries daily.  
20 Sometimes I cry two and three times a day. My wife  
21 she cries daily. It is just something that I never  
22 dreamed of. It has destroyed my household completely.  
23 And I just can't find the way to restore the  
24 happiness.

25 I ask the Lord to comfort my heart, but I have yet

1 to feel the comfort.

2 THE COURT: Yes, ma'am, your full name.

3 MRS. PATE: Shanette Pate.

4 THE COURT: Be glad to hear from you, yes, ma'am.

5 MRS. PATE: Thank you. I am Chance's mother. As  
6 my husband said we have three sons; 27, 25 and Chance  
7 was 21. So, he was the youngest of the three. I had  
8 to write down what I have to say. Okay.

9 I am currently studying echocardiography and I  
10 literally seen the physical effects on my heart  
11 through ultrasound. Literally. I see it daily. With  
12 that being said I realize words are not sufficient to  
13 express the way I feel.

14 Our family of five is now a family of four. Our  
15 younger son, Chance, had been prematurely and sensibly  
16 stolen from us. We will never get the to experience  
17 his love. His big hugs. His sense of humor or his  
18 musical talent.

19 Chance was the youngest of our three sons. He was  
20 independent, loving, and charming. He made every aunt  
21 feel like they were the favorite and every friend feel  
22 like the best friend. Those he loved he did not  
23 hesitate to let you no.

24 My husband, the big former football player, now  
25 cries from grief noting that he will never again shoot

1 pool with Chance. Ask him about his shows. Lift  
2 weights with him or tease him about getting a haircut.  
3 His two nieces and nephews ask about him all the time.  
4 His older brother he has dreams constantly and both  
5 brothers are devastated. We actually had two bury  
6 Chance the day after my oldest's son birthday. So  
7 that will be a constant reminder to him.

8 We miss Chance so much. The last conversation I  
9 had with Chance on that Wednesday he called me in a  
10 frenzy. He said, mom, I need you to make sure you  
11 turn in my financial aid paperwork and help me  
12 register to school. He was a student at Central  
13 Piedmont Community College and was getting ready to  
14 register for fall.

15 I am also a student at Central Piedmont Community  
16 College in the Cardiovascular program. So when the  
17 coroner said his aorta was pierced I knew exactly what  
18 he meant. I have to look at aorta's every day on  
19 ultrasound. So I immediately knew what that meant and  
20 I am constantly reminded of that. I am overcome with  
21 grief. Reminded that he should be there every time I  
22 step foot on campus. I stood in line to finalize my  
23 last semester on campus and I cried the entire time  
24 struggling to make it through the process and now  
25 struggling through each class without falling apart.

1 I am constantly reminded that Chance would never have  
2 the opportunity to pursue the music production degree  
3 that we discussed.

4 Chance's life has already left a legacy and we are  
5 glad about that, but it doesn't bring him back. There  
6 is students and friends that have told us that Chance  
7 repeatedly encouraged them to continue and finish  
8 their college coursework. We donated Chance's cells  
9 and tissues and veins and cornea. We partnered with  
10 John C. Smith University to establish at Chance P.  
11 Pate scholarship for the performing arts department,  
12 but none of that will bring him back.

13 Now we need to make sure that justice prevails for  
14 Chance. We will never get to see Chance again or talk  
15 to him, nor laugh at him or with him. So all we have  
16 is the hope that each perpetrator receives the maximum  
17 allowable sentence. Our family especially asks the  
18 Court to impose no less than the maximum for the  
19 actual person that pulled the trigger and the person  
20 that cultivated all of this and thought of Chance when  
21 they did this. It will never bring him back.

22 My older son he couldn't be here because he is  
23 devastated. Like I said our family -- me and my  
24 husband have been together for thirty years. We have  
25 three sons. Our family has been changed forever. It

1 will never be the same. And all I ask that you  
2 consider that when you are making your determination.  
3 Thank you.

4 THE COURT: It is awfully sad situation. All of  
5 this young people are children, 20, 21, 24, 17 and  
6 19. I have a child, a son who is 20 -- 21 years old.  
7 Very difficult situation. Very difficult.

8 You know the other thing that needs to be said is  
9 that in a Christian environment, so many of us grow up  
10 in Christian homes, it is easy to talk about  
11 forgiveness in a vacuum on Sunday, but to do that here  
12 in real life is difficult.

13 Thank you so much.

14 MRS. PATE: Thank you.

15 MR. BRACKETT: If it please the Court. I can say  
16 generally, while everyone is in here it is apparent  
17 from what Mr. and Mrs. Pate had to say and Mr. Davis,  
18 this is vengeful family. They are not standing over  
19 here and screaming for vengeance. I found Mr. Davis's  
20 comment very poignant and touching. Some of the most  
21 powerful I have heard in my years of experience  
22 prosecuting cases.

23 They just want something meaningful to come from  
24 Chance's death. Some signal to be sent to the  
25 community and that is what ultimately the State will

1 be asking for in each of these cases as we go through  
2 the sentencing process.

3 (Whereupon all defendant except defendant Govan  
4 return to the holding cell.

5 THE COURT: Very good. All right. Mr.  
6 Cook, you are recognized.

7 MR. COOK: Thank you, Your Honor, if it please the  
8 Court.

9 As Your Honor well knows, my client is 24. Your  
10 Honor this being a negotiated plea and in addition I  
11 would like to mention that we do have a probation  
12 violation with years over my client's suspended.  
13 This being a negotiated plea and given judicial  
14 efficiency with a lot of defendants to plea I will  
15 defer a lot of my mitigation, Your Honor, and I will  
16 just rest by saying that I went over entire colloquy  
17 with my client on several occasions. He understands  
18 everything going on today and he respectfully asks you  
19 to accept the negotiated plea, Your Honor.

20 THE COURT: Very good. Be glad to hear from  
21 probation at this time.

22 PROBATION OFFICER: Thank you, Your Honor. I will  
23 serve citation number 6461213 on Mr. Govan. It has  
24 been served on him, Your Honor.

25 THE COURT: Mr. Govan, do you agree that you have

1 done what you were suppose to on probation?

2 DEFENDANT GOVAN: Yes, sir.

3 THE COURT: Based on that I do indeed find there is  
4 substantial and willful violation. With regard to the  
5 probation violation, revoke 196 days. Terminate  
6 probation in all respects. Any financial obligations  
7 that have not been satisfied reduced to civil  
8 judgement.

9 PROBATION OFFICER: Yes, Your Honor. Thank you  
10 Your Honor. Excuse me, Your Honor, I do need to put  
11 on record he was served with arrest warrant  
12 W-46-112563 on August the 1st of 2011.

13 THE COURT: All right. With regard to Indictment  
14 2012-GS-46-00432, accessory before the fact, a felony,  
15 the sentence of the court is you be committed to the  
16 State correction for period of 196 days. Sentence to  
17 run concurrent. Credit for 196.

18 With regard to Indictment 2012-GS-46-00437  
19 possession of a stolen vehicle, the sentence of the  
20 court is you be committed to State Department of  
21 Correction for a period of five years. Sentence to  
22 run concurrent. Credit for 196 days.

23 With regard to Indictment 2012-GS-46-00433, general  
24 criminal conspiracy, sentence of the Court you be  
25 committed to State Department of Correction for a

1 period of five years sentence to run concurrent.

2 Credit for 196 days.

3 Good luck to you.

4 MR. BRACKETT: Thank you Your Honor.

5 Mr. McClinton.

6 THE COURT: Mr. Brackett, anything you like to put  
7 on record with regard to the sentencing particularly  
8 relevant to Mr. McClinton?

9 MR. BRACKETT: Yes, sir. With regard to Mr.  
10 McClinton, my deputy solicitor Mr. Thompson has some  
11 comments to make with regard to this defendant.

12 MR. THOMPSON: Specifically, his rap sheet shows  
13 juvenile convictions in June of '06 of assault and  
14 battery of high and aggravated nature and in 2010,  
15 malicious injury to property.

16 I would point out Your Honor as far as the people  
17 who were actually at the scene where Mr. Chance Pate  
18 was killed, this defendant was the least culpable of  
19 that group. He was one of the peripheral players.  
20 The main thing he did when they gathered at Mr.  
21 Govan's house when they talk about a gun he offered up  
22 his gun and ultimately it was his gun used by Mr.  
23 Rutledge that shot the fatal shots.

24 THE COURT: Mr. Vann, you are recognized.

25 MR. VANN: Thank you, Your Honor, may it please the

1 Court. First OF all Mr. McClinton's mother and his  
2 extended family are here. They do not wish to speak.  
3 I don't think they no quite what to say, but they are  
4 here to support Mr. McClinton at this time.

5 Mr. McClinton as you mentioned earlier is only 17  
6 years old. He is the baby of the group. And through  
7 some bad decisions he is where he is.

8 When I first met him I couldn't match him up with  
9 the charges that I saw that he was facing. I had a  
10 hard time reconciling those two things. He was born  
11 in Rock Hill. Grew up in Fort Mill. His mother works  
12 for Springs Industry. One of the few left that still  
13 work for Springs. He did not finish high school but  
14 did take it upon himself to get his GED and he has  
15 done that.

16 At the time of his incident he was working at  
17 McDonald's on Cherry Road. I spoke to his hiring  
18 manager Miss Sharon Rose and I will offer up an  
19 affidavit from her. He was exemplary employee and  
20 exhibited a great work ethic. Showed up for work and  
21 did everything he was asked to do and more.

22 Now Miss Rose would have like to have been here  
23 today. She had to work and was unable to get off of  
24 work. She spoke very highly of Mr. McClinton and  
25 indicated he was one of the best employees she has

1 had over her 20 plus years as the manager of  
2 McDonalds. But for what happened on July 20th I think  
3 Mr. McClinton would still be employed there and she  
4 would still be speaking as highly of him.

5 Mr. McClinton does not have any children. He does  
6 have a girlfriend though, Mckindra, who is also a  
7 student at CPC like many other people who are here and  
8 she is trying to better herself and I think at the end  
9 of the day that will be his goal as well. He does  
10 have very few things on his record. Very minimal  
11 record. His involvement in this incident was minimal.  
12 He made a bad decision to give someone a gun and that  
13 gun was ultimately used to shoot someone. That was  
14 not his intent. He was not in the room when this  
15 occurred. He was never in the room when any of this  
16 occurred. The only evidence is that he was in a back  
17 room the entire time and when shots were fired he fled  
18 the scene and ran out the back door. And while we are  
19 unable to negotiate a lower sentencing bracket  
20 unfortunately, I think that Mr. McClinton would do  
21 well at the very low end of the bracket that we were  
22 able to negotiate. Ten years would be very fitting  
23 for him. He has minimal involvement in this incident  
24 and if sentenced on the low end of that range he can  
25 get out as a still relatively young man. A 27-year

1 old. Still have time to go to college and do things  
2 that young men are suppose to do and have a life in  
3 front of him. And so we ask that you sentence him to  
4 ten years, the low end of that spectrum.

5 THE COURT: Mr. McClinton, anything you have to say  
6 for yourself?

7 MR. MCCLINTON: No, sir, Your Honor.

8 THE COURT: How long has he been in prison?

9 MR. VANN: I believe 196 days, Your Honor.

10 MR. THOMPSON: 198.

11 MR. VANN: 198.

12 THE COURT: All right Mr. McClinton, on Indictment  
13 2012-GS-46-00448 burglary second degree, the sentence  
14 of the Court is you be committed to State Department  
15 of Corrections for a period of 15 years. Sentence to  
16 run concurrent. Credit for 198 days.

17 With regard to Indictment 2012-GS-46-00450,  
18 attempted armed robbery, sentence of the Court is you  
19 be committed to State Department of Correction for a  
20 period of 15 years. Sentence to run concurrent.  
21 Credit for 198 days.

22 With regards to Indictment 2012-GS-46-00451,  
23 criminal conspiracy the sentence of the Court you be  
24 committed to State Department of Correction for a  
25 period of five years. The sentence to run concurrent.

1 Credit for 198 days.

2 Good luck to you.

3 MR. BRACKETT: Thank you, Your Honor. Mr. Jones.

4 THE COURT: Mr. Brackett, you are recognized

5 MR. BRACKETT: Yes, sir, Your Honor.

6 Mr. Jonathan Jones, to refresh your recollection as  
7 to his involvement because we are dealing with a  
8 number of folks.

9 Mr. Jones was armed with the pistol that Mr. Govan  
10 had provided to him. He was located behind the door.  
11 He was in the room and he was one of the individuals  
12 who intended to help subdue Mr. Pate once he got into  
13 the room. All the evidence tends to indicated that  
14 Mr. Jones did not come out from behind the door and  
15 did not lay hands on Mr. Pate, nor did he fire at him.  
16 He did however give a statement initially to law  
17 enforcement implicating Mr. Govan as the individual  
18 and helping so forth assist in prosecuting that case,  
19 what would have been useful in prosecuting Mr. Govan,  
20 but ultimately Mr. Jones recanted that which  
21 complicated our prosecution of Mr. Govan and made it  
22 more difficult and resulted in ultimately a plea offer  
23 that Your Honor has already heard and issued a  
24 sentence in.

25 So I don't know whether Mr. Thompson has anything

1 to add. No, sir.

2 His only prior record consist of simple possession  
3 of marijuana from 2010.

4 THE COURT: Mr. Hall, you are recognized.

5 MR. HALL: Your Honor, I represent Jonathan Jones.  
6 He is 20 years old. He is somewhat -- he is not  
7 situated in the same position as the other defendants.  
8 Mr. Jones served in the national guard. In fact he  
9 was deployed to Afghanistan and served a deployment in  
10 Afghanistan and according to his sergeant that was  
11 with him in Afghanistan he served very admirably in  
12 Afghanistan and then when he was discharged when he  
13 got out. He -- I have a son who is marine who works  
14 with wounded marines and his job is to deal with  
15 solders, actual marines who come back from Iraq and  
16 Iran and Afghanistan. It is true that men who served  
17 in the combat come back with a lot of things on their  
18 mind. That's certainly not an excuse for Mr. Jones'  
19 involvement. It certainly puts him in a category with  
20 a lot of men who live in the United States now who  
21 served. Who have served and have some issues when  
22 they come back. Again, we don't offer that as any  
23 excuse for what happened, but that is who he is. He  
24 was discharged from the national guard as E-4  
25 specialist. He was raised in a good home. His mother

1 is here, Edith Jones, with his aunt and his father,  
2 Phillip Mackey is present.

3 Mr. Jones got his GED. Certainly had to have that  
4 to be able to get in the national guard. He has  
5 worked and been gainfully employed since he got out.  
6 Audra Cunningham is his cousin. He obviously knew  
7 her. He got caught up in this scheme. Certainly he  
8 acknowledges he went to the house intending to commit  
9 a robbery and he was armed. I think it does show some  
10 part of his training, his background and his mental  
11 state that he certainly had the ability to use a nine-  
12 millimeter when he was there but he didn't. Certainly  
13 he showed great restraint with shots being fired just  
14 a few feet away from him that he did not use his gun.  
15 He did cooperate with the police. He gave a  
16 statement. He gave a signed statement. It is true  
17 that later he informed the solicitor through me that  
18 he did not agree with everything in the statement, but  
19 certainly the facts of what happened and as far as his  
20 involvement he did not deny. He is here looking a the  
21 a range of 15 to 25 years.

22 Your Honor, we are also asking that you consider a  
23 sentence him to 15-year range. That certainly for a  
24 man who served his country; that is going to be a  
25 huge price for him to pay as far as his liberty. He

1           expressed to me and his parents expressed to me great  
2           sympathy for the victim's family. They can't bring  
3           him back. And certainly their grieving over that as  
4           well as grieving over the loss of their son for a  
5           period of time.

6           In fact his mother is here and would like to  
7           address the Court and as she is coming up I would like  
8           to pass up some letters that she provided me from his  
9           relatives and his brother and would like to make it  
10          part of the record. Miss Jones.

11          THE COURT: Yes, ma'am, your full name.

12          MS. JONES: I am Edith Renee Jones. I am  
13          Jonathan's mother.

14          Your Honor, I just want to say that Jonathan is my  
15          first born and my only son. I was going through some  
16          hard times and I was unemployed for a many years and  
17          I was struggling. He has two siblings, a 14-year  
18          old sister and 11-year old sister. He left school at  
19          17 and joined the army to provide for me and my two  
20          daughters. He was there for them. He is like a  
21          father figure to them. He made sure we were all  
22          right. Jonathan has a big heart. He would give the  
23          world if he could. I know he had made a bad decision  
24          by going there. I know that in his heart and I feel  
25          in my heart that Jonathan had no intention of no one

1 getting hurt or killed because he has never been  
2 violent. I never been called to school for him for  
3 fights or when they be out at a party I never had to  
4 get a call in my bed at two or three o'clock in  
5 morning come get Jonathan because he is out there  
6 fighting and drunk or disorderly conductor anything.  
7 He is a very respectful, well-mannered son and person  
8 to everyone. And I am just -- you know, my heart  
9 goes out to their family and I hate that he really got  
10 caught up in this. He also has a nine-month old  
11 little baby and that's about all I can say.

12 THE COURT: Yes, ma'am, your full name.

13 MS. IRVING: Brandi Irving. I am the first cousin  
14 of Jonathan. I am the oldest of the grandchildren, so  
15 I watched him raised from birth to now. I just want  
16 to say that when Jonathan came from his last leave he  
17 sat in my bedroom with me and he told me how when he  
18 was he going to Afghanistan the very people that he  
19 was trying to protect was trying to kill him and he  
20 was forced to kill them. And he didn't really want to  
21 be there any more because he couldn't kill. A few  
22 months later I had use left to go out of the state,  
23 and I got a phone call that this had happened. I  
24 couldn't believe it because I know the conversation  
25 and he didn't know what to do. He wasn't really

1 discharged for anything but smoking marijuana, but he  
2 did go and serve his country proud. He never  
3 disrespected anyone. He as always tried to help and I  
4 know his heart is hurting right now for this family  
5 and know he is thinking about the decision that he did  
6 make to even be in the mix of that. And he always had  
7 the training. He also been been brought up with  
8 morals and respectful. And he still did what was  
9 right for his country, his family, his mom and  
10 everybody and I believe in his heart he is really  
11 sorry, you know, that things happened the way it did  
12 because otherwise he wouldn't be able to stand up here  
13 like a man and accept his role.

14 THE COURT: Thank you. Yes, ma'am, your full  
15 name.

16 MS. JONES: Jalia Jones.

17 THE COURT: Miss Jones, be glad to hear from you.

18 MS. JONES: I am Jonathan's sister and my brother  
19 he has been like a father-figure to me. My whole  
20 life he has been there helping me through everything.  
21 Talking to me even when I didn't want to listen. He  
22 helped me through my troubles. He has always been  
23 there for me and he encouraged me to be active, keep  
24 out of trouble, and be in sports. He encouraged me to  
25 play basketball which I am currently doing. And he

1 really helped me out a lot through everything that I  
2 have been doing in school. I have been making good  
3 grades. Keeping my grades up. Staying out of  
4 trouble. And it is really hard for me to see him like  
5 this because we haven't been apart. We never been  
6 apart for longer than at least a month since we were  
7 little and --

8 THE COURT: Thank you. Yes, ma'am, your full name?

9 MS. Base: Stephanie Ann Base (phonetics).

10 THE COURT: Be glad to hear from you .

11 MS. BASE: I am here for Jonathan. He has been a  
12 very close friend of my daughters for years. He is  
13 someone that has always been welcome in my home. He  
14 is someone that is still very welcome in my home at  
15 any given time. He is trustworthy. He is honest. He  
16 has never shown myself or my daughter or anyone one I  
17 know any disrespect.

18 I am very sorry for the victim's family, however I  
19 am very sorry for his family as well. I would have  
20 never in a million years seen this happening. This  
21 is a catastrophe. It is just absolutely abominable.  
22 I can't fathom on either side and I hate that they  
23 both lost family members and if I could take him back  
24 to the guard I would put him in my car and drop him  
25 off at the shipping facility because I gave him a ride

1           there once when he had to deploy. I didn't want to go  
2           to Charlotte in the middle night but I did it for him.  
3           I would do anything for him. So I believe in his  
4           character. He has good self worth and I will never  
5           understand the mix-up but again he is always welcome  
6           in my home and his family.

7           Thank you.

8           MR. HALL: Thank you, Your Honor. There are other  
9           family members hear, but probably what they said  
10          spoken in the letter they expressed the concern for  
11          the family and support that he has. Your Honor, he  
12          does stand here asking you that you sentence him to an  
13          appropriate sentence.

14          And Your Honor, my client does wish to address the  
15          Court.

16          THE COURT: Be glad to hear from you, yes, sir, Mr.  
17          Jones.

18          How long has he been in jail, 196 days?

19          MR. BRACKETT: 198.

20          THE COURT: Mr. Jones be glad to hear from you.

21          DEFENDANT JONES: First of all I want to apologize  
22          to the victim's family. I know going through this  
23          situation nothing can replace the loss they have and  
24          had to deal with these past six months. It has been  
25          very hard to me knowing that I was part of a situation

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where a man lost his life where I couldn't control the situation. But things may have got out of hand even though no one was intended to die. I apologize for that. I apologize to my family for being here and putting them through this situation and seeing me have to go away like this.

I just I pray to God for forgiveness and to have mercy on me. I pray for Mr. Pate every night and pray to God that he find it his heart to draw me close as I go away for this time.

THE COURT: Anything further.

MR. HALL: Nothing further, Your Honor.

Your Honor the solicitor has informed me he has actually served 201 days.

THE COURT: Mr. Jonathan Jones on indictment 2012-GS-46-00442 kidnapping, the sentence of the Court you be committed to the State Department of Correction for period of 18 years. Sentence to run concurrent. Credit for 201 days. Non sexual offense.

With regard to Indictment 2012-GS-46-00441 burglary second degree, violent, sentence of the Court is you be committed to the State Department of Correction for a period of 15 years. Sentence to run concurrent. Credit for 201 days.

On Indictment 2012-GS-46-00443 attempted armed

1 robbery, sentence of the Court is you be committed to  
2 the State Department of Correction for a period of 18  
3 years. Sentence to run concurrent. Credit for 201  
4 days.

5 With regard to Indictment 2012-GS-45-00443  
6 possession of a weapon during the commission of a  
7 violent the sentence the Court is you be committed to  
8 the Department of Correction for a period of five  
9 years. Sentence to run concurrent. Credit for 201  
10 days.

11 With regard to Indictment 2012-GS-46-00444  
12 general criminal conspiracy, the sentence of the Court  
13 is you be committed to the State Department of  
14 Correction to period of five years. The sentence to  
15 run concurrent. Credit for 2012 days.

16 Good luck to you.

17 MR. BRACKETT: Thank you, Your Honor.

18 Miss Audra Nicole Cunningham.

19 MR. BRACKETT: If it please the Court. Your Honor  
20 this is the Audra Nicole Cunningham, standing before  
21 you with her counsel Mr. Tyler Burns.  
22 Your Honor, as you no doubt by now noticed we have  
23 sort moving towards the hierarchy of culpability and we  
24 are entering the top.

25 If it were not for Miss Cunningham selecting Mr.

1 Pate to be the victim Mr. Pate would be with his family  
2 today. And that is something that we are particularly  
3 concerned about. And I feel that of all the defendants  
4 if the shooter is the executioner, so to speak, Miss  
5 Cunningham was the architect of this conspiracy. She  
6 is the one who came up with the plan. She is the one  
7 who found the victim. She is the one who reached out  
8 to the victim. Communicated with him and lured Mr.  
9 Pate down to Rock Hill to his demise.

10 She has no prior record, but we feel her  
11 involvement in this crime was significant and her  
12 sentence should reflect that fact and would ask the  
13 Court to consider that when you fashion her sentence.

14 THE COURT: Mr. Burns, you are recognized.

15 MR. BURNS: Thank you, Your Honor. If it please  
16 the court. Audra here is 21 years old. She is grew  
17 up in single family home where her mother raised her  
18 and three brothers. She graduated North Western High  
19 School and worked full time before this incident  
20 happened.

21 I partially disagree with the hierarchy, but she  
22 did have a great part to play in this. She has taken  
23 full responsibility from the very moment that the  
24 police spoke to her. She admitted that she originally  
25 tried to buy pot, then she was the one that hatched

1 the idea to rob him. However, she hatched this idea  
2 and started luring the victim down before there was  
3 ever a gun involved. Before they ever grabbed any of  
4 these other people to come along. She planned the  
5 robbery, but I don't believe she believe this to be an  
6 armed robbery.

7 I spent a considerable amount of time with her and  
8 dealing with her and I can honestly truly say that I  
9 believe that when she did this it never entered her  
10 mind that there was even the slightest possibility  
11 that somebody could have been killed. To her I just  
12 don't think that ever existed and I believe that is  
13 just the naiveness of her age being a 21 year old.

14 Your Honor, she knows she has to take  
15 responsibility for this. From the very beginning she  
16 knew she had to take responsibility. She took  
17 responsibility for it. She admitted to what she had  
18 done. In one of our conversations she asked me how  
19 things would have been different had she not given a  
20 statement and I kind of explained to her that with Mr.  
21 Jones he recanted part of his statement and several  
22 others giving different stories there credibility  
23 would not have been as good and her exact words to me  
24 in that situation was, I wouldn't change my story at  
25 all. I am sticking to what I said because it is the

1 truth.. And that is direct quote that she told me.

2 Your Honor, as victim's family says, this is truly  
3 a situation where no one would within. Audra has the  
4 support of her mother and her pastor and they wish to  
5 address the Court at this time if they may.

6 THE COURT: Yes, ma'am, your full name.

7 MS. CUNNINGHAM: Colleen Cunningham.

8 THE COURT: Be glad to hear from you .

9 MS. CUNNINGHAM: Your Honor, I am a single mother  
10 of four children. Two of my children are grown.  
11 Three boys and Audra is my only girl. My daughter is  
12 not a murderer and I know in my heart that if she did  
13 this it wasn't intended to go down like it did. This  
14 whole situation just about killed me. And I am just  
15 asking you to just have a little bit of mercy on my  
16 child.

17 Thank you.

18 THE COURT: Thank you.

19 MR. HALL: Her pastor is also here. Pastor Anthony  
20 King, he wishes to address the Court as well.

21 MR. KING: How are you doing, Your Honor ?

22 THE COURT: Your full name once again.

23 MR. KING: Anthony King.

24 THE COURT: Thank you, very much.

25 MR. KING: Like the Pate family said, there are no

1 winners. This is tragedy. A situation that shouldn't  
2 have happen.

3 To the Pate family I was in this situation five  
4 years ago. So I know what you are going through. I  
5 had -- not to be long, but I had cousin that got  
6 killed at 18 and I had to go to Detroit and do a  
7 eulogy. I didn't lose a son, but I lost a cousin and  
8 I ask God to help you to forgive. So that's what my  
9 cousin went through and I had to help her and just  
10 last year after five years she was able to forgive.  
11 And so I sat in the courtroom five years ago same as  
12 you do going through the same situation. Your son  
13 won't be back, but we have to ask God to help us to  
14 forgive and there is no winner. This tragedy. No  
15 winners. Nobody wins and so, we just pray that one  
16 day when things develop that she is able, the  
17 defendant is able to go to Pate family and apologize.  
18 But there is no winner.

19 That's it. Thank you.

20 MR. HALL: Your Honor as I said, she did attempt or  
21 she did lure Mr. Pate down here. She did it before  
22 any of the guns were involved. Actually came up to  
23 this being armed robbery. She freely admits that she  
24 planned that and she did lure him down. She has  
25 admitted that from the very beginning. She has made a

1 terrible, terrible mistake. She truly has and for a  
2 21-year old this is a mistake that she truly will  
3 carry with her the rest of her life knowing that  
4 somebody else passed away or was killed due to this.

5 Your Honor, she never actually had a gun. Unlike  
6 Mr. Jones or Mr. Rutledge, never had a gun. In fact  
7 when she heard the shots fired she was so surprised  
8 she turned and ran. Didn't even know that somebody  
9 had been killed until she found out later..

10 Your Honor, she is 21 year old. Her entire life  
11 that she has known is that 21 years. She is facing  
12 20 to 35. I would just respectfully ask Your Honor  
13 to give her the 20 to her. That is a life sentence.  
14 It would get her out and a chance that she will  
15 actually be able to move forward and pay for the  
16 mistakes that that she made and pay for the fact that  
17 she did initially planned this..

18 I believe you have something to say.

19 THE COURT: Miss Cunningham, I will be glad to hear  
20 from you.

21 DEFENDANT CUNNINGHAM: I want the courtroom to know  
22 and the victims that I am truly sorry. I never meant  
23 any of this to happen and I regret it.

24 THE COURT: Miss Cunningham, the court reporter is  
25 going to have to hear what you have to say. I know

1           you are nervous, but we got all day. Take your time  
2           and read it slowly and loudly.

3           DEFENDANT CUNNINGHAM: I want the courtroom and  
4           the Pate family to know that I am truly sorry. I  
5           never meant for any of this to happen. It is a  
6           mistake and I regret it and I will have to deal with  
7           this the rest of my life. The whole situation will  
8           bother me for a long time. The good lord help me  
9           through this and I have finally forgave myself and I  
10          wish you all forgive me and even though it is a bad  
11          situation everybody make mistake and we have to learn  
12          from them. I am far from perfect but I am learning  
13          from my mistakes. I do believe I deserve a second  
14          chance and I want everybody to forgive me.

15          THE COURT: Anything further Mr. Burns?

16          MR. BURNS: No, Your Honor.

17          MR. BRACKETT: Your Honor, if I may clarify one  
18          thing. Just to make sure. Not to put too fine of  
19          point, but it is an important distinction. The  
20          planning did start earlier. I understand what Mr.  
21          Burns is saying. However, at the house in her own  
22          statement on page two she indicates she was present  
23          and saw Mr. Jones ask Mr. Govan for a gun and  
24          Mr. Govan gave him a silver nine millimeter pistol so  
25          she was aware that Mr. Jones was armed and then on the

1 way there to the house she said on the way over to the  
2 house I saw Chad who is Mr. McClinton give Bugger Rat  
3 who is the nickname for Mr. Rutledge, the black 380  
4 pistol. And then while they were at the house they  
5 waited for a long time for the meat man. It seemed  
6 like two hours. At one point I sent him a text asking  
7 if he was driving the meat truck just so we know what  
8 kind of car he was in. The meat man called me telling  
9 me he was getting off the highway. So there was  
10 lengthy period of time in which she knew that two of  
11 her co-conspirators were armed. So, I just want to  
12 make sure the Court understands it wasn't as if the  
13 whole thing was planned and these two showed up at the  
14 last moment with guns.

15 She spent a considerable amount of time and texted  
16 him and talked to him on phone from the house knowing  
17 this was an armed robbery. So I want to make sure the  
18 Court understands that.

19 THE COURT: I want to make sure these statements  
20 and affidavits are made a part of record. All right.

21 MR. Burns: Your Honor, I don't want to get back  
22 and forth. If I can say really briefly, I don't  
23 disagree with anything Mr. Brackett said at all. I  
24 was just merely trying to point out that the situation  
25 evolved far beyond she originally intended. But I

1 don't disagree, and that's all I wish to say.

2 THE COURT: How long has she been in detention?

3 MR. BURNS: I have 203 days.

4 MR. BRACKETT: I have 201.

5 MR. BURNS: Okay. He is probably right.

6 MR. BRACKETT: Arrested on July 22nd of 2011.

7 MR. BURNS: You are probably right.

8 MR. BRACKETT: She was arrested on the same day as

9 Mr. Jones was. They were in jail the longest.

10 THE COURT: All right. Miss Cunningham, on

11 Indictment 2012-GS-46-00428 kidnapping, the sentence

12 of the Court is you be committed to the State

13 Department of Correction for a period of 25 years.

14 Sentence to run concurrent. Credit for 201 days. It

15 is non-sexual offense with regard to custodial

16 status.

17 With regard to Indictment 2012-GS-46-00429,

18 attempted armed robbery, the sentence of the Court is

19 you be committed to the State Department of Correction

20 for a period of 20 years, sentence to run concurrent

21 credit for 201 days. With regard to 2012-GS-46-00427

22 burglary second degree violent, sentence of the Court

23 you be committed to State Department of Correction for

24 period of 15 years. The sentence to concurrent.

25 Credit for 201 days. With regard to Indictment 2012-

1 GS-46-00430 conspiracy the sentence of the Court you  
2 be Committed to State Department of Correction for a  
3 period of five years. Sentence to run concurrent.  
4 Credit for 201 days.

5 Good luck to you.

6 MR. BURNS: Thank you, Your Honor.

7 MR. BRACKETT: Thank you, Your Honor.

8 Lastly, Mr. Rutledge.

9 As regard to Mr. Rutledge his prior record consists  
10 2006 conviction for possession of stolen vehicle. 2008  
11 assault and battery. It is not a significant record  
12 and the grand scheme of things I recognize that,  
13 however Mr. Rutledge entered the big time. He came out  
14 of the gate with the most serious charge that anybody  
15 could possibly incur in this state. Taking the life of  
16 another person with malice of forethought.

17 I listened during the colloquy during that Your  
18 Honor was asking and there was a partial exception  
19 taken to my rendition of the facts, which I would just  
20 comment on briefly as I am sure Mr. Schusterman has  
21 probably advised his client, but the only person that  
22 had a right of self defense out on Amelia Avenue on  
23 July the 20th, of 2011 was Mr. Pate. Both of his  
24 cousins in the car of course also had the right to come  
25 to Mr. Pate's defense and use legal force if they had

1 to protect him from an ongoing felony which had been  
2 planned and perpetrated by Mr. Rutledge and all of the  
3 other co-conspirators who plead guilty here today. So  
4 to say that you saw somebody pull a gun, if Mr. Pate  
5 had a gun on his person and he was about to be robbed  
6 by at least two people who were armed at the time, Mr.  
7 Pate had every right to pull that gun and shoot anybody  
8 who was trying to rob him or hurt him in self defense.  
9 Likewise if the Lee's in the car were armed they  
10 had a right to pull their weapon and fire and shoot and  
11 kill Mr. Rutledge he had no right of self defense.  
12 So I would take exception to the use of that as  
13 mitigation. I don't believe that this is an  
14 appropriate mitigation because Mr. Pate was the one  
15 being robbed that day, not Mr. Rutledge.

16 Now, as I indicated at the last defendant  
17 sentencing, Your Honor, we have a sort of hierarchy of  
18 culpability.

19 Mr. Rutledge is the individual who armed himself  
20 with 380. Mr. Rutledge fired all the shots that struck  
21 Mr. Pate. The shot in the shoulder which would not  
22 have been fatal. The shot that pierced his arm going  
23 through and through and entering side, doing damage to  
24 his stomach, his spleen, and his liver. And the final  
25 shot as Mr. Pate fled for his life trying to get back

1 to his car so that he could get out of there, striking  
2 him in the the back severing his spine and severely  
3 damaging his aorta causing him to hemorrhage rather  
4 quickly and die on the scene.

5 Mr. Rutledge fired his weapon until all the bullets  
6 were gone. There is no other evidence from witnesses  
7 at the scene, innocent civilians who were nearby in  
8 houses who saw this unfold, no evidence that any shots  
9 were fired by Mr. Pate, nor is there any evidence that  
10 Mr. Pate was armed. Nor were guns found in the car  
11 that the Lee's came in and no evidence from any  
12 witnesses that the Lee's excited the vehicle and were  
13 armed and firing back at this defendant. This was just  
14 a brutal murder for absolutely nothing. Mr. Pate died  
15 for nothing and this is the man who pulled the trigger.  
16 He is pleading guilty to murder. This is a terrible  
17 crime. I can't elaborate or hope to improve on the  
18 eloquence of the pain of Mr. And Mrs. Pate when they  
19 stood before you. They are going to suffer the rest of  
20 their days. They will suffer for their rest of their  
21 life and we would ask for a sentence that reflects that  
22 and honors their request to make something positive  
23 happen out of this. Make something positive happen as  
24 a warning to other people that something stupid and  
25 something small even if don't intend it to result in

1 the taking of another person's life. Its entirely  
2 foreseeable that this could happen and you are  
3 responsible for the murder just as if you planned to  
4 kill the person who ended up dying.

5 So, we ask the Court to sentence Mr. Rutledge in a  
6 manner that reflects the severity of this crime.

7 Thank you, Your Honor.

8 THE COURT: Mr. Schusterman, you are recognized.

9 MR. SCHUSTERMAN: Thank you, Your Honor. May it  
10 please the Court.

11 I have been appointed to represent Mr. Rutledge.  
12 He is 19 years old, Your Honor. He is not married and  
13 doesn't have any kids. And everything that Mr.  
14 Brackett says is absolutely true. No one though of  
15 the five people -- and there are many things I could  
16 say here. I don't want to say anything that in any  
17 way minimizing the gravity of this situation. There  
18 is -- regardless of what Mr. Pate was doing there that  
19 day, whether he was lured there, no one has the right  
20 to take the life of another. It is absolutely true.  
21 But lets not lose site, Your Honor, that of the five  
22 people that were involved in this, only one person is  
23 standing up and saying I did it. I am pleading  
24 straight up. I am coming before the Court and asking  
25 for mercy. It is an 19-year old young man and by all

1 accounts, Your Honor, since you heard the facts for --  
2 it feels like hours we are been doing this, but by all  
3 accounts, Mr. Rutledge prior to him putting the gun  
4 and this altercation happening, he was not part of the  
5 planning process. It was not. His name doesn't come  
6 up until later on.

7 Now, I say that just obviously he sits at the top  
8 of the ladder. We understand that. There is no great  
9 revelation. What Mr. Brackett says he is absolutely  
10 right. But my client is sitting here and is coming  
11 before you and unlike everyone else who got plea  
12 bargains and had ranges, my client stands before you  
13 saying I did it. It didn't go -- it wasn't suppose  
14 to go that way, but I understand that, and I am  
15 responsible. And what concerns me, Your Honor, the  
16 most through this process is that our legislature has  
17 said that murder carries 30 to life. Assuming that  
18 the Court gave my client's 30 years, day for day, that  
19 would be one and a half times what he has been alive  
20 for. One and a half times. I think some times while  
21 Mr. Pate clearly is not come back and for that there  
22 is no remedy. Whether you sentence him to one hundred  
23 life times or ten minutes in jail, Mr. Pate doesn't  
24 come back, but this man at 19-years old with a  
25 relatively minor juvenile record, I would submit to

1           you, that 30 years, Your Honor, is a substantial  
2           sentence. Substantial. And he is here of his own  
3           free will as the colloquy went with you and Mr.  
4           Rutledge he would be entitled to a trial. He would be  
5           entitled to assert any defenses may have. I happen to  
6           agree, as does Mr. Rutledge in his conversation with  
7           with you, that self defense was not an option and he  
8           is not asserting that. But he wanted to come here  
9           today before you 200 days or I should say less than a  
10          year since the incident and appear before you not  
11          because someone said listen Rutledge, if you come  
12          before the judge I am not going to charge you with  
13          murder. I will reduce it to something. He is here  
14          wanting to plead guilty. He has said to me quite  
15          candidly, Your Honor, there have been times where I  
16          have tried to talk him out of it for various reasons.  
17          To allow him -- not to attempt to get away with it,  
18          but to exercise other constitutional rights he may  
19          have and he has continually said to me I want to come.  
20          I want to be there the same day. I want to apologize  
21          to the family. It wasn't suppose to be like that and  
22          I want to take responsibility for what occurred. It  
23          is heinous crime. And he understands that. And he  
24          knows that even if his honor was impressed with him as  
25          a human being his honor couldn't give him 29 years and

1 eleven months. It would be an illegal sentence. He  
2 knows he has to get at least 30 years.

3 I submit to you, Your Honor, that a 19-year old  
4 young man from Fort Mill who did this 30 years, I  
5 believe it was even in the eloquence of Mr. Davis, who  
6 spoke on behalf of the Pate family, who said that  
7 30 years is a long time. I hope that we in the  
8 criminal justice system haven't become so jaded to  
9 throwing numbers around that we don't realize that  
10 30 years, especially to a 19-year old is an incredible  
11 amount of time. And obviously as I have said, you  
12 have the authority to go 30 to life.

13 I submit that a young man who commits the crime  
14 of murder which he is admitting too and does so, comes  
15 before the Court, admits guilt, 19-years old, I  
16 submit that this is the situation where he should  
17 receive a thirty-year sentence. And while his honor  
18 can give him 30, 50, 70 or life, I submit to you at  
19 some point the number 30 has a bearing in our  
20 legislative scheme and I submit to you this man is in  
21 this incident with all the facts, and I have no  
22 intention of demeaning the victim hear and why the  
23 victim, things the victim said or why he came. I am  
24 not doing that. I am merely saying from a totality of  
25 the situation which his honor has heard about for the

1 last several hours, if ever there was a person who was  
2 pleading to murder and is worthy of getting a sentence  
3 of thirty years day-for-day I submit to you it is Mr.  
4 Rutledge. He is by all accounts something bad was  
5 going to happen to Mr. Rutledge. Mr. Rutledge, in  
6 spite of having a minor criminal record has basically,  
7 will tell you has lived on the streets for a long  
8 time. He didn't know the people. His relationship  
9 was with Mr. McClinton. That was person who he knew.  
10 The others he got wrapped up in that day.

11 Once again, I tell you these things just to get a  
12 feel for who he is. I am in no way trying to diminish  
13 that Mr. Rutledge wants to be here today and plead for  
14 mercy from the Court. I know that the one thing he  
15 told me that he wanted to do was he wanted to -- while  
16 he is instructed to address you, but he did want to  
17 apologize to the family. And you had indicated to do  
18 it through you, earlier, and I believe he wants to be  
19 heard. Your Honor, at the appropriate time if you  
20 would be good enough to hear from him.

21 THE COURT: Mr. Rutledge, I will be glad to hear  
22 from you. Yes, sir.

23 DEFENDANT RUTLEDGE: Yes, sir, like my lawyer said,  
24 I did do it. But the situation escalated. There was  
25 never the intent and I do apologize to the family

1 through you. But I know that may not mean nothing.  
2 I can not bring his life back, but at least they know  
3 it was never cold blooded.

4 THE COURT: Okay. Anything further, Mr.  
5 Schusterman.

6 MR. SCHUSTERMAN: I have nothing. Just to let you  
7 know that Mr. Rutledge only he went to ninth grade.  
8 He was not employed. I told you he was basically  
9 living on the streets. He did go to Adult Ed, but  
10 never really saw it through.

11 As I indicated to you before, he has no kids and  
12 is not married and I would ask you for ever  
13 consideration as he is standing up straight, as we say  
14 straight up on these charges and I would ask for some  
15 mercy, while giving the Pate family the right to  
16 justice, I would just ask to temper it with mercy.  
17 Thank you, sir.

18 I would also ask, as a housekeeping matter, since  
19 he pleading to kidnapping charge if you would make  
20 note that -- I believe that everyone agrees, it was a  
21 non-sexual related incident and he not be placed on  
22 sexual registry.

23 Thank you.

24 THE COURT: All right. Mr. Rutledge as a Circuit  
25 Court Judge, clearly criminal sentencing is the most

1 difficult and sentencing someone that is not much more  
2 than a child is probably the most difficult. What  
3 Mr. Schusterman says is true, that I try not to allow  
4 numbers -- just throw around numbers. I know they  
5 are very real sentences and they effect people in a  
6 very real way.

7 Mr. Rutledge, you are only 19-years old and the  
8 sentence that you are going to receive is going to  
9 take the vast majority of you're adult life. I  
10 can't help that during the time that you are going to  
11 be in prison I attended Wofford College, graduated. I  
12 went to law school. I had a fulfilling career. I got  
13 married. I witnessed the birth of three children and  
14 you are not. Those things that the period of time in  
15 your life that you are going to miss. You are going  
16 to be gone. And you know, the sentence that I am  
17 going to give you, Mr. Schusterman, is going to be  
18 dead and gone when you get out. I am going to be dead  
19 and gone when you get out. It is a long sentence and  
20 what you did was wrong. It is excusable. The thing I  
21 find particularly reprehensible is the fact that you  
22 shot him in his back when he was running away from  
23 you. And this is the sentence of the Court.

24 For Indictment 2012-GS-46-00453, murder, the  
25 sentence of the Court is you be committed to the State

1 Department of Correction for period of 33 years.  
2 Sentence to run concurrent. Give him credit for 199  
3 days.

4 With regards to 2012-GS-46-00457, kidnapping, the  
5 sentence of the Court you be committed to the State  
6 Department of Correction for a period of 30 years.  
7 Sentence to run concurrent. Credit for 199 days.  
8 Non-sexual offense. There will be no sex offender  
9 registry and the custody level will not be effected by  
10 that.

11 With regards to Indictment 2012-GS-46-00454,  
12 attempted murder, the sentence of the Court is you be  
13 committed to the State Department of Correction for a  
14 period of 30 years. Sentence to run concurrent.  
15 Credit for 199 days,.

16 With regards to Indictment 2012-GS-46-00455,  
17 attempted murder, sentence of the Court is that you be  
18 committed to the State Department of Correction for a  
19 period of 30 years. Sentence to run concurrent.  
20 Credit for 199 days. With regards to Indictment 2012-  
21 GS-46-00458, attempted armed robbery, sentence of the  
22 Court is you be committed to the State Department  
23 of Correction for a period of 20 years. Sentence to  
24 run concurrent. Credit for 199 days.

25 With regards to Indictment 2012-GS-46-00456,

1 burglary second degree, the sentence of the Court is  
2 you be committed to the state department of correction  
3 for a period of 15 years. Sentence to run concurrent.  
4 Credit for 199 days.

5 With regards to Indictment 2012-GS-46-00453,  
6 possession of a weapon during the commission of a  
7 violent crime, the sentence of the Court is you be  
8 committed to the State Department of Correction for a  
9 period of five years, sentence to run concurrent.  
10 Credit for 199 days.

11 With regard to Indictment 2012-GS-46-00458,  
12 possession of weapon during the commission of a  
13 violent crime, the sentence of the Court is you be  
14 committed to the State Department of Correction for a  
15 period of five years. Sentence to run concurrent.  
16 Credit for 199.

17 With regard to Indictment 2012-GS-46-00459, general  
18 criminal conspiracy, the sentence of the Court you be  
19 committed to the State Department of Correction for a  
20 period of five years. Sentence to run concurrent.  
21 Credit for 199 days .

22 With regards to Indictment 2012-GS-46-00460,  
23 unlawful weapon, sentence the of the Court you be  
24 committed to State Department of Correction for a  
25 period of five years. Sentence to run concurrent.

1 Credit for 199 days.

2 I would ask that everybody in the courtroom remain  
3 seated as victim's family exits the courtroom.

4 Good luck to you.

5 \* \* \*

6 (END OR TRANSCRIPT OF RECORD)

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## C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter  
for the 16th Judicial Circuit of the State of South Carolina, do  
hereby certify that the foregoing is a true, accurate, and  
complete transcript of record of all the proceedings in the  
captioned case, in the Circuit Court for York County, South  
Carolina, on the 8th day of February, 2012.

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

November 4, 2012

Aileen Butler

WITNESSES

RHPD / Haire

DOCKET NO. 2012-GS46-

00453

2012-GS46-004534

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 19, TERM 2012

ARREST WARRANT NUMBER

COUNT ONE: J133275

COUNT TWO: J133319

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

1/19/12

VERDICT

Foreperson of Petit Jury

Date:

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

Defendant

Montez Rutledge  
hereby appear in my own proper person and plead guilty to the within indictment or to both counts as charged

Montez Rutledge  
Defendant

Witness:  
Special Agent  
C.C.C. RLB AND G.S.

MONTEZ LAVERREY RUTLEDGE

Indictment for

COUNT 1 - MURDER

SC Code: § 16-11-0330

CDR Code: 0139

COUNT 2 - POSSESSION OF A  
FIREARM DURING THE COMMISSION  
OF A VIOLENT CRIME

SC Code: 16-23-0490

CDR Code: 0549

STATE OF SOUTH CAROLINA   )  
                                           )  
 COUNTY OF YORK                )

INDICTMENT

At a Court of General Sessions, convened on January 19, 2012, the Grand Jurors of York County present upon their oath:

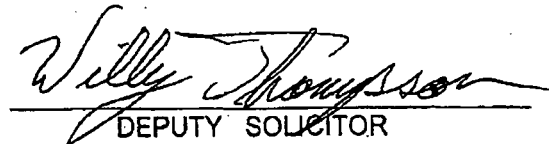
**COUNT ONE - MURDER**

Montez Lavarrey Rutledge did in York County on or about July 20, 2011, feloniously, willfully and with malice aforethought, kill one Chance Pate by means of shooting said victim and Chance Pate died as a result thereof, all in violation of Section 16-3-10, *Code of Laws of South Carolina* (1976), as amended. The Murder occurred at                               in Rock Hill, South Carolina.

**COUNT TWO – POSSESSION OF A FIREARM DURING THE  
 COMMISSION OF A VIOLENT CRIME**

Montez Lavarrey Rutledge did in York County on or about July 20, 2011, possess a firearm while committing the violent crime of murder in Rock Hill, South Carolina, all in violation of Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended

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

  
 DEPUTY SOLICITOR

WITNESSES

RHPD / Haite

DOCKET NO. 2012-GS46-

00454

The State of South Carolina

County of York

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

Defendant

COURT OF GENERAL SESSIONS

JANUARY 19, TERM 2012

Montez Rutledge  
hereby appear in my own proper person and plead guilty to the within indictment or to

as charged

ARREST WARRANT NUMBER

J133292

THE STATE

vs.

Montez Rutledge  
Defendant

ACTION OF GRAND JURY

TRUE BILL

MONTEZ LAVERREY RUTLEDGE

Indictment for

Witness: Paul V. ...  
C.C.C. P.D.S. AND G.S. Specialist

Foreperson of Grand Jury

11/19/12

VERDICT

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR Code: 3410

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA    )  
                                          )  
COUNTY OF YORK                )

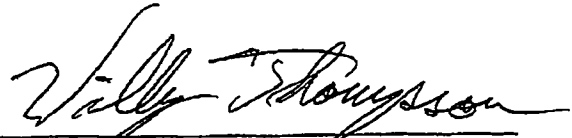
## INDICTMENT

At a Court of General Sessions, convened on January 19, 2012, the Grand Jurors of York County present upon their oath:

**ATTEMPTED MURDER**

Montez Lavarrey Rutledge did in York County on or about July 20, 2011, feloniously, willfully and with malice aforethought, either express or implied, attempt to kill Josh Lee by means of shooting at Josh Lee with the intent to kill him, all in violation of Section 16-3-0029 *Code of Laws of South Carolina* (1976, 2010), as amended. This occurring at Rock Hill, South Carolina.

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

  
DEPUTY SOLICITOR

WITNESSES

RHPD / Haire

DOCKET NO. 2012-GS46-00455

The State of South Carolina

County of York

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

Defendant

COURT OF GENERAL SESSIONS

JANUARY 19, TERM 2012

Montez Rutledge  
hereby appear in my own proper person and plead guilty to the within indictment or to  
as charged

ARREST WARRANT NUMBER

J133293

Montez Rutledge  
Defendant

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

MONTEZ LAVERREY RUTLEDGE

Paul Wall  
Foreperson of Grand Jury  
1/19/12

Indictment for

Witness:  
Paul Wall  
C.C.C.P.L.S. AND G.S.  
Specialist

VERDICT

ATTEMPTED MURDER

SC Code: § 16-03-0029  
CDR Code: 3410

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

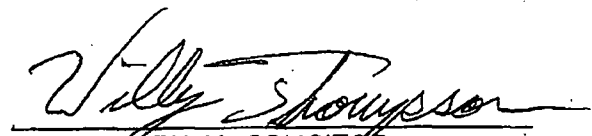
## INDICTMENT

At a Court of General Sessions, convened on January 19, 2012, the Grand Jurors of York County present upon their oath:

**ATTEMPTED MURDER**

Montez Lavarrey Rutledge did in York County on or about July 20, 2011, feloniously, willfully and with malice aforethought, either express or implied, attempt to kill Jamar Lee by means of shooting at Jamar Lee with the intent to kill him, all in violation of Section 16-3-0029 *Code of Laws of South Carolina* (1976, 2010), as amended. This occurring at  
Rock Hill, South Carolina.

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

  
DEPUTY SOLICITOR

WITNESSES

RHPD / Haire

DOCKET NO. 2012-GS-46-00456

The State of South Carolina

County of York

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

Defendant

ARREST WARRANT NUMBER

J133310

COURT OF GENERAL SESSIONS

JANUARY 19, TERM 2012

Montez Rutledge  
hereby appear in my own proper person and  
plead guilty to the within indictment or to

Burglary 2nd degree  
(Violent)

ACTION OF GRAND JURY

TRUE BILL

THE STATE

VS.

Montez Rutledge  
Defendant

Paul Walker  
Foreperson of Grand Jury  
1/19/12

VERDICT

MONTEZ LAVERREY RUTLEDGE

Witness:  
Paul Walker Court D  
C.C.C. DLS. AND G.S. Speck

Indictment for

BURGLARY FIRST DEGREE

SC Code: 16-11-311  
CDR Code: 0079

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA)  
 )  
 COUNTY OF YORK )

INDICTMENT

At a Court of General Sessions, convened on January 19, 2012, the Grand Jurors of York County present upon their oath:

**BURGLARY FIRST DEGREE**

Montez Lavarrey Rutledge did in York County on or about July 20, 2011, willfully and unlawfully enter a dwelling of another located at \_\_\_\_\_ in Rock Hill, South Carolina. Montez Lavarrey Rutledge entered without consent and with the intent to commit a crime therein. At some point during the commission of the crime, Montez Lavarrey Rutledge, or another participant in the crime committed one or more of the following acts: 1. He / she was armed or became armed with a deadly weapon; 2. He / she caused physical injury to Chance Pate who was not a participant in the crime; 3. He / she used or threatened the use of a dangerous instrument; or 4. He / she displayed a firearm. All in violation of Section 16-11-311, *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.

  
 DEPUTY SOLICITOR

WITNESSES

RHPD / Haire

DOCKET NO. 2012-GS46-00457

STATE OF SOUTH CAROLINA

COUNTY OF YORK

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

Defendant

ARREST WARRANT NUMBER

J133315

COURT OF GENERAL SESSIONS

JANUARY 19, TERM 2012

I Montez Rutledge  
hereby appear in my own proper person and plead guilty to the within indictment or to

as charged

ACTION OF GRAND JURY

~~THE STATE~~

THE STATE

VS.

Montez Rutledge  
Defendant

MONTEZ LAVERREY RUTLEDGE

Witness:  
Debra D. Williams Clerk  
C.C.C.B.L.S. AND G.S.  
Spears

Foreperson of Grand Jury

1/19/12

VERDICT

Indictment for

KIDNAPPING

SC Code: §16-3-910  
CDR Code: 0095

Foreperson of Petit Jury:  
Date:

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

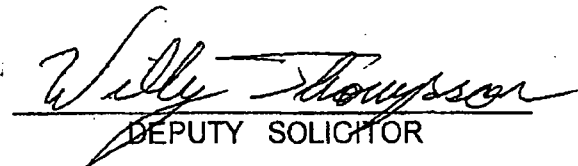
## INDICTMENT

At a Court of General Sessions, convened on January 19, 2012, the Grand Jurors of York County present upon their oath:

**KIDNAPPING**

Montez Lavarrey Rutledge did in York County on or about July 20, 2011, commit the crime of Kidnapping in violation of Section 16-3-910, *Code of Laws of South Carolina*, (1976), as amended. Montez Lavarrey Rutledge unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away Chance Pate without authority of law and against the victim's will and consent. Mr. Pate was kidnapped while at Avenue in Rock Hill, South Carolina.

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

  
DEPUTY SOLICITOR

WITNESSES

RHPD / Haire

ARREST WARRANT NUMBER

COUNT ONE - J133300

COUNT TWO - DIR IND RE: J133300

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

1/19/12

VERDICT

DOCKET NO.

2012-GS46-004584

004584

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 19, TERM 2012

THE STATE

VS.

MONTEZ LAVARREY RUTLEDGE

Indictment for

COUNT ONE - ATTEMPTED ARMED ROBBERY

SC Code : 16-11-0330(B)

CDR Code: 0026

COUNT 2 - POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-0490

CDR Code: 0549

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

Defendant

Montez Rutledge

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

as charged

Montez Rutledge

Defendant

Witness:

Donalbio Court Specialist

C.C.D PLS. AND G.S.

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

INDICTMENT

At a Court of General Sessions, convened on January 19, 2012, the Grand Jurors of York County present upon their oath:

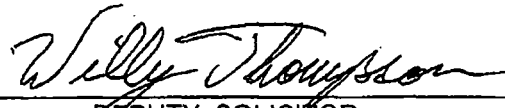
**COUNT ONE – ATTEMPTED ARMED ROBBERY**

Montez Lavarrey Rutledge did in York County on or about July 20, 2011, feloniously attempt to rob Chance Pate of currency or other items of value while at \_\_\_\_\_ in Rock Hill, South Carolina, by means of force or intimidation. Montez Lavarrey Rutledge was armed with a firearm when he attempted to rob Mr. Pate with the intent to deprive Mr. Pate permanently of said currency or other items of value; all in violation of Section 16-11-0330(B), *Code of Laws of South Carolina* (1976, as amended).

**COUNT TWO – POSSESSION OF A FIREARM DURING THE  
COMMISSION OF A VIOLENT CRIME**

Montez Lavarrey Rutledge did in York County on or about July 20, 2011, possess a firearm while committing the violent crime of Attempted Armed Robbery in Rock Hill, South Carolina, all in violation of Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended

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

  
DEPUTY SOLICITOR

WITNESSES

RHPD / Haire

ARREST WARRANT NUMBER

J133306

ACTION OF GRAND JURY

TRUE BILL

*Paul W.*  
Foreperson of Grand Jury

1/19/12

VERDICT

DOCKET NO. 2012-GS46-

*06459*

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 19, TERM 2012

THE STATE

vs.

MONTEZ LAVERREY RUTLEDGE

Witness:

*Paul W. Haire*  
C.C.C. PLS. AND G.S.

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410

CDR Code: 0049

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

Defendant

*Montez Rutledge*  
I hereby appear in my own proper person and plead guilty to the within indictment or to

*as charged*

*Montez Rutledge*

*Montez Rutledge*  
Defendant

STATE OF SOUTH CAROLINA    )  
                                          )  
COUNTY OF YORK                )

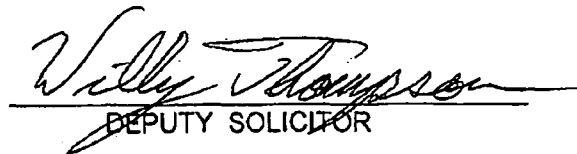
INDICTMENT

At a Court of General Sessions, convened on January 19, 2012, the Grand Jurors of York County present upon their oath:

**CRIMINAL CONSPIRACY**

Montez Lavarrey Rutledge did in York County on or about July 20, 2011, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have a tacit understanding with Audra Cunningham, Are'Tayevious Markee Govan, Jonathon Jones, and Denzel McClinton for the purpose of committing an Armed Robbery against Chance Pate. The crime occurred at or near \_\_\_\_\_ in the City of Rock Hill, South Carolina, all in violation of Section 16-17-410, *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.

  
DEPUTY SOLICITOR

WITNESSES

RHPD / Haite

ARREST WARRANT NUMBER

J133322

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

11/9/12

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-46-00460

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 19, TERM 2012

THE STATE

VS.

MONTEZ LAVERREY RUTLEDGE

Indictment for

POSSESSION OF A  
STOLEN PISTOL

SC Code: 16-23-0030  
CDR Code: 2364

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

Defendant

Montez Rutledge

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

as charged

Montez Rutledge

Defendant

Witness:

Montez Rutledge

C.C.C. P.D. AND G.S.

Special

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )

INDICTMENT

At a Court of General Sessions, convened on January 19, 2012, the Grand Jurors of York County present upon their oath:

**POSSESSION OF A STOLEN PISTOL**

Montez Lavarrey Rutledge did in York County, on or about July 20, 2011, knowingly, willfully and unlawfully transport and/or have in his possession a stolen Hi Point Model CF .380 pistol (Serial # P8008747). All in violation of Section 16-23-0030, *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.

  
DEPUTY SOLICITOR

COUNTY OF York *Jail*  
 STATE VS.  
Montez Lavarrey Rutledge  
 AKA: \_\_\_\_\_  
 Race: BLACK Sex: M Age: 19  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: Fort Mill, SC 29715  
 DL#: \_\_\_\_\_ SID#: SC 01982729  
 \*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐  
 In disposition of the said indictment comes now the Defendant who was DAVID HAMILTON  
 TO: Murder / Murder CLERK OF COURT CONVICTED OF or ☒ PLEADS  
(30 years to life)

## SENTENCE SHEET

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116  
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Walter W. Thompson 65118 Montez Rutledge 11979  
 Thompson, Walter W. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
 for a determinate term of 33 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-8-12  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 199 days  
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_  
 § 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_  
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00  
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_  
 § 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
 § 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_  
 Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_  
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00  
 § 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_  
 § 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00  
 3% to County (if paid in installments) \$ \_\_\_\_\_  
 TOTAL \$ 130.00

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton  
 Court Reporter: Aileen Butler  
 SCCA/217 (03/2011)

Presiding Judge \_\_\_\_\_  
 Judge Code: 2140  
 Sentence Date: 2-8-12

## IN THE COURT OF GENERAL SESSIONS

COUNTY OF York  
STATE VS.  
Montez Lavarrey Rutledge

INDICTMENT/CASE#: 2012-GS46-00453A

A/W#: J133319

Date of Offense: 7/20/2011

S.C. Code § 16-23-0490

CDR Code #: 0549

AKA:

Race: BLACK

Sex: M

Age: 19

DOB:

SS#:

2012 AUG 23

Address:

City, State, Zip: Fort Mill, SC 29715

DL#:

SID#:

SC 01982729

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

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

☐ CONVICTED OF or ☒ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

(5 years)

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

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

ATTEST:

Thompson, Walter W.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 199 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

## SPECIAL CONDITIONS:

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

PTUP

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

\_\_\_\_\_ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:

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

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_

§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ \_\_\_\_\_

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$ 130.00

Presiding Judge

Judge Code: 2140

Sentence Date: 2-8-12

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Aileen Butler

SCCA/217 (03/2011)

COUNTY OF  
STATE

York

VS.

Montez Lavarrey Rutledge

AKA:

Race: BLACK Sex: M

DOB: SS#:

Address:

City, State, Zip: Fort Mill, SC 29715

DL#: SID#: SC 01982726

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

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

TO: Murder / Attempted Murder

INDICTMENT/CASE#: 2012-GS46-00454

A/W#: J133292

Date of Offense: 7/20/2011

S.C. Code §: 16-03-0029

CDR Code #: 3410

## SENTENCE SHEET

in violation of § 16-03-0029

of the S.C. Code of Laws, bearing CDR Code #

3410

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

ATTEST:

Thompson, Walter W.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment

of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-8-12☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 199 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

## SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| § 14-1-206 (Assessments 107.5 %)       | \$      | \$        |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$        |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$        |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$        |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$        |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$        |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$        |
| Proviso 90.5 (SCCA Surcharge)          | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) | \$      | \$        |
| TOTAL                                  |         | \$ 130.00 |

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2140

Sentence Date: 2-8-12

COUNTY OF YORK  
STATE VS.  
Montez Lavarrey Rutledge

AKA:  
Race: BLACK Sex: M Age: 19  
DOB: SS#: 2012 AUG 23 PM 2:52

Address:  
City, State, Zip: Fort Mill, SC 29715  
DL#: SID#: SC 01982729

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐  
In disposition of the said indictment comes now the Defendant who was  
TO: Murder / Attempted Murder

INDICTMENT/CASE#: 2012-GS46-00455  
A/W#: J133293  
Date of Offense: 7/20/2011  
S.C. Code §: 16-03-0029  
Code #: 3410

SENTENCE SHEET

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410  
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: Walter W. Thompson 65118 Montez Rutledge 11979  
Thompson, Walter W. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-8-12  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 199 days  
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_  
Obtain GED ☐  
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling ☐

\*Fine: \$ \_\_\_\_\_  
§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_  
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00  
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_  
§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_  
Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_  
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00  
§ 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_  
§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00  
3% to County (if paid in installments) \$ \_\_\_\_\_  
TOTAL \$ 150.00

Random Drug/Alcohol testing ☐  
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton  
Court Reporter: Aileen Buttur  
SCCA/217 (03/2011)

Presiding Judge Michael H. Hester  
Judge Code: 2140  
Sentence Date: 2-8-12

COUNTY OF York Sail  
STATE VS.  
Montez Lavarrey Rutledge

AKA: \_\_\_\_\_

Race: BLACK Sex: M Age: 19

DOB: \_\_\_\_\_ SS#: 2

Address: \_\_\_\_\_

City, State, Zip: Port Mill, SC 29715

DL#: \_\_\_\_\_ SID#: SC 01982729 DAVID HAMILTON

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

In disposition of the said indictment comes now the Defendant DAVID HAMILTON

TO: Burglary / Burglary (After June 20, 1985) - Second degree (violent) (up to 15 years)

in violation of § 16-11-0312 (B) of the S.C. Code of Laws, bearing CDR Code # 0086

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS

☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Walter W. Thompson 65118 Montez Rutledge 11979

Thompson, Walter W. SC Bar# \_\_\_\_\_ Defendant Attorney for Defendant SC Bar# \_\_\_\_\_

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of

probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-8-12

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections. 199 days

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

#### SPECIAL CONDITIONS:

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

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

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_

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

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_

§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$ 130.00

Clerk of Court/ Deputy Clerk David Hamilton

Court Reporter: Aileen Butler

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2012-GS46-00456

A/W#: J133310

Date of Offense: 7/20/2011

S.C. Code §: 16-11-0311

CDR Code #: 0079

#### SENTENCE SHEET

Presiding Judge Michael W. [Signature]

Judge Code: 2140

Sentence Date: 2-8-12

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

COUNTY OF York *Jail*  
 VS.  
Montez Lavarrey Rutledge  
 AKA:  
 Race: BLACK Sex: M Age: 27  
 DOB: SS# 2012 AUG 23 PM 2:52  
 Address: Fort Mill, SC 29715  
 City, State, Zip: Fort Mill, SC 29715  
 DL#: SID#: SC 01982729  
 \*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐  
 In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS  
 TO: Kidnapping / Kidnapping *(up to 30 years)*

## SENTENCE SHEET

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095  
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45  
 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)  
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.  
 ATTEST Walter W. Thompson 65118 Montez Rutledge 11979  
 Thompson, Walter W. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-8-12  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections. 199 days  
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

|                                        |         |
|----------------------------------------|---------|
| *Fine:                                 | \$      |
| § 14-1-206 (Assessments 107.5 %)       | \$      |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   |
| § 56-5-2995 (DUI Assessment)           | \$12    |
| § 56-1-286 (DUI Breath Test)           | \$25    |
| Proviso 47.9 (Public Def/Prob)         | \$500   |
| § 14-1-212 (Law Enforce. Funding)      | \$25    |
| § 14-1-213 (Drug Court Surcharge)      | \$150   |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     |
| 3% to County (if paid in installments) | \$      |
| TOTAL                                  | \$1300  |

Obtain GED ☐  
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling ☐  
 Random Drug/Alcohol testing ☐  
 Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: not pretrial offense

☐ Appointed PD or appointed other counsel,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Clerk of Court/ Deputy Clerk David Hamilton  
 Court Reporter: Aileen Butler  
 SCCA/217 (03/2011)

Presiding Judge Michael Vetter  
 Judge Code: 21406  
 Sentence Date: 2-8-12

COUNTY OF YORK VS. Jail  
 STATE Montez Lavarrey Rutledge  
 AKA: \_\_\_\_\_  
 Race: BLACK Sex: M **NOTIFIED TRUE COPY**  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
 Address: \_\_\_\_\_ 2012 AUG 23 PM 2:53  
 City, State, Zip: Fort Mill, SC 29715  
 DL#: \_\_\_\_\_ SID#: SC 01982729  
 \*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazardous ☐ No ☐  
 In disposition of the said indictment comes now the Defendant who was  
 TO: Robbery / Attempted armed, or allegedly armed, robbery ☐ CONVICTED OF or ☒ PLEADS (up to 20 years)

## SENTENCE SHEET

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026  
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Walter Thompson 65118 Montez Rutledge 11979  
 Thompson, Walter W. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-8-12  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 199 days  
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

|                                        |          |
|----------------------------------------|----------|
| *Fine:                                 | \$       |
| § 14-1-206 (Assessments 107.5 %)       | \$       |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100    |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100    |
| § 56-5-2995 (DUI Assessment)           | \$12     |
| § 56-1-286 (DUI Breath Test)           | \$25     |
| Proviso 47.9 (Public Def/Prob)         | \$500    |
| § 14-1-212 (Law Enforce. Funding)      | \$25     |
| § 14-1-213 (Drug Court Surcharge)      | \$150    |
| § 50-21-114 (BUI Breath Test Fee)      | \$50     |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea  |
| Proviso 90.5 (SCCA Surcharge)          | \$5      |
| 3% to County (if paid in installments) | \$       |
| TOTAL                                  | \$130.00 |

\_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED ☐  
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling ☐  
 Random Drug/Alcohol testing ☐  
 Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Clerk of Court/ Deputy Clerk David Hamilton  
 Court Reporter: Patricia Butler  
 SCCA/217 (03/2011)

Presiding Judge Michael Holt  
 Judge Code: 2140  
 Sentence Date: 2-8-12

COUNTY OF York 1001  
 STATE VS.  
Montez Lavarrey Rutledge

INDICTMENT/CASE#: 2012-GS46-00458A  
 A/W#: DIJ133300  
 Date of Offense: 7/20/2011  
 S.C. Code §: 16-23-0490  
 CDR Code #: 0549

AKA: DAVID HAMILTON  
 Race: BLACK Sex: M Age: 19  
 DOB: 2012 AUG 23 PM 2:53  
 Address: Fort Mill, SC 29715  
 DL#: SC 01982729 SID#: CLERK OF COURT YORK COUNTY, SC

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐  
 In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS  
 TO: Weapons / Poss. weapon during violent crime, if not also sen (5 years)  
 in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549  
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)  
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.  
 ATTEST: Walter W. Thompson 65118 Monter Rutledge 11979  
Thompson, Walter W. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed        years  
 and/or to pay a fine of \$       ; provided that upon the service of        days/months/years and/or payment  
 of \$       ; plus costs and assessments as applicable\*; the balance is suspended with probation for         
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-8-12  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections. 199 days  
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP         
 Total: \$        plus 20% fee: \$         
 Payment Terms:         
☐ Set by SCDPPPS       

Recipient:       

|                                        |          |
|----------------------------------------|----------|
| *Fine:                                 | \$       |
| § 14-1-206 (Assessments 107.5 %)       | \$       |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100    |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100    |
| § 56-5-2995 (DUI Assessment)           | \$12     |
| § 56-1-286 (DUI Breath Test)           | \$25     |
| Proviso 47.9 (Public Def/Prob)         | \$500    |
| § 14-1-212 (Law Enforce. Funding)      | \$25     |
| § 14-1-213 (Drug Court Surcharge)      | \$150    |
| § 50-21-114(BUI Breath Test Fee)       | \$50     |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea  |
| Proviso 90.5 (SCCA Surcharge)          | \$5      |
| 3% to County (if paid in installments) | \$       |
| TOTAL                                  | \$130.00 |

Obtain GED ☐  
 Attend Voc. Rehab. or Job Corp.         
 May serve W/E beginning         
 Substance Abuse Counseling ☐  
 Random Drug/Alcohol testing ☐  
 Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$        beginning         
 \$        paid to Public Defender Fund  
 Other:       

☐ Appointed PD or appointed other counsel,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Clerk of Court/ Deputy Clerk Dana Hamilton  
 Court Reporter: Queen Butler  
 SCCA/217 (03/2011)

Presiding Judge Michael White  
 Judge Code: 2140  
 Sentence Date: 2-8-12

CITY OF York  
 STATE VS.  
 Montez Lavarrey Rutledge

AKA:

Race: BLACK Sex: M Age: 19

DOB: 07/21/92 SS#:

Address: 9

City, State, Zip: Fort Mill, SC 29715

DL#: SID#: SC 01982729

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

In disposition of the said indictment comes now the Defendant was

TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

INDICTMENT/CASE#: 2012-GS46-00459

A/W#: J133306

Date of Offense: 7/20/2011

S.C. Code §: 16-17-0410

CDR Code #: 0049

# SENTENCE SHEET

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Walter Thompson 65118 Montez Rutledge 11979

Thompson, Walter W. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of

probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-8-12

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections. 199 days

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

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

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED ☐

☐ Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_

\*Fine: \_\_\_\_\_ Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5 %) \_\_\_\_\_ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_ pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_ \$ \_\_\_\_\_ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_ Other: \_\_\_\_\_

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$ 130.00

Clerk of Court/ Deputy Clerk: David Hamilton

Court Reporter: Aileen Butler

SCCA/217 (03/2011)

Presiding Judge: Michael Miller

Judge Code: 2140

Sentence Date: 28.12

York

VS.

Montez Lavarrey Rutledge

INDICTMENT/CASE#: 2012-GS46-00460

A/W#: J133322

Date of Offense: 7/20/2011

S.C. Code §: 16-23-0030, 0050(A)(1)

CDR Code #: 2364

## SENTENCE SHEET

AKA:

Race: BLACK

Sex: M

DOB:

SS#:

Address:

City, State, Zip: Fort Mill, SC 29715

DL#:

SID#:

SC 01982229K OF COURT

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazardous Yes ☐ No ☐

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

TO: Weapons / Sale or delivery of pistol to, and possession by, certain persons unlawful, stolen pistol

in violation of § 16-23-0030, 0050(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2364

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

ATTEST:

Thompson, Walter W.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment

of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2-8-12☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 199 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

## SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$

TOTAL \$130.00

PTUP

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐May serve W/E beginning ☐Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Queen Butler

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2140

Sentence Date: 2-8-12

## FORM 5

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA

2012 AUG 24 PM 2:55 THE COURT OF COMMON PLEAS

County of YorkMontez Lavarrey R. Age 349102

Full name and prison number (if any) of Applicant

v.

State of South Carolina

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 York County Detention Center
2. Name and location of Court which imposed sentence York County Probation  
Detention Center 911675 York Hwy, York SC
3. Name(s) of co-defendant(s) (if any) Audra Cunningham  
Ake'tayevious Govan, Johnathon Jones Denzel McClinton
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2012-GS46-00453 (Murder) 2012-GS46-00453A (Poss. Firearm During Crime of Violence)
  - (b) 2012-GS46-00454 (Attempted Murder) 2012-GS46-00455 (Attempted Murder) 2012-GS46-00456 (Murder)

2012-GS46-00457 (union-PPing) 2012-GS46-00458 (attempted armed robbery)  
 2012-GS46-00459 (conspiracy) 2012-GS46-00460 (written R. 201)

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 8, 2011 for all
- (b) Sentencing on A.B. and C on question
- (c) number 4.
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) Because I do not know SC. laws and at that time I did not know what an appeal was.
- (b) Because I was never informed by my lawyer that I could appeal if not satisfied by the court.

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) lack of evidence on convictions
- (b) INEffective Assistance of counsel
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial counsel fail to investigate the fact of the case
- (b) all of which ~~was~~ was a violation of U.S. constitution
- (c) 6<sup>th</sup> ~~advised~~ amendments
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

- i. N/A
- 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! this is my first time presenting this information to anyone

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

(a) which grounds have been presented:

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

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

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

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

(a) N/A  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_

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

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

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

(a) the name and address of each attorney who represented you:  
 i. Stephen D. Schusterman at Schusterman  
law firm, P.A. 541 East main st. P.O. Box 4211 Rock Hill SC 29730  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 (b) the proceedings at which each such attorney represented you:  
 i. STEPHEN D. SCHUSTERMAN  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

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

A Fair trial / vacate conviction and release  
from custody

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

NO

STATE OF SOUTH CAROLINA )

County of York )

VERIFICATION

I, Montez L Rutledge, 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.

Montez Rutledge

SWORN to and subscribed before me this 16  
 day of Aug 2012

Debra Sines (L.S.)  
 Notary Public

My Commission Expires: 11-4-2015

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

I, Montez Rutledge, 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.

Montez Rutledge  
Montez Rutledge Applicant

SWORN or affirmed to and subscribed before me this

16 day of Aug., 2012.

[Signature]  
Notary Public

My Commission Expires: 11-4-2015

|                              |   |                              |
|------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF YORK               | ) | SIXTEENTH JUDICIAL CIRCUIT   |
|                              | ) |                              |
|                              | ) |                              |
|                              | ) |                              |
| Montez L. Rutledge, #349702, | ) | 2012-CP-46-3031              |
|                              | ) |                              |
| Applicant,                   | ) |                              |
|                              | ) |                              |
| v.                           | ) | <b>RETURN</b>                |
|                              | ) |                              |
| State of South Carolina,     | ) |                              |
|                              | ) |                              |
| Respondent.                  | ) |                              |

---

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 24, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the January 2012 term of the York County Grand Jury for Possession of a Stolen Pistol (2012-GS-46-0460), Criminal Conspiracy (2012-GS-46-0459), Attempted Armed Robbery (2012-GS-46-0458), Possession of a Firearm During the Commission of a Violent Crime (2012-GS-46-0458A), Kidnapping (2012-GS-46-0457), Burglary, 1<sup>st</sup> Degree (2012-GS-46-04<sup>5</sup>46), two counts of Attempted Murder (2012-GS-46-0454, -00455), Murder (2012-GS-46-00453), and Possession of a Firearm During the Commission of a Violent Crime (2012-GS-46-0453A). Stephen D. Schusterman, Esquire, represented him. On February 8, 2012, the Applicant pled guilty before the Honorable Michael G. Nettles and was sentenced to thirty-three (33) years imprisonment for Murder, five (5) years imprisonment for Possession of a Weapon During a

Violent Crime, thirty (30) years for Attempted Murder, thirty (30) years for a second count of Attempted Murder, fifteen (15) years for Burglary Second Degree, a lesser included offense Burglary First Degree, thirty (30) years for Kidnapping, twenty (20) years for Attempted Armed Robbery, five (5) years for Possession of a Weapon During a Violent Crime, five (5) years for Criminal Conspiracy, and five (5) years for Possession of a Stolen Pistol, all sentences to run concurrently. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s) and the Applicant's records from the South Carolina Department of Corrections and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. "lack of evidence on convictions"
2. "ineffective assistance of counsel"
  - a. "Trial counsel fail [sic] to investigate the fact [sic] of the case all of which was a violation of [his] constitution 6<sup>th</sup> amendments [sic]"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

## III.

The Respondent submits plea counsel rendered effective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

In regard to Applicant's allegation that he is being held unlawfully on the grounds of insufficient evidence, this allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

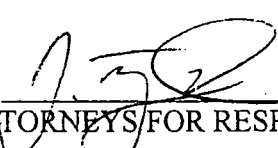
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

December 6, 2012.

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2012-CP-46-3031

MONTEZ L. RUTLEDGE, 349702

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

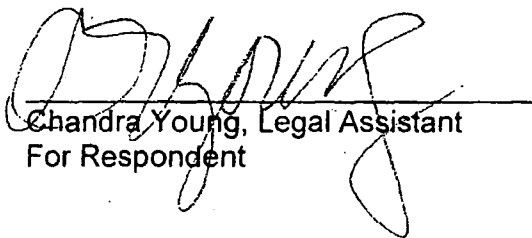
STATE OF SOUTH CAROLINA,

Respondent.

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(s) by depositing same in the United States mail, postage prepaid:

Jordan C. Calloway, Esquire  
1539 Health Care Dr.  
Rock Hill, SC 29732

DATED this 6<sup>th</sup> day of December, 2012.

  
Chandra Young, Legal Assistant  
For Respondent

|                             |   |                                   |
|-----------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA     | ) | IN THE COURT OF COMMON PLEAS      |
|                             | ) |                                   |
| COUNTY OF YORK              | ) | SIXTEENTH JUDICIAL CIRCUIT        |
|                             | ) |                                   |
| Montez L. Rutledge, #349702 | ) | Civil Action No.: 2012-CP-46-3031 |
|                             | ) |                                   |
| Applicant,                  | ) |                                   |
|                             | ) |                                   |
| v.                          | ) | SUPPLEMENTAL APPLICATION          |
|                             | ) | FOR POST-CONVICTION RELIEF        |
| State of South Carolina     | ) |                                   |
|                             | ) |                                   |
| Respondent.                 | ) |                                   |

FILED - RECEIVED  
 2013 JAN 30 PM 12:08  
 DAVID HAMILTON  
 CLERK & S.S.  
 YORK COUNTY, SC

Applicant Montez L. Rutledge, through his attorney, respectfully submits this Supplemental Application for Post-Conviction Relief.

### FACTS

Montez Rutledge was arrested and charged with a series of crimes related to an incident occurring on July 20, 2011, in Rock Hill, South Carolina. Attorney Stephen D. Schusterman was appointed to represent Mr. Rutledge. On February 8, 2012, Mr. Rutledge and multiple co-defendants plead guilty in a hearing before the Honorable Michael G. Nettles. On the advice of Mr. Schusterman, Mr. Rutledge plead guilty to murder, two counts of possessing a weapon during the commission of a violent crime, two counts of attempted murder, second-degree burglary, kidnapping, attempted armed robbery, criminal conspiracy, and possession of a stolen pistol. In total, Mr. Rutledge received a 33 year sentence. On August 16, 2012, Mr. Rutledge filed an Application for Post-Conviction Relief. The State filed its Return on December 6, 2012.

### BASIS FOR POST-CONVICTION RELIEF

In his August 12, 2012 Application for Post-Conviction Relief, Mr. Rutledge responded to question number 10 by identifying two bases for relief: (a) "lack of evidence on convictions"; and (b) "ineffective assistance of counsel." This Supplemental Application is not intended to

replace Mr. Rutledge's original application, only to provide additional information to support his stated bases for relief.

### **Ineffective Assistance of Counsel**

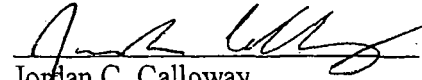
Mr. Rutledge alleges Mr. Stephen Schusterman provided ineffective assistance leading up to Mr. Rutledge's guilty plea on a variety of charges. In addition to Mr. Rutledge's original claim that Mr. Schusterman failed to investigate the facts of the case, Mr. Rutledge also claims Mr. Schusterman failed to provide discovery documents and other documents received from the 16<sup>th</sup> Circuit Solicitor's Office pursuant to a request made under Rule 5, SCRCrimP ("discovery documents"). Mr. Rutledge requested these documents from Mr. Schusterman before Mr. Rutledge's plea hearing on February 8, 2012. Mr. Rutledge requested these documents again after the plea hearing. The discovery documents were not sent for Mr. Rutledge's review until February 21, 2012, as indicated by Mr. Schusterman's letter to Mr. Rutledge. (Letter attached as **EXHIBIT 1**). Additionally, due to South Carolina Department of Corrections procedures, Mr. Rutledge did not receive the discovery documents until April 2012. (SCDC procedures form attached as **EXHIBIT 2**).

Mr. Rutledge believes the absence of the discovery documents before his plea hearing fell below the minimum standards of performance by his attorney and prevented him from making a voluntary guilty plea. In other words, Mr. Rutledge contends his plea did not "represent[] a voluntary and intelligent choice among the alternative courses of action open to the defendant." Kolle v. State, 386 S.C. 578, 690 S.E.2d 73 (2010)(quoting Hill v. Lockhart, 474 U.S. 52, 56 (1985)).

CONCLUSION

Based on the claims above and those presented in Mr. Rutledge's original Application,  
Mr. Rutledge respectfully requests an order entitling him to all relief permitted by law.

Respectfully submitted,



Jordan C. Calloway  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, South Carolina 29732  
(803) 327-7800  
(803) 328-5656 (fax)  
jcalloway@mcgowanhood.com

Attorney for Montez Rutledge

Rock Hill, South Carolina

January 29, 2013

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF YORK ) IN THE COURT OF COMMON PLEAS

3  
4 MONTEZ RUTLEDGE )  
5 APPLICANT, ) TRANSCRIPT OF RECORD  
6 -vs- ) 2012-CP-46-03031  
7 ) MARCH 4, 2013  
8 STATE OF SOUTH ) YORK, SOUTH CAROLINA  
9 CAROLINA, )  
10 RESPONDENT.

11 B E F O R E:

12 THE HONORABLE LEE S. ALFORD, JUDGE.

13  
14  
15 A P P E A R A N C E S:

16 JORDAN CALLOWAY, ESQUIRE  
17 ATTORNEY FOR THE APPLICANT

18 J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL  
19 ATTORNEY FOR THE RESPONDENT

20  
21 MICHAEL R. WATTS  
22 CIRCUIT COURT REPORTER  
23  
24  
25

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## EXHIBITS

| NO. | DESCRIPTION | ID. | EV. |
|-----|-------------|-----|-----|
| A-1 | LETTER      |     | 12  |
| R-1 | AFFIDAVIT   |     | 17  |

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(PROCEEDINGS, FEBRUARY 4, 2013)

MR. JOHNSON: May it please the court, Your Honor, this is the case of Montez Rutledge versus the State of South Carolina, case number 2012-CP-46-3031.

Mr. Rutledge was indicted at the January 2012 term of the York County Grand Jury for possession of a stolen pistol, criminal conspiracy, attempted armed robbery, possession of a firearm during the commission of a violent crime, kidnapping, burglary in the first degree, two counts of attempted murder, murder, and possession of a firearm during the commission of a violent crime.

On February 8th, 2012 he pled guilty before the Honorable Michael G. Nettles. His sentence, they are all to run concurrent to the each other, but it was 33 years for murder; 30 years for each count of attempted murder; 30 years for kidnapping; 20 years for attempted armed robbery; 15 years for burglary, second degree, as a lesser included of burglary first degree; five years for both counts of possession of a weapon during the commission of a violent crime; five years for criminal conspiracy; and five years for possession of a stolen pistol.

There was no appeal. However, he filed a timely PCR application on August 24th, 2012.

The State filed its return on December 6th, 2012.

1 He is represented here today by Mr. Jordan  
2 Calloway.

3 THE COURT: Yes, sir, Mr. Calloway.

4 MR. CALLOWAY: Your Honor, at this time we would  
5 call Mr. Montez Rutledge.

6 MONTEZ RUTLEDGE, having been first duly sworn,  
7 testified as follows:

8 DIRECT EXAMINATION BY MR. CALLOWAY:

9 Q. Good morning, Mr. Rutledge.

10 If you would, please state your full name for the  
11 record.

12 A. Montez Levar Rutledge.

13 Q. And, Mr. Rutledge, are you currently incarcerated, sir?

14 A. Yes, sir.

15 Q. And where are you incarcerated?

16 A. Lee County. SCDC. Department of Corrections.

17 Q. Would you mind telling us the charges under which you  
18 are incarcerated?

19 A. Murder, attempted murder, criminal conspiracy,  
20 kidnapping, possession of a stolen pistol during a crime of  
21 violence, possession of stolen pistol. I think that might  
22 be it.

23 Q. Did you have a trial on those charges?

24 A. No, sir, I pled guilty.

25 Q. Were you represented by an attorney in regards to those

1 charges?

2 A. The State provided an attorney, yes, sir.

3 Q. And who was your attorney, sir?

4 A. Mr. Schusterman.

5 Q. Tell me, Mr. Rutledge, how many times did you meet with  
6 Mr. Schusterman during the course of his representation of  
7 you?

8 A. I think maybe twice.

9 Q. Do you recall your first meeting with him, sir?

10 A. Parts of it, yes, sir.

11 Q. Tell me, if you would, just describe to the court your  
12 first meeting with Mr. Schusterman.

13 A. Mr. Schusterman came to see me at the Moss Justice and  
14 he sat and told me, it was like, he asked me did I want to  
15 come in front of Judge Nettles. I was like -- I told him no  
16 three times. I was like, "no, I don't want to go in front  
17 of Judge Nettles."

18 He was like "well, I'm going to give you the  
19 opportunity to go up in front of Judge Nettles."

20 I was like "no, I don't want to go."

21 He was like this, "it's in your best interest right  
22 now. And all your co-defendants, everybody has rolled on  
23 you, has told on you."

24 And I seen the stack of papers with the statements with  
25 my co-defendants names on it. I never read the paperwork.

1 I never -- I never -- I never read it, but he was like,  
2 "look, everybody told on you. It's in your best interest.  
3 You will be a fool not to take this plea, and if I had to, I  
4 would tell the courtroom that I told you this."

5 So I told him "yes, I would take -- I would take their  
6 plea, knowing since that everybody has told on me."

7 Q. Now, you referenced a stack of paper. What stack of  
8 papers are you referring to?

9 A. It was -- I guess it was just information pertaining to  
10 my case. And on top of it all I could see was that it was  
11 a -- all of our names, me and my co-defendants names, and a  
12 statement. It that said a statement from a defendant of  
13 mine.

14 Q. Did you have the opportunity at that time to read the  
15 statement?

16 A. No, I didn't.

17 Q. What about the other documents that were a part of that  
18 stack of papers that you referenced? Did you have an  
19 opportunity at that time to read those documents?

20 A. No, I didn't. I didn't have an opportunity to read  
21 none of them.

22 Q. Did you request Mr. Schusterman to provide you a copy  
23 of those documents?

24 A. No, but I did request a copy of my motion of discovery  
25 after I wrote the Clerk of Court and got his address and

1 information.

2 Q. Do you recall the first time that you requested your  
3 motion for discovery?

4 A. It was -- not exact date, but I know it was January of  
5 2012.

6 Q. How many requests -- if you recall, how many requests  
7 did you make for your motion of discovery, or any documents  
8 related to your case?

9 A. I did it personally up close and face, and I did it  
10 through mail.

11 Q. Do you remember how many times that you made that  
12 request?

13 A. At least twice.

14 Q. Do you recall anything else about your first meeting  
15 with Mr. Schusterman?

16 A. Not in particular.

17 Q. You mentioned that you had perhaps two meetings. Do  
18 you remember a second meeting with Mr. Schusterman?

19 A. Yes, right back here in the court holding cell.

20 Q. Describe -- could you describe for the court what  
21 happened during that meeting?

22 A. During that meeting there was -- it was like we are up  
23 here, the ball is rolling. I knew I didn't -- I didn't -- I  
24 I didn't -- I wasn't ready for it, but I was scared to back  
25 out, so I said "we are going to go ahead and do it."

1 I told Mr. Schusterman, I was like "I'm going to go  
2 ahead and take the plea, but I'm going to file for a PCR and  
3 try to educate myself on the law and come back and get the  
4 time," because he was like "no, don't do that. That's when  
5 you are going against your lawyer." But, you see, I still  
6 did that because the facts of my case -- when Mr.  
7 Schusterman told me that everybody in my case had told on  
8 me, you know what I'm saying, nobody never said that I did  
9 anything. I just pleaded guilty for these charges that --

10 Q. Now, when did this second meeting take place?

11 A. February 8th, right here in the holding cell.

12 Q. Was that -- okay, so the same day that you pled guilty?

13 A. Yeah.

14 Q. Okay. At that time, during that second meeting, had  
15 you received what you referred to as a motion for discovery?

16 A. No, I didn't receive my motion of discovery until after  
17 I pleaded guilty and I was at Kirkland going through R & E,  
18 convicted already.

19 Q. Now, you pled guilty on February 8th, is that correct?

20 A. Yes, sir.

21 Q. Tell this court, Mr. Rutledge, based on what you have  
22 already told us this morning why you decided to plead guilty  
23 on February 8th.

24 A. Why I decided to plead guilty? Because from -- I felt  
25 Mr. Schusterman was my lawyer and what he would do would be

1 in my best interest, and he told me straight up "it's no way  
2 you can win a trial like this, and all your co-defendants  
3 had told on you," but I requested for my motion. I didn't  
4 get my motion until I got to Kirkland. And when I got the  
5 motion of discovery, it's -- I got four co-defendants and  
6 only two of them wrote statements and one had an interview  
7 and not -- not one time did anybody say I shot somebody.  
8 They said that I had a gun. They never said that I shot  
9 anybody, so no one could tell on me, because didn't no one  
10 said I shot anybody.

11 Q. Now, Mr. Rutledge, do you feel like at the time that  
12 you pled guilty, that you had all the information that you  
13 needed to make a decision as to whether to plead guilty or  
14 not?

15 A. No, because once I did receive that information, I  
16 realized that basically I -- I was -- my mind was  
17 manipulated and that I would not have took that plea if I  
18 would have had that discovery in front of me, because it was  
19 not -- it was not true what Mr. Schusterman said that they  
20 told on me. They said that I had a gun. They never said  
21 that I shot anybody. I would not have took that guilty  
22 plea.

23 Q. Now, Mr. Rutledge, I want to show you a document.

24 MR. CALLOWAY: Your Honor, may I approach the  
25 witness?

1 THE COURT: Yes, sir.

2 BY MR. CALLOWAY:

3 Q. Mr. Rutledge, if you would, take a moment to read this  
4 document.

5 Do you recognize this document, sir?

6 A. Yes, sir, I do.

7 Q. What is this document?

8 A. It says "Mr. Montez Rutledge. Kirkland reception and  
9 evaluation --

10 MR. JOHNSON: Your Honor, he asked the question  
11 what the document is, not what it contains.

12 A. What this document is, this document is from February  
13 12th, 2012, saying "per your request here --

14 BY MR. CALLOWAY:

15 Q. Hold on just a minute. Just focus on my question, if  
16 you would, just for a second.

17 Do you -- do you understand or do you recognize what  
18 this document is?

19 A. I recognize this.

20 Q. Okay. What is the document? Just don't -- without  
21 reading it, if you would, just tell me what the document is.

22 A. The document is a late request for my motion of  
23 discovery.

24 MR. CALLOWAY: Your Honor, at this time -- at this  
25 time we would ask to move this into evidence as Plaintiff's

1 Exhibit 1.

2 MR. JOHNSON: No objection, Your Honor.

3 THE COURT: Admitted without objection.

4 (Letter marked and admitted into evidence as  
5 Petitioner's Exhibit No. 1)

6 BY MR. CALLOWAY:

7 Q. Now, Mr. Rutledge, if you would, please read  
8 Plaintiff's Exhibit 1.

9 A. "Dear Mr. Rutledge. Per your request please find  
10 enclosed a copy of discovery in regards to the  
11 above-referenced matter. If you should have any further  
12 questions, please feel free to contact my office. With kind  
13 regards I am still yours, Stephen D. Schusterman, February  
14 21, 2012."

15 Q. Mr. Rutledge, is there a date on this letter?

16 A. February 21st, 2012.

17 Q. And do you recall, Mr. Rutledge, what day that you pled  
18 guilty?

19 A. February 8th, 2012.

20 Q. Now, was February 21st the day that you received your  
21 motion of discovery or the documents that were requested  
22 here?

23 A. This is the day that it arrived at Kirkland.

24 Q. Did you receive the documents that day?

25 A. No, I didn't.

1 Q. When did you receive the documents?

2 A. I received the documents in April.

3 Q. Do you know why it took so long for you to receive  
4 those documents?

5 A. Because Kirkland had to go through it and the photos of  
6 my case and see was it approved for SCDC.

7 Q. Now, Mr. Rutledge, do you recall when you pled guilty  
8 during -- there was a plea hearing, is that correct?

9 A. Yes, sir.

10 Q. And you were before Judge Nettles, is that correct?

11 A. Yes, sir.

12 Q. Now, do you recall if he asked you any questions during  
13 that plea hearing?

14 A. He asked questions, yes, sir.

15 Q. Did he ask you about your satisfaction with your  
16 attorney?

17 A. Yes, sir.

18 Q. Did he ask you if you had had time to confer with your  
19 attorney?

20 A. Yes, sir.

21 Q. Do you recall what your answers to those questions  
22 were?

23 A. Not word for word, but I kind of told him that I was  
24 satisfied, being that I didn't have my motion. I -- I  
25 didn't have the facts of my case. I didn't know decisions

1 on my case because I had never reviewed my case.

2 THE COURT: Hold it, hold it. What's your answer  
3 to his question? I'm not sure I understand you. Do you  
4 want to tell me why your answer was wrong, or how did you  
5 answer?

6 THE WITNESS: How did I answer? I answered -- I  
7 answered -- I answered that everything I did that I was  
8 satisfied.

9 THE COURT: Okay. You can go on and say but you  
10 really aren't satisfied, but your question was did you say  
11 that on the record before the judge that you were satisfied  
12 with your services, right?

13 MR. CALLOWAY: Yes, sir. Yes, sir.

14 THE COURT: And your answer to that is yes, sir?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. Move on.

17 BY MR. CALLOWAY:

18 Q. And, Mr. Rutledge, why did you answer those questions  
19 in that way?

20 A. I really don't know, sir.

21 Q. Were you --

22 A. Because -- because I thought my lawyer was in my best  
23 interest.

24 Q. Were you, in fact, satisfied with the services that Mr.  
25 Schusterman provided?

1 A. I mean, no, sir.

2 Q. Tell the court why not.

3 A. Because off the top when me and Mr. Schusterman first  
4 met I told him several times "no, I do not" -- "I do not"  
5 want to go in front of the judge. I would like a trial."

6 And he kept asking me, "are you sure, are you sure, are  
7 you sure," until I just fell into it, like I was -- like  
8 basically I was pressured into it, and I was like okay, and  
9 I went forward.

10 Q. Now, Mr. Rutledge, you had at this point had an  
11 opportunity to review what you referred to as a motion of  
12 discovery, is that correct?

13 A. Yes, sir.

14 Q. What is it about those documents that would have  
15 changed your mind or would have led you not to plead guilty  
16 if you would have had them before you pled guilty?

17 A. Because even with my statement I would have a chance of  
18 fighting for a manslaughter than a murder, because, like I  
19 said, it was a confrontation, fighting and a gun went off,  
20 and I didn't -- I didn't just cold-blooded, cold-heartedly  
21 shoot this man.

22 Q. Okay. But what specifically about the content of the  
23 documents in the motion of discovery would have perhaps led  
24 you to a different decision in regards to whether to plead  
25 guilty?

1 A. Because from what I was told and what I saw on my  
2 motion was two different things. If I would have seen my  
3 discovery, I would have seen it. As a matter of fact, I  
4 wouldn't -- I wouldn't -- I wouldn't -- I wouldn't have -- I  
5 wouldn't have took no plea. I would have seen that I did  
6 have a chance for a marathon and ending up fighting my case.

7 Q. Did the motion of discovery include a statement that  
8 you made to the police?

9 A. Yes.

10 Q. Did you have an opportunity to review that statement  
11 before you pled guilty?

12 A. No, I didn't review none of that.

13 Q. If you had had an opportunity to review your statement  
14 to police before the time of your guilty plea, would that  
15 have influenced your decision?

16 A. No, I still -- I -- I would have went to trial. I  
17 would not have took that plea.

18 Q. Now, Mr. Rutledge, in your meetings with Mr.  
19 Schusterman, did he present to you an affidavit for you to  
20 sign?

21 A. Yes, sir.

22 Q. Did you sign an affidavit presented to you by Mr.  
23 Schusterman?

24 A. Yes, sir.

25 Q. Could you tell the court why you decided to sign the

1 affidavit presented to you by Mr. Schusterman?

2 A. I really can't say why I signed it, but he put the  
3 paper there in my face and I signed it.

4 MR. CALLOWAY: Your Honor, I have nothing further.

5 CROSS EXAMINATION BY MR. JOHNSON:

6 Q. Mr. Rutledge, you did, in fact, sign this affidavit?

7 A. Did I? Yes, I did.

8 MR. JOHNSON: May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. JOHNSON:

11 Q. Is that a copy of that affidavit?

12 A. Yes, sir.

13 Q. And that's a true and accurate copy of what you signed?

14 A. Yes, sir.

15 MR. JOHNSON: Your Honor, at this time I would  
16 move that into evidence.

17 MR. CALLOWAY: No objection.

18 THE COURT: Admitted without objection.

19 (Affidavit marked and admitted into evidence as  
20 Respondent's Exhibit No. 1)

21 BY MR. JOHNSON:

22 Q. Mr. Rutledge, in this affidavit it states that you had  
23 a chance to go over your case with Mr. Schusterman, doesn't  
24 it?

25 A. Yes, sir.

1 Q. And it says that you discussed the offers with Mr.  
2 Schusterman and the offers of those of your co-defendants,  
3 isn't that right?

4 A. Yes, sir.

5 Q. And that you don't have to take the plea, but it was  
6 your choice to take the plea, isn't that right?

7 A. Yes, sir.

8 Q. Okay. And that, you know, the fact that Judge Nettles  
9 was coming to town, there would be no better judge to go in  
10 front of to plead, and that was your decision to sign this,  
11 isn't that right?

12 A. Yes, sir.

13 Q. But your prior testimony says that you were pressured  
14 into pleading guilty. Isn't that what you said on direct  
15 examination?

16 A. Yes.

17 Q. But now you are saying it's your choice to plead  
18 guilty, right?

19 A. Because --

20 Q. Yes, sir?

21 A. Yes, sir.

22 Q. You also said that during the guilty plea you were  
23 satisfied with your attorney and his services, isn't that  
24 right?

25 A. Yes, sir.

1 Q. But today you are saying that you are not satisfied  
2 with him?

3 A. Yes, sir.

4 Q. So you were lying under oath at the guilty plea, or are  
5 you lying today?

6 A. No, sir, neither one.

7 Q. But you can't have two inconsistent statements.  
8 Were you satisfied with him?

9 A. No.

10 Q. So what you told the judge on your guilty plea was a  
11 lie, correct?

12 A. Yes, sir.

13 Q. You pled guilty in order to forego a trial and face a  
14 life in prison, isn't that right?

15 A. Yeah.

16 Q. You understand that's what -- if you were successful  
17 here today, that's what you would go face. The State could  
18 bring all those charges back and try you for a life  
19 imprisonment, do you understand that?

20 A. Yes, sir.

21 Q. And in this guilty plea you stated that you were guilty  
22 of all these crimes charged, right?

23 A. Yes, sir.

24 Q. And you agreed with the facts of the case, that you  
25 were the shooter? At the guilty plea that's what you agreed

1 to, isn't that right?

2 A. Yes, sir.

3 Q. As a matter of fact, your statement to the court was  
4 "yes, like my lawyer said, I did do it." You admitted your  
5 guilt, didn't you?

6 A. Yes, sir.

7 Q. Because you did shoot him?

8 A. Yes, sir.

9 Q. You weren't under any influence of any alcohol or  
10 drugs? You had no mental issues?

11 A. No.

12 Q. And you are pleading guilty because you are guilty,  
13 isn't that right?

14 A. Yes, sir.

15 Q. Nobody forced you into it? You pled guilty on your own  
16 accord, correct?

17 A. Yes, sir.

18 MR. JOHNSON: No further questions, Your Honor.

19 MR. CALLOWAY: Briefly, Your Honor.

20 THE COURT: Yes.

21 REDIRECT EXAMINATION BY MR. CALLOWAY:

22 Q. Mr. Rutledge, since the time of your plea hearing do  
23 you have more information about your case than you did at  
24 that time?

25 A. Yes, sir.

1 Q. And where did that additional information come from?

2 A. My motion of discovery.

3 Q. And you didn't have that at the time of your plea  
4 hearing, did you?

5 A. No, sir.

6 Q. Now, Mr. Johnson asked you about the affidavit. You  
7 have a copy in front of you, don't you?

8 A. Yes, sir.

9 Q. Now, I'm looking in the first paragraph, and the fifth  
10 line down, the sentence that starts with "the time," could  
11 you read that for the court, just that sentence?

12 A. "The time has been so limited that I have not had the  
13 time to go over the voluminous discovery with Mr.  
14 Schusterman, though we have talked about the case and  
15 evidence that the State has against me."

16 Q. So you didn't have an opportunity to go over -- or to  
17 view the discovery before you pled guilty, is that correct?

18 A. Correct.

19 MR. CALLOWAY: I have nothing further, Your Honor.

20 RECROSS EXAMINATION BY MR. JOHNSON:

21 Q. On cross-examination you admitted that you were guilty,  
22 isn't that right?

23 A. Yes, sir.

24 Q. So even in going over discovery, you are still guilty,  
25 aren't you? Even if you had a chance to go over that

1 discovery, you still fired that shot, didn't you?

2 A. No, I'm not guilty of murder. We was fighting and the  
3 gunshot went off. That is manslaughter.

4 If I had my discovery, I would not have took that plea.  
5 I would have fought for a trial for my manslaughter.

6 Q. Sir, wasn't there an agreement to lure the victim to  
7 rob him in this case? Wasn't that the plan that you and  
8 your co-defendants made?

9 A. Yes, sir.

10 Q. Do you understand that that is not eligible for a  
11 manslaughter charge, because you brought upon the difficulty  
12 yourself?

13 A. But we -- we never got the chance to rob. A robbery  
14 never took place. It was a fight on sight.

15 Q. You shot and killed a man?

16 A. No, a gunshot went off and killed the man.

17 Q. You just admitted that you fired that shot, sir.

18 A. The gunshot went off. I said a gunshot went off.

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

20 MR. CALLOWAY: I have nothing further.

21 THE COURT: Has the felony murder doctrine been  
22 explained to you, sir?

23 THE WITNESS: Can you repeat?

24 THE COURT: You go in and start the crime and  
25 whatever happens when you are committing a felony, somebody

1 gets killed in the process, whether it's a fight or not,  
2 whoever instituted that robbery and the felony in the  
3 process is guilty of whatever happens. Has that been  
4 explained to you?

5 THE WITNESS: No, sir.

6 THE COURT: Do you understand that even if you got  
7 relief on this post-conviction relief, the only relief that  
8 you could get would be, of course, to overturn your  
9 conviction and send you back to trial on the murder charge,  
10 the attempted murder, armed robberies, kidnappings, and the  
11 maximum punishment on all of those, if you were convicted of  
12 them, would be life, plus maybe another hundred years.  
13 Life, plus a hundred years, if you were convicted on all  
14 these charges. And that if you were -- if the conviction  
15 was overturned you would simply come back. The State would  
16 take you to trial on these charges. Do you understand that?  
17 You would still be looking at life, plus whatever these  
18 other sentences carry. Kidnapping I think carries up to 30,  
19 armed robbery up to 30. Attempted murder, was that one of  
20 them?

21 MR. CALLOWAY: Yes, Your Honor.

22 And, Your Honor, we did discuss that during our  
23 meeting at first and also by letter that I sent Mr.  
24 Rutledge.

25 THE COURT: I'm asking him. I want to be sure

1 that he understands that.

2 That would be the result, and you would come back  
3 face all those charges.

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. Any other questions  
6 related to the questions that I asked him?

7 MR. CALLOWAY: No, Your Honor.

8 MR. JOHNSON: Nothing further from the State.

9 THE COURT: Thank you, sir. You may stand down.

10 MR. CALLOWAY: Your Honor, I have no additional  
11 witnesses.

12 MR. JOHNSON: The State calls Mr. Schusterman to  
13 the stand.

14 STEPHEN SCHUSTERMAN, ESQUIRE, having been first  
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. JOHNSON:

17 Q. Good morning, Mr. Schusterman.

18 A. Good morning, sir.

19 Q. I guess we will go from the beginning.

20 Do you remember becoming involved in this case?

21 A. I do.

22 Q. Were you appointed or retained?

23 A. I was appointed.

24 Q. Do you remember around what date that you were  
25 appointed?

1 A. I don't, but it was late in the process. I said --  
2 when I say late in the process, as opposed to the ultimate  
3 plea date. It wouldn't have been very much before that.

4 Q. Okay. Were you appointed to Mr. Rutledge's case before  
5 or after his co-defendants had had counsel?

6 A. After. And that's -- this is all to the best of my  
7 recollection, Mr. Johnson.

8 Q. And he said -- he stated that you met twice. How many  
9 times did you meet?

10 A. He's right, twice.

11 Q. Do you remember the content of those discussions?

12 A. Sure.

13 Q. If you will, please tell the court about those.

14 A. What happened was I was involved in the case. It was  
15 obviously a very serious case, murder with all those  
16 collateral charges.

17 I got word I want to say, though wouldn't swear to it,  
18 that it was from Mr. Thompson, the deputy solicitor, that  
19 the other co-defendants were going to tender pleas during a  
20 week of trial where Judge Nettles was coming to town.

21 Because I had gotten into the process late, I felt, I  
22 guess in terms I felt bad, I felt an obligation to my client  
23 on the concept that Judge Nettles has a reputation of being  
24 a more lenient sentencer, so I very quickly had my staff  
25 contact the Moss Justice Center and I set up a contact

1 visit, and I went to Moss with the discovery, and the  
2 discovery is clearly -- it's probably over a thousand pages  
3 long, and I had a contact visit with Mr. Rutledge.

4 And obviously I can only do so much in a contact visit,  
5 whether I was there for 60 minutes or 90 minutes, and we  
6 basically talked about his case, and we went over just the  
7 general court -- the General Sessions Court summary. He's  
8 probably right, the statements of co-defendants were  
9 probably on top and I read them.

10 And I told him very candidly why I was there. I  
11 indicated to him that Judge Nettles was coming to town, that  
12 it was my knowledge I believe that that was the last time he  
13 was coming for the foreseeable future; that his  
14 co-defendants were pleading; that I was in no way putting  
15 pressure on him. He had every right to see this case  
16 through to its end. We would get investigators, experts,  
17 whatever he needed, but I felt obliged to come to him, to  
18 let him know not only was his co-defendants pleading, but  
19 there was a reason why they were lining up to plead that  
20 week, and it was because this particular judge was coming to  
21 town.

22 And so we talked about the case and I gave him the  
23 option of contemplating this. And I -- he wanted to answer  
24 me that day. I would not let him answer me that day. I  
25 told him this was like I want to say a Tuesday or Wednesday

1 and Judge Nettles was coming the following week. I said "I  
2 want you to go ahead and take five days and ponder it and I  
3 will have you brought up next week. And if you want to  
4 plead, we will go through with it. And if you don't, that's  
5 perfectly all right."

6 And I said to him that it was my belief that he knew  
7 whether he was guilty or not. He knew what his  
8 co-defendants were saying.

9 We certainly talked about the law. We talked about  
10 maximum punishment. As Judge Alford just talked about, we  
11 talked about the concept of felony murder. These were all  
12 talked about.

13 And I told him that I thought that if he was going to  
14 plead, he would get as good a deal in the State of South  
15 Carolina with Judge Nettles as with any other judge, but I  
16 said that "if you are not guilty and you don't want to  
17 plead, then it's not a good deal." And I specifically gave  
18 him an example. I said "if they offered me this deal in  
19 front of Judge Nettles, I wouldn't take it. I'm not guilty.  
20 So if you are not guilty, don't take it. But if you know  
21 you are or you think this is ultimately going to be a guilty  
22 plea, there is no better judge, in my opinion, to take this  
23 case in front of." And we went over, you know, the life and  
24 we went over all the maximum charges.

25 He -- I felt that he was leaning towards wanting to

1 plead, but, like I said, I give him five, six days.

2 I went back to the office. And certainly, as you know,  
3 there are enough things that go on in court that you don't  
4 anticipate. This one, I saw this problem that we are  
5 dealing with today, I saw coming a mile down the track, and  
6 I went back and I typed out a very detailed affidavit and I  
7 brought it with me the following week when I had him brought  
8 up here to the holding cell and asked him did he still want  
9 to go through with it, and he indicated that he did.

10 And he wanted to know what I thought he would get, and  
11 I said I knew he was going to get no less than 30 years. I  
12 told him if Judge Nettles gave him 29 years, 11 months, it  
13 would be an illegal sentence. He had to catch 30 years. I  
14 said "and then I would hope that we would keep the numbers  
15 as close to that number to 30 as possible."

16 I took this affidavit, and my paralegal was with me,  
17 and we went over it line by line and explained it. If  
18 anything, I was trying to talk him out of doing it, because  
19 I guess I saw this happening down the line. And he signed  
20 it, we pled, and he got 33 years, and that's what happened.

21 Q. So based on the seriousness of these charges, that is a  
22 pretty good sentence, isn't it?

23 A. I mean, I don't want to do 33 years. I don't want to  
24 go 33 minutes, but in terms of what he's alleged to have  
25 done, the facts and the like, I think that's a terrific

1 sentence.

2 Q. And the negotiations were for 30 to life?

3 A. That's correct.

4 Q. So he's getting no less than 30?

5 A. Right, and he knew that. I mean, there was no  
6 misunderstanding. In other words, he knew that in a perfect  
7 world, that if everything working perfectly, he would get 30  
8 years.

9 Q. And that was the only offer from the State at that  
10 point?

11 A. Well, with all due respect, that was the only offer,  
12 but, I mean, allowing me to plead in front of -- take this  
13 case in front of Judge Nettles was what I perceived as a  
14 defense attorney to be a huge concession.

15 Q. And ultimately whose decision was it to plead guilty?

16 A. It was Mr. Rutledge's.

17 Q. And you would have been prepared for trial, had it gone  
18 to that stage?

19 A. Yes, probably many months down the line.

20 As I told him, I would be more than glad to investigate  
21 and get experts, investigate, whatever needed to be done. I  
22 was just giving him the same option, because, quite frankly,  
23 I thought that I saw the reverse of this situation happening  
24 and I would be accused of not working diligently enough and  
25 giving him the opportunity to plea in front of Judge

1 Nettles, had I not gone there and done that.

2 MR. JOHNSON: I have no further questions at this  
3 time, Your Honor.

4 CROSS EXAMINATION BY MR. CALLOWAY:

5 Q. Good morning, Mr. Schusterman.

6 A. Good morning, sir.

7 Q. When you had these discussions with Mr. Rutledge, did  
8 you ever make any recommendations to him?

9 A. I made a recommendation that if --

10 The answer is yes, and the recommendation was that if  
11 he was contemplating, based on his knowledge of the facts,  
12 the brief -- the papers that we did go over, the summary and  
13 some statements, if he was planning on pleading, there would  
14 be no better time to do it than the following week.

15 Q. Okay. Now, you mentioned during this initial contact  
16 visit a 60 to 90 minute conversation, is that right?

17 A. Yes, sir, and I'm --

18 Q. Somewhere in that range?

19 A. Right, it was a contact visit. We actually met in  
20 person.

21 Q. And you estimate that the discovery documents received  
22 from the State were about a thousand pages?

23 A. Yes, sir. Again, these are general numbers. It was a  
24 stack of papers that looked like it was probably at least  
25 two or maybe more reams of paper.

1 Q. Did you transmit or send any of these documents to Mr.  
2 Rutledge before his plea hearing?

3 A. Before?

4 Q. Yes, sir.

5 A. There was no time. I'm not allowed to give him his  
6 discovery in person. I had it there and there was no way  
7 that I -- I'm not allowed to give it to him. It has to go  
8 through the mail system, so there was no way that I could  
9 get him the discovery before we were going to go to court  
10 the following week. I sent it to him I want to say maybe a  
11 week after the plea.

12 Q. Now, during that 60 to 90 minute conversation, or about  
13 that length of time during the contact visit, you didn't go  
14 over all the documents in the discovery?

15 A. I did not.

16 Q. What documents did you go over with him?

17 A. To the best of my recollection, we highlighted -- I  
18 want to say there was a General Sessions Court summary in  
19 there. We went over that. And I want to say we went over  
20 the -- are you talking about just documents? We went over  
21 statements that were in there. That's to the best of my  
22 recollection.

23 Q. Mr. Rutledge's statement?

24 A. If I did the statements, I'm sure I did all the  
25 statements.

1 Q. Now, you mentioned when you spoke about the affidavit  
2 that you went over with Mr. Rutledge during your second  
3 meeting, that you went over it line by line?

4 A. That's correct.

5 Q. Did you go over the statements or the documents, or all  
6 the documents in discovery, with him line by line?

7 A. Excuse me?

8 Q. Did you go over the discovery documents, Mr. Rutledge's  
9 discovery documents, with him line by line the way that you  
10 did with the affidavit?

11 A. Okay. The -- Mr. Calloway, the affidavit is one page  
12 and the discovery is a thousand pages long.

13 Q. Do you think that the documents in the discovery would  
14 have been -- are important to Mr. Rutledge in making a  
15 decision as to whether to plead guilty to these charges?

16 MR. JOHNSON: Objection. That's speculation as to  
17 what's important to Mr. Rutledge. Counsel would have no  
18 idea about that.

19 THE COURT: Well, I think you can rephrase it,  
20 counsel.

21 BY MR. CALLOWAY:

22 Q. Mr. Schusterman, you do criminal defense fairly often,  
23 is that correct?

24 A. Yes.

25 Q. You have been in circumstances like this before where

1 there was a lot of discovery documents or whether it's a  
2 defendant who has a lot of documents to deal with, is that  
3 correct?

4 A. Absolutely.

5 Q. Do you think -- and is your experience as a criminal  
6 defense attorney that the documents received from the State  
7 are important in the mind of a defendant in making a  
8 decision as to whether to accept the plea or go to trial?

9 A. Absolutely.

10 Q. Do you think those documents are important to Mr.  
11 Rutledge in making his decision in this case?

12 A. Apparently not, because he signed this affidavit saying  
13 that it was more important to him to get the benefit of  
14 Judge Nettles than it was to go over the discovery.

15 That -- I mean, with all due respect, Mr. Calloway, I  
16 certainly understand what you are saying and that's why I  
17 went back -- this is not a form document.

18 I went back, and I'm sure that you have read this  
19 document, and six ways to Sunday I said that "you are not  
20 getting the benefit of everything that can be done for your  
21 case, but you are weighing it against the ability to plea in  
22 front of a certain judge. Do you want to do that?"

23 I mean, I'm well aware that in the greatest -- in the  
24 best situation would be to have had months and months to go  
25 over the discovery and get experts and all that. That

1 wasn't the choice that I was giving him -- or it was the  
2 choice I was giving him and he chose to instead go in front  
3 of Judge Nettles.

4 Q. Do you think it might have made a difference if that 60  
5 or 90 minute meeting would have been a 120 or a 180 minute  
6 meeting to go over more of the indictments line by line, the  
7 way you did the affidavit?

8 A. No, there was no way that -- there is no way that  
9 without sitting there with him for five or six hours that I  
10 could have gone through that entire discovery packet and  
11 spoken about each piece of paper and the implications of it.

12 Q. Could you have sit there for five or six hours and gone  
13 over those documents with him?

14 A. No.

15 Q. Why not?

16 A. Because I was too busy. I did this -- this whole case.  
17 I did this to help Mr. Rutledge. I don't know that I had an  
18 obligation to go there and have a contact visit the week  
19 before a particular judge was coming into town.

20 I certainly could have done nothing for Mr. Rutledge,  
21 seen him a week or two later and said "I'm sorry, sir, you  
22 know, I didn't get appointed until later. We will have to  
23 work through it."

24 And this was -- this was my trying to help Mr. Rutledge  
25 to give him options, and that's why I think criminal defense

1 attorneys do. They give their clients options. And so this  
2 is going to come under the title of no good deed goes  
3 unpunished. That's why I went early.

4 Q. Did the solicitor's office put a clock or a time  
5 limitation on the length of time that their plea offer was  
6 being made, or -- I understand he pled straight up, but did  
7 they indicate to you that any potential plea offer might get  
8 worse, might not be as lenient in times to come?

9 A. No, but it wasn't -- I wasn't doing it because of the  
10 offer. I was doing it because of the judge.

11 Q. And you said that you didn't believe that Mr. -- or  
12 that Judge Nettles would be back within a foreseeable period  
13 of time?

14 A. That is my -- that is my recollection. I'm not --

15 Q. But you are not sure?

16 A. I believe that to be true. There was a -- I mean, I --  
17 no, I'm not sure. I don't -- I haven't memorized the court  
18 calendar, but there was a reason why I went there the week  
19 before, knowing that Judge Nettles was coming to -- coming  
20 to town.

21 If I believed that he was going to be back in three  
22 weeks or four weeks, there wouldn't have been that pressure  
23 to do it that quickly.

24 Q. So didn't you indicate a few moments ago that you  
25 thought that if it went to trial, it would be several months

1 down the line?

2 A. Absolutely.

3 Q. Now, during that period of time, the several months  
4 between the time when you met with Mr. Rutledge in early  
5 February and the time when that trial might occur in the  
6 future, is it your indication that Judge Nettles might not  
7 be back at any point in time --

8 A. That's right.

9 Q. -- in the future?

10 A. That's right, I had no -- I do not at this point have  
11 any recollection that Judge Nettles was coming back within  
12 the foreseeable future.

13 Q. Could you have met with Mr. Rutledge a second time, a  
14 second contact visit, that week before Judge Nettles was to  
15 arrive?

16 A. Could I have? I don't know. I think my schedule was  
17 pretty busy, but I presume that if I wanted to come here in  
18 the middle of the night, I'm sure I could have manipulated  
19 something.

20 Q. Well, I believe you said it was a Tuesday or Wednesday  
21 of that week that you met with him?

22 A. That's correct.

23 Q. Could you have met with him on Thursday or Friday?

24 A. I don't have my schedule in front of me.

25 I -- I really believe that I did -- I did everything

1 that I could that week, taking it as far as I could, to give  
2 him that option, to plea or not to plea. Whether I came for  
3 another hour or I found another time, it was not going to  
4 change this concept that it was going to have to be a faster  
5 decision on his part.

6 Q. But he could have had access or more time to review  
7 those discovery documents, is that correct, if you had  
8 additional meeting with him or spent additional time with  
9 him?

10 A. Okay. And I don't think --

11 Q. Could you?

12 A. Yes, absolutely. So if I had read -- if we had gone  
13 over another 100 pages of the discovery and there were only  
14 900 pages that we hadn't gone over. There was -- there was  
15 no way that we were going to -- that we could have gone over  
16 all the discovery and digested all the consequences of the  
17 case in that short a period of time.

18 Q. Because your indication earlier was that it would take  
19 five or six hours to do so?

20 A. Or maybe more. I mean, I have no idea what we would  
21 have found in there.

22 Q. You don't, you have no idea what you would have found  
23 in there?

24 A. No.

25 Q. Something that could have been beneficial to Mr.

1 Rutledge?

2 A. Absolutely.

3 Q. Something that could have indicated a lesser charge  
4 than murder would have been appropriate here?

5 A. Well, if you want to play at that time, I guess the  
6 answer is yes. I'm not sure that looking Monday morning  
7 quarterbacking, I'm not sure that that's true as we sit here  
8 today, but I certainly understand your point.

9 Q. Thank you, Mr. Schusterman.

10 A. Thank you.

11 MR. JOHNSON: Briefly.

12 REDIRECT EXAMINATION BY MR. JOHNSON:

13 Q. Mr. Schusterman, you met with Mr. Rutledge and you went  
14 over his affidavit, did you not?

15 A. Yes.

16 Q. And in this affidavit you explained to him that you  
17 only had a short amount of time in which to decide -- or he  
18 had a short of amount of time in which to decide to plead in  
19 front of Judge Nettles?

20 A. I would hope so. Basically there is four paragraphs  
21 there where I keep saying the same thing, taking it from  
22 four different angles.

23 Q. Did you force him to sign this affidavit?

24 A. Absolutely not. Quite the contrary. I -- as I  
25 explained it to him, Mr. Johnson, I was trying to -- I was

1 taking the position that I understood completely if he  
2 didn't want to take the deal.

3 Q. So you encouraged him not to take the plea deal?

4 A. I would say that I leaned towards him, if he -- I don't  
5 know that that's a fair way to put it.

6 I told him that if he wasn't absolutely sure that he  
7 was going -- that he was guilty and that he was going to  
8 plead guilty, then this was no deal at all for him.

9 Q. And, in fact, it was his decision to take the deal and  
10 plead in front of Judge Nettles?

11 A. Of course, completely.

12 Q. You didn't force him to do it in any way?

13 A. No.

14 MR. JOHNSON: No further questions, Your Honor.

15 MR. CALLOWAY: No additional questions, Your  
16 Honor.

17 THE COURT: Thank you, sir.

18 THE WITNESS: Thank you.

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

21 THE COURT: Anything in reply?

22 MR. CALLOWAY: Nothing in rebuttal, Your Honor.

23 THE COURT: All right. I'll take it under  
24 advisement.

25 MR. CALLOWAY: Thank you, Your Honor.

1 THE COURT: I will tell you when I have reached a  
2 decision.

3 MR. CALLOWAY: Thank you, Your Honor.

4 MR. JOHNSON: Thank you, Your Honor.

5 (END OF REQUESTED TRANSCRIPT OF RECORD)  
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## CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for YORK County, South Carolina, on the 4th day of February, 2013.

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

APRIL 24, 2013

Michael R. Watts

Michael R. Watts  
Circuit Court Reporter

**SCHUSTERMAN LAW FIRM, P.A.***Attorney at Law*

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TELEPHONE 803 325-7788 • FACSIMILE 803 325-7889

STEPHEN D. SCHUSTERMAN

February 21, 2012



Mr. Montez L. Rutledge

Kirkland Reception &amp; Evaluation

d

Columbia, South Carolina 29210

Re: Rutledge Discover

Dear Ms. Rutledge:

Per your request, please find enclosed a copy of your discovery in regards to the above referenced matter.

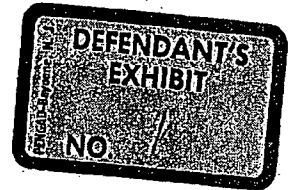
If you should have any further questions please feel free to contact my office.

With kind regards, I am

Sincerely yours,

Stephen D. Schusterman

ure



AFFIDAVIT OF MONTEZ RUTLEDGE

I, Montez Rutledge, am signing this document at the request of my attorney, Stephen D. Schusterman because it is my desire to enter a plea of guilty to the charge of murder before the Honorable Michael Nettles during the term of General Sessions Court of February 6, 2012. The reason that I am signing this document is to indicate that this is my choice to do even though I have not had an extended period of time to work with Mr. Schusterman. The time has been so limited that I have ~~had~~ not had the time to go over the voluminous discovery with Mr. Schusterman though we have talked about the case and the evidence that the State has against me. We discussed at length the offers that the other co-defendants were given and that all of them were pleaing before Judge Nettles this week and two of them had already committed to testify against me.

Mr. Schusterman told me that I did not have to plea and that if I chose not to plea we would not only have as much time as we needed to prepare but he would get a private investigator to help pursue any defenses that I might have. Mr. Schusterman explained to me that the only reason that he was meeting with me on that given day was because of the fact that Judge Nettles was coming to town and it was his opinion that if I was going to plea, there would be no better judge to go before than Judge Nettles and that is why my 3 co-defendants were all pleaing before him this week.

Mr. Schusterman explained to me that my charge carried 30 years to life just on the murder and whatever I received I would have to do day for day on the sentence with all other charges running concurrently and several of my other charges from being incarcerated would be dropped and I would not be labeled a sex offender which I told Mr. Schusterman was very important to me.

After Mr. Schusterman left me, he gave me 5 days to think about what I wanted to do and by signing this, I have decided that I want to enter a plea of guilty before Judge Nettles this week and I understand that I may get no benefit from entering the plea but I believe it is my best chance at leniency and I want to take advantage of it even if it means that I will not get to go over every piece of the discovery with my attorney. This is my decision and my decision alone and Mr. Schusterman has said to me several times that I don't have to do this and if I choose to go to trial or even enter a plea in front of another Judge, I would have the opportunity to explore every possible defense that I might have and even knowing that, based on my knowledge of the case as well as my discussions with my attorney, I want to enter a plea before Judge Nettles and pray for the best.

SWORN to before me this  
8<sup>th</sup> day of February, 2012

*[Signature]*  
Notary Public for South Carolina  
My Commission Expires: 4-21-14

*[Signature]*  
Montez Rutledge

February 8, 2012.

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Montez L. Rutledge, #349702,

2012-CP-46-3031

Applicant,

**ORDER OF DISMISSAL**

v.

State of South Carolina,

Respondent.

FILED-RECEIVED  
2013 MAR -5 PM 4:15  
DAVID S. JOHNSON  
C.C.C.P. & GS  
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 24, 2012. The Respondent made its Return on December 6, 2012. An evidentiary hearing into the matter was convened on February 4, 2012, at the Moss Justice Center in York, SC. Jordan Calloway, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Stephen Shusterman, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the guilty plea transcript the plea affidavit, and a letter from Mr. Shusterman to the Applicant dated February 21, 2012.

#### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the January 2012 term of the York County Grand Jury for Possession of a Stolen Pistol (2012-GS-46-0460); Criminal Conspiracy (2012-GS-46-0459), Attempted Armed Robbery (2012-GS-46-0458),

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Possession of a Firearm During the Commission of a Violent Crime (2012-GS-46-0458A), Kidnapping (2012-GS-46-0457), Burglary, 1<sup>st</sup> Degree (2012-GS-46-0446), two counts of Attempted Murder (2012-GS-46-0454, -00455), Murder (2012-GS-46-00453), and Possession of a Firearm During the Commission of a Violent Crime (2012-GS-46-0453A). Stephen D. Schusterman, Esquire, represented him. On February 8, 2012, the Applicant pled guilty before the Honorable Michael G. Nettles and was sentenced to thirty-three (33) years imprisonment for Murder, five (5) years imprisonment for Possession of a Weapon During a Violent Crime, thirty (30) years for Attempted Murder, thirty (30) years for a second count of Attempted Murder, fifteen (15) years for Burglary Second Degree, a lesser included offense Burglary First Degree, thirty (30) years for Kidnapping, twenty (20) years for Attempted Armed Robbery, five (5) years for Possession of a Weapon During a Violent Crime, five (5) years for Criminal Conspiracy, and five (5) years for Possession of a Stolen Pistol, all sentences to run concurrently. Applicant did not appeal his conviction and sentence.

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

1. "lack of evidence on convictions"
2. "ineffective assistance of counsel"
  - a. "Trial counsel fail [sic] to investigate the fact [sic] of the case all of which was a violation of [his] constitution 6<sup>th</sup> amendments [sic]"

In his amended Application, the Applicant alleges, through counsel, plea counsel was deficient for not providing him with a copy of the discovery prior to his guilty plea, which resulted in unintelligent and involuntary guilty plea.

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

### SUMMARY OF TESTIMONY

The Applicant testified he was appointed Counsel and met with him twice. He stated he told Counsel he did not want to plead before Judge Nettles. The Applicant testified Counsel advised him that his co-defendants "rolled on him." He also stated he asked for, but did not receive a copy of his discovery materials and did not have a chance to read his 'papers' which included statements given by his co-defendants to law enforcement.

The Applicant testified he met with Counsel in the holding cell before his guilty plea, and at that point, was scared to back out of his plea. He claims Counsel told him not to file a PCR action and advised the Applicant that his co-defendants had given statements against the Applicant. He asserted he pled guilty because Counsel advised him there was no chance for acquittal at trial.

The Applicant also testified he did not receive his copy of discovery until after his guilty plea because of South Carolina Department of Corrections mail system. He further testified, at his guilty plea, he remembered the court asking him questions, but he answered them because he did not understand and thought Counsel was looking out for his best interest. During the guilty plea, the Applicant said he was satisfied with Counsel, but at the PCR hearing, he claimed he was not satisfied with Counsel's services. He also asserted he wanted a trial and was pressured into pleading guilty.

The Applicant further testified if he were given a chance to review the discovery before his guilty plea, that, even with the statement he gave to law enforcement implicating his involvement in the crime, he would have had the chance to ask for a charge of manslaughter. He lastly asserted he would not have pled guilty, he did not have a chance to review the statements before his plea, and he does not know why he signed the plea affidavit.

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On cross-examination, the Applicant admitted he signed the plea affidavit, where he admitted he understood he was not going to have a chance to review the discovery before he pled and wanted to take advantage of Judge Nettles' reputation for being more lenient in sentencing. He also admitted he was facing life imprisonment if he were successful in this action and was tried and found guilty. The Applicant further admitted he lied at the guilty plea when he told the plea judge he was satisfied with Counsel's representation. Additionally, the Applicant testified, at the guilty plea, he agreed to the facts of the case as explained by the State, admitted his guilt, and pled freely and voluntarily.

Counsel testified he was appointed to the Applicant's case and was appointed after the Applicant's co-defendants were appointed counsel. He stated he met with the Applicant on two occasions and discussed the severity of the case. Upon speaking with the solicitor in the case, Counsel learned the Applicant's co-defendants were pleading before Judge Nettles the following week. Counsel testified he felt an obligation to the Applicant to explain Judge Nettles, in Counsel's opinion, was a more lenient sentencer. Counsel admitted the discovery was voluminous, but had a contact visit with the Applicant to discuss the case and the statements made by co-defendants.

Counsel also testified he did not pressure the Applicant to plead guilty. Had the Applicant elected to pursue a trial, Counsel would have retained experts and a private investigator. Counsel stated he discussed the case with the Applicant and gave him the option to plead the following week before Judge Nettles. Counsel testified the Applicant wanted to give Counsel an answer that day about whether he wanted to plead, but Counsel wanted the Applicant to think about his decision, and gave him five to six days to decide. Counsel also stated only the Applicant knew whether he was guilty or not.

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Counsel additionally testified he discussed the felony murder rule with the Applicant as well as the charges and penalties. Counsel also stated he typed a very detailed affidavit that he discussed line-by-line with the Applicant and tried to talk the Applicant out of pleading. Counsel testified the Applicant knew the plea offer was straight up to murder which carried thirty years to life. Counsel lastly testified it was the Applicant's decision to plead guilty, but he would have been prepared for trial.

On cross-examination, Counsel testified he recommended to the Applicant that if he was contemplating pleading, then there was no better time to do so than before Judge Nettles. He stated the discovery was well over one thousand pages and that he did not have time to give the Applicant a copy of the discovery because he would have to send it via mail as the York County Detention Center does not allow him to deliver to the Applicant anything by hand. He admitted that he did not discuss all of the documents with the Applicant, but did state he discussed the plea affidavit line-by-line with the Applicant.

Counsel testified while the discovery was important to the Applicant, apparently the plea was more important because the Applicant signed the plea affidavit. When given the chance between pleading before Judge Nettles or pursuing a trial and reviewing the discovery, the Applicant chose a plea. Counsel stated he would have needed at least five to six hours to fully discuss the discovery with the Applicant. Counsel also stated he was doing the Applicant a favor by making a contact visit and that this is a case of 'no good deed goes unpunished.' Counsel lastly testified he did not visit the Applicant again before the date of the plea and it was not possible to discuss and digest all of the discovery before the Applicant's plea.

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On re-direct, Counsel testified he did not force the Applicant to sign the plea affidavit or plead guilty.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

#### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71:1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong,

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

This Court finds Counsel was competent and diligent in his representation of the Applicant in this case. Counsel is a very experienced criminal defense attorney with death penalty case experience. Counsel sufficiently advised the Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel also engaged in plea negotiations which were beneficial to the Applicant. This Court also finds the Applicant's testimony regarding ineffective assistance of counsel not credible, while finding Counsel's testimony very credible and supported by the plea affidavit.

The Applicant's co-defendants were scheduled to plead guilty before a judge, generally considered to be lenient in sentencing, about two weeks after Counsel began representing him. Counsel also was informed that it was the only week for some considerable time before Judge Nettles would be assigned to York County again.

Counsel testified that he normally takes longer to investigate and prepare a case in part because he has a busy practice. Further, Counsel made the time and effort to discuss the case with the Applicant to help him if the Applicant wanted to plead guilty along with his co-defendants. After meeting with the Applicant, Counsel was concerned that, due to the relatively short period of time of

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his representation, the Applicant might later challenge the effectiveness of his representation. Counsel, therefore, prepared an affidavit about the charges and the Applicant's decision to plead guilty, which the Applicant reviewed and signed. This affidavit was made an exhibit in this case.

The Applicant was charged with offenses which carried a maximum of life imprisonment, plus one hundred and forty (140) years. Counsel made the Applicant aware that he could get no less than thirty (30) years on the murder charge and that he could get life imprisonment on that charge. The Applicant received a sentence of thirty-three (33) years, with all sentences running concurrent.

The Applicant alleged that upon the facts of his case, a jury would have found him guilty of voluntary manslaughter rather than murder, and that Counsel rendered ineffective assistance in failing to explain the elements of voluntary manslaughter to him. Voluntary manslaughter is the unlawful killing of another human being in the sudden heat of passion with sufficient legal provocation. Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Both heat of passion and sufficient legal provocation must be present at the time of the killing. State v. Hernandez, 386 S.C. 655, 690 S.E.2d 582 (Ct. App. 2010); State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000).

Neither the exercise of a legal right nor a victim's attempts to resist or defend himself from crime constitute sufficient legal provocation. State v. Hernandez, *supra*; State v. Ivey, 325 S.C. 137, 142; 481 S.E.2d 125, 127 (1997); State v. Shuler, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001).

In State v. Tyson, 283 S.C. 375, 323 S.E.2d 770 (1984), the South Carolina Supreme Court, held evidence of a struggle between the victim and defendant during an armed robbery was not enough evidence to warrant a voluntary manslaughter charge to the jury.

Here, the solicitor recited to the plea court, during the guilty pleas of the Applicant and his

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co-defendants, the facts of the case that the State would present at trial. Essentially, the facts presented were that the Applicant pushed the victim into an empty apartment where two co-defendants waited, one with a pistol, to rob the victim. The victim resisted and the Applicant shot him in the shoulder. The victim struggled and ran out of the apartment to a vehicle in which he had arrived. The Applicant then fired shots at the victim as he ran. One of the shots struck the victim in the back and fatally injured the victim. Two of the victim's cousins were in the vehicle and one of them opened a car door and reached out and pulled the victim inside the vehicle. They drove off and called the police.

All of the co-defendants agreed with the facts as recited by the solicitor. The Applicant agreed for the most part, but stated the shooting was not in cold-blood.

The Applicant alleges, as a ground in his application, that he was not aware of the elements of voluntary manslaughter when he entered his guilty plea, and that his attorney rendered ineffective assistance when he did not explain voluntary manslaughter to him before the plea.

This Court finds the element of legal provocation was not available to the Applicant. The Applicant's attorney did not render ineffective assistance in failing to explain voluntary manslaughter to the Applicant and the prejudice prong of ineffective assistance is not available to him.

As such, this Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

#### **Involuntary Guilty Plea**

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v.

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State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leake, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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

The Applicant alleged his guilty plea was not voluntarily entered because Counsel was not able to fully discuss the discovery with him and Counsel did not provide the discovery before the Applicant's plea. At the PCR hearing, the Applicant testified he felt pressured into pleading and that he was scared to back out of the plea. However, the guilty plea transcript, the plea affidavit and the Applicant's answers during cross-examination at the PCR hearing directly refute his claims.

At the guilty plea, the Applicant stated he partially agreed with the facts as recited by the solicitor. (Tr. p. 22 line 4). He later stated the only part he disagreed with was that the killing was in cold blood. (Tr. p. 23 lines 11-18). He then stated he understood he was waiving his right to assert a

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self-defense claim. (Tr. p. 23 line 25). The Applicant also testified he understood the negotiations were from thirty years to life imprisonment. (Tr. p. 28 line 24). He stated he was satisfied with Counsel. (Tr. p. 32 line 20). The Applicant then stated he understood his constitutional rights and waived those rights. (Tr. p. 32 line 25). He stated he did not need any extra time with Counsel, he had no complaints against Counsel, and that Counsel has done everything the Applicant asked him to do. (Tr. p. 33 line 3; line 5; line 11). The Applicant testified he was not promised anything or threatened in any way to influence him to enter a guilty plea. (Tr. p. 37 line 10). He also stated he understood all of the court's questions and was truthful in answering them (Tr. p. 37 line 21; p. 38 line 7). The Applicant testified he was pleading guilty because he was guilty. (Tr. p. 38 line 18). Lastly, the Applicant, in a statement to the plea court, said, "Yes sir, like my lawyer said, I did do it." (Tr. p. 85 lines 23-24).

On cross-examination at the PCR hearing, the Applicant freely admitted he testified to all of the above at his guilty plea. He also admitted he lied to the plea court about being satisfied with Counsel and answering the plea court's questions truthfully.

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

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

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This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

### CONCLUSION

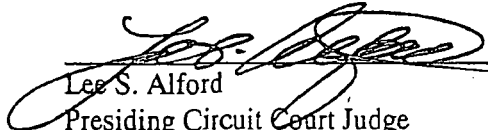
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

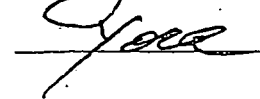
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has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

**IT IS THEREFORE ORDERED:**

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

**AND IT IS SO ORDERED!**

  
Lee S. Alford  
Presiding Circuit Court Judge  
Sixteenth Judicial Circuit

 January 27, 2013  
 South Carolina