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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Perry H. Gravely, Circuit Court Judge

KASHAWN A. SHELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001887

APPENDIX

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1	State of South Carolina	)	In the Court
2	County of Lexington	)	Of General Sessions
3	County of Columbia	)	Indictment Nos.: 2018-GS-32-01633
4	State of South Carolina,	)	and 01634
5	Plaintiff,	)	2019-GS-40-07852
6	vs.	)	and 07853
7	Kashawn A. Shell,	)	
8	Defendant.	)	
9	_____	)	

Transcript of Record

November 20, 2019

Lexington, South Carolina

BEFORE:

The Honorable Frank Addy, Judge

APPEARANCES:

Rhonda W. Patterson, Assistant State Attorney
Bethany Miles, Assistant State Attorney
Attorneys for the State

Jason Chehoski, Assistant Public Defender
Aimee Zmroczek, Esquire
Attorneys for the Defendant

ALSO PRESENT:

Kashawn A. Shell

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EXHIBITS

COURT'S

NO.	DESCRIPTION	ID	EVDS.
1	DMH Evaluation Report	40	40

1 Thereupon, the following proceedings were had,

2 THE CLERK: Kashawn Shell. 2018-GS-32-1633, State
3 versus Kashawn Shell, indicted for armed robbery. He is
4 pleading as charged. I'm sorry. He is pleading to
5 attempted armed robbery. 2018-GS-32-1634, State versus
6 Kashawn Shell, indicted for criminal sexual conduct first
7 degree. He is pleading to criminal sexual conduct second
8 degree. Both indictments are true billed. He is
9 represented by Mr. Chehoski. 2019-GS-40-7853, State
10 versus Kashawn Shell, indicted for armed robbery. He is
11 pleading as charged. 2019-GS-40-7852, State versus
12 Kashawn Shell, indicted for criminal sexual conduct first
13 degree. He is pleading as charged. He is waiving
14 presentment to the grand jury on these indictments and is
15 represented by Ms. Zmorczek.

16 Thereupon,

17 KASHAWN A. SHELL

18 after having been first duly sworn, testified as follows,

19 THE COURT: Mr. Chehoski, you're representing
20 Mr. Shell on, I presume, the Lexington County charges; is
21 that correct?

22 MR. CHEHOSKI: That's correct.

23 THE COURT: The two charges he's pleading to,
24 attempted armed robbery and csc second, each of those
25 would carry up to 20 years. Is that your understanding?

1 MR. CHEHOSKI: That is correct.

2 THE COURT: And you have reviewed with him the
3 ramifications of these pleas, the penalties involved and
4 all his constitutional rights?

5 MR. CHEHOSKI: Yes, sir.

6 THE COURT: Ms. Zmroczek, you're representing
7 Mr. Shell on the Richland charges. Csc first degree I
8 think would carry up to 30 years, minimum of 10?

9 MS. ZMROCZEK: That's correct.

10 THE COURT: And the armed robbery would be a minimum
11 of 10 also with a maximum of 30 years. You have reviewed
12 with him the penalties involved and all of his
13 constitutional rights?

14 MS. ZMROCZEK: I have and, in fact, I think I handed
15 it up and I would like to make a copy of and place it in
16 the record as well a copy of the guilty plea checklist
17 that we went through.

18 THE COURT: All right. Very good. Each of you have
19 explained to Mr. Shell that the offenses he's pleading
20 guilty to are 85 percent offenses, the most serious
21 nature of these, violent nature of these and the
22 requirement for sex offender registry; is that correct?

23 MR. CHEHOSKI: That's correct.

24 MS. ZMROCZEK: Yes.

25 THE COURT: Are there any recommendations or

1 negotiations in these cases?

2 MS. PATTERSON: Your Honor, it is changed for the
3 Lexington charges. We are dismissing several charges.
4 We're dismissing two companion kidnappings, a possession
5 of a weapon during the commission of a violent crime,
6 criminal conspiracy and, of course, we're pleading down
7 our criminal sexual conduct first to a criminal sexual
8 conduct second. I think there may have been some plea
9 agreements with respect to the Richland charges.

10 MS. ZMROCZEK: And we did waive venue, sir.

11 THE COURT: All right.

12 MS. MILES: May it please the Court, Your Honor. As
13 far as the Richland County cases we are dismissing a
14 kidnapping, possession of a weapon during a violent crime
15 and a burglary first and we are agreeing that our
16 sentences for the criminal sexual conduct first degree
17 and armed robbery can run concurrent with the Lexington
18 charges.

19 MS. PATTERSON: And there's an A and B second. Or
20 an A and B first being dismissed.

21 MS. MILES: And an A and B first is being dismissed
22 as well.

23 MS. ZMROCZEK: Yes. Thank you.

24 THE COURT: Thank you. The record will also reflect
25 that the Court was provided prior to a plea with an

1 evaluation of Mr. Shell that was conducted by the
2 Department of Mental Health. A Dr. Payne, P-a-y-n-e, was
3 the individual who performed the evaluation. The
4 evaluation was conducted April 2nd of this year and
5 basically found that Mr. Shell suffers from mild mental
6 retardation. There were some other mental health
7 diagnoses in his history, but the examiner with DMH found
8 that the primary problem that he suffers from is again
9 intellectual disability diagnosed as mild.

10 Ms. Zmroczek and Mr. Chehoski, y'all have been able
11 to communicate intelligently with Mr. Shell about these
12 charges and explained to him in a way that he could
13 understand exactly what's involved with all of this? Ms.
14 Zmroczek?

15 MS. ZMROCZEK: I have.

16 MR. CHEHOSKI: Yes, sir.

17 THE COURT: You all are comfortable with him going
18 forward with this plea today?

19 MS. ZMROCZEK: I am.

20 MR. CHEHOSKI: Yes, sir.

21 THE COURT: Sir, are you Kashawn Shell?

22 KASHAWN SHELL: Yes, sir.

23 THE COURT: Mr. Shell, my name is Frank Addy. I'm a
24 Circuit Judge from Greenwood, okay?

25 KASHAWN SHELL: Yes, sir.

1 THE COURT: They tell me that you want to plead
2 guilty to four charges, two of those charges arose here,
3 started, came out of Lexington and then two of those
4 charges came out of Richland. Do you understand that?

5 KASHAWN SHELL: Yes, sir.

6 THE COURT: They are telling me that you want to
7 plead guilty to attempted armed robbery and criminal
8 sexual conduct second degree for the Lexington cases. Is
9 that your understanding?

10 KASHAWN SHELL: Yes, sir.

11 THE COURT: And in Richland you're pleading guilty
12 to an armed robbery and a criminal sexual conduct first
13 degree charge. Do you understand that?

14 KASHAWN SHELL: Yes, sir.

15 THE COURT: Now, Mr. Shell, you understand the
16 attempted armed robbery and the criminal sexual conduct
17 second, those charges carry up to 20 years. Do you
18 understand that, sir?

19 KASHAWN SHELL: Yes, sir.

20 THE COURT: And the charges out of Richland, they
21 carry a minimum of 10 years and a maximum of 30 years.
22 Do you understand that?

23 KASHAWN SHELL: Yes, sir.

24 THE COURT: You realize that means that as it
25 relates to the charges you have to receive at least a

1 minimum of a 10 year sentence but you can get up to 30
2 years. That's completely within my discretion. That's a
3 decision I will have to make. Do you understand?

4 KASHAWN SHELL: Yes, sir.

5 THE COURT: Now, Mr. Shell, you understand that you
6 will also have to serve 85 percent of whatever sentence
7 you get. For example, if I gave you 10 years, you could
8 not hope to be released until eight and a half years from
9 now. Do you understand that, sir?

10 KASHAWN SHELL: Yes, sir.

11 THE COURT: And, of course, these crimes are
12 classified as violent crimes and most serious crimes. Do
13 you understand that?

14 KASHAWN SHELL: Yes, sir.

15 THE COURT: A most serious crime, Mr. Shell, means
16 that if you get in trouble with the law again for
17 something that's really bad, you could possibly go to
18 prison for the rest of your life. Do you understand
19 that?

20 KASHAWN SHELL: Yes, sir.

21 THE COURT: Mr. Shell, in the last 24 hours have you
22 taken any - or what medication have you taken in the last
23 24 hours? I think you are on some medicines from the
24 detention center, right?

25 KASHAWN SHELL: Yes, sir.

1 THE COURT: Do you recall what those medicines
2 are?

3 KASHAWN SHELL: Yes, sir.

4 THE COURT: Can you tell me about them?

5 KASHAWN SHELL: Haldol and Zyprexa.

6 THE COURT: The Haldol, I guess, is for the voices
7 that you sometimes hear?

8 KASHAWN SHELL: Yes, sir.

9 THE COURT: And Zyprexa is a mood stabilizer. Just
10 kind of helps to keep you even?

11 KASHAWN SHELL: Yes, sir.

12 THE COURT: Mr. Shell, I know that you've been
13 treated for psychiatric issues in the past and that you
14 were in special education classes when you were in
15 school. In your own words, would you tell me just
16 generally what's going on here right now? Why are you
17 here and what are these proceedings or what are these
18 courtroom proceedings about? Just in your own words why
19 are you here?

20 KASHAWN SHELL: My charges.

21 THE COURT: Okay. And what is going on right now in
22 terms of what you're doing?

23 KASHAWN SHELL: Standing here.

24 THE COURT: Okay. For what purpose?

25 KASHAWN SHELL: Oh, a plea.

1 THE COURT: All right. And, Mr. Shell, are you, in
2 fact, guilty of these particular charges?

3 KASHAWN SHELL: Yes, sir.

4 THE COURT: In a moment the Solicitor is going to
5 give me the facts, or the Solicitors are going to give me
6 the facts on these cases. Listen carefully, okay?
7 Because what they say about what you did, I'm gonna ask
8 you if that's what you did, all right? So I'm gonna ask
9 you when they're done talking if that's what you did
10 wrong so listen up, okay, sir?

11 KASHAWN SHELL: Yes, sir.

12 THE COURT: Whoever wants to go first.

13 MS. PATTERSON: I'll go first, Your Honor. The
14 incident in Lexington County occurred on December 6th,
15 2017 about 4:46 p.m. The victims were 23 year old Ginger
16 and 24 year old Courtney. Ginger was messaged on Back
17 Page, a social media app, by Mr. Shell. They agreed to
18 meet up at the Quality Inn located at 2516 Augusta Road
19 in the West Columbia area of Lexington County. They
20 agreed to meet up to have sex. When Mr. Shell arrived,
21 he arrived with his Lexington County co-defendant Charles
22 Gallart. Mr. Gallart came in and he was - and he and the
23 24 year old Courtney, they went to Mr. Gallart's car to
24 smoke marijuana while the defendant stayed behind with
25 Ginger. Once they left out, Mr. Shell pulled out a

1 revolver handgun and ordered Ginger to lie on the bed.

2 Ginger stated to law enforcement that he made her
3 have sex with him while presenting the gun the entire
4 time. After he had sex with her, he used her phone to
5 call Courtney back up to the room and when Courtney and
6 Mr. Gallart came back, he pointed the gun at both
7 Courtney and Ginger, made them lie on the bed - on the
8 floor while he and Mr. Gallart searched the room for
9 things to rob. They eventually took both the ladies'
10 cell phones and about \$200.00 in cash. Mr. Shell also
11 recorded the whole incident on his cell phone. Law
12 enforcement was called. Investigator Chris Morris who
13 was here this morning but had to leave, Your Honor, got
14 assigned to the case. Ginger was taken to the hospital
15 where a SANE kit was done on her.

16 That same night about five hours later they
17 committed a similar incident in Richland County which is
18 what Ms. Miles will go over. On December 11th the
19 Lexington County Sheriff's Department was patrolling the
20 parking lot at the Red Roof Inn located off Berryhill
21 Road in Lexington. This hotel is known for drugs, it's
22 known for prostitution. That's where Mr. Shell and
23 Mr. Gallart was found along with some other
24 co-defendants. Mr. Shell and Mr. Gallart fit the
25 descriptions of the sexual assault that I just described

1 and were questioned by the West Columbia Investigator
2 Chris Morris as well as Sergeant Voss with the Richland
3 County Sheriff's Department regarding the armed robbery
4 and sexual assault incidents. Both confessed with Mr.
5 Shell admitting to most of the same facts as our victim.
6 He stated he and Mr. Gallart split the money. He used it
7 to pay his rent. He also stated he knew the victims
8 were, in both cases, were very scared, and he knew what
9 he was doing was wrong. I think he confessed to his
10 brother that's in the military and told his brother that
11 he knew what he was doing was wrong. He was out here
12 robbing females, and he also told law enforcement he
13 wanted to be caught so he would stop. There was a
14 positive DNA analysis done on the sexual assault kit that
15 was done on Ginger, tested back, the vaginal/rectal swabs
16 did test back to Mr. Shell.

17 Mr. Gallart's charges are still pending, Your Honor.
18 I'm working with his attorney. I think he does want to
19 plea, but we haven't made any offers because we wanted to
20 work on Mr. Shell's case first, but it is still pending
21 and I think he will plead guilty eventually. The only
22 thing on Mr. Shell's record that I have is a breach of
23 peace. The victims were notified, Your Honor. Of
24 course, they're scared. They didn't want to come today.

25 MS. MILES: May it please the Court, Your Honor.

1 THE COURT: Yes, ma'am.

2 MS. MILES: In regards to the Richland County case,
3 as Ms. Patterson said, this did happen on the same date,
4 but this was in a hotel in Richland County and this one
5 is different in the sense that this victim did not know
6 the defendant or have any arrangements to meet up. She
7 was simply staying in a hotel room. She reports that she
8 received a knock on the door, she answers the door, the
9 defendant is there saying, I'm sorry. I must have the
10 wrong room. He leaves and about five minutes later she
11 receives another knock on the door. This time when she
12 looks he has a gun in his hand, looks to her to appear to
13 be a police gun and is saying that he is there as police,
14 let him in the room.

15 Once he is in the room with the gun, he holds the
16 victim at gunpoint, allows three of the other
17 co-defendants to come in there after which he grabs her
18 by her shirt, pushes her into the bathroom, tells her
19 she's not allowed to leave, he sexually assaults her by
20 sexual intercourse. Another one of the co-defendants
21 also has intercourse with her. He also forces oral sex
22 on the victim. While still at gun point he also stole
23 \$40.00 and marijuana from her. The victim was 20 years
24 old and was unknown to this defendant. She didn't
25 recognize him at all. She just happened to be staying at

1 the hotel and happened to open the door, Your Honor. The
2 defendant, as Ms. Patterson said, did provide a
3 confession in this case as well.

4 THE COURT: Thank you. All right. Mr. Shell, did
5 you hear what the Solicitors said about these cases?

6 KASHAWN SHELL: Yes, sir.

7 THE COURT: Is that what happened?

8 KASHAWN SHELL: Yes, sir.

9 THE COURT: Do you disagree about anything? Do you
10 disagree with anything about what they said?

11 KASHAWN SHELL: No, sir.

12 THE COURT: So what they said is true?

13 KASHAWN SHELL: Yes, sir.

14 THE COURT: Mr. Shell, I need to briefly go over
15 rights that you're giving up by pleading guilty here
16 today, okay? If you have any question about anything,
17 stop me. I'll let you talk to your attorneys or you can
18 ask me about it, okay? Do you understand?

19 KASHAWN SHELL: Yes, sir.

20 THE COURT: So you agree that you will stop me if
21 you don't understand what I'm talking about?

22 KASHAWN SHELL: Yes, sir.

23 THE COURT: Mr. Shell, you understand that the one
24 set of charges from Columbia, those charges came out of
25 Richland County, you could have those cases heard over in

1 Richland. Or if you want, you can have it all heard here
2 today in Lexington, if you're okay to have that happen.
3 Are you okay to waive venue and let everything be handled
4 here today?

5 KASHAWN SHELL: Yes, sir.

6 THE COURT: Okay. And you understand, Mr. Shell,
7 that you don't have to plead guilty. You can have a
8 trial instead. Do you understand?

9 KASHAWN SHELL: Yes, sir.

10 THE COURT: Have you seen trials on TV or something
11 like that or in the movies?

12 KASHAWN SHELL: (Witness shaking head.)

13 THE COURT: You haven't really. All right. Well,
14 you understand a trial is where other people determine
15 whether you're guilty of this or not. Do you understand
16 that?

17 KASHAWN SHELL: Yes, sir.

18 THE COURT: Those other people would be the jury.
19 You and your lawyers would pick 12 people and they would
20 sit and the State would bring in the witnesses against
21 you and you would be able to question those witnesses.
22 Your lawyers could ask them any questions that they
23 wanted to. Do you understand that, sir?

24 KASHAWN SHELL: Yes, sir.

25 THE COURT: Okay. So you could bring the witnesses

1 in here, you could question the witnesses, and you
2 realize, Mr. Shell, that you don't have to prove anything
3 at trial, but if you wanted, you could call your own
4 witnesses to testify. Do you understand that, sir?

5 KASHAWN SHELL: Yes, sir.

6 THE COURT: You could use the subpoena, you could
7 subpoena them, you could force them to come. If they
8 didn't want to come, they wouldn't have a choice. They
9 would have to come to court to testify for you. Do you
10 understand that, sir?

11 KASHAWN SHELL: Yes, sir.

12 THE COURT: And you would be able to testify
13 yourself, if you wanted. You understand you could take
14 the stand, tell the jury what happened or what didn't
15 happen, if you wanted to. You could do that at a trial.
16 Do you understand, sir?

17 KASHAWN SHELL: Yes, sir.

18 THE COURT: And if you decided not to testify, I
19 would tell the jury that they couldn't hold that against
20 you. They couldn't hold your failure to testify as
21 evidence of guilt. They couldn't consider that in any
22 bad way against you. Do you understand, sir?

23 KASHAWN SHELL: Yes, sir.

24 THE COURT: And at trial, Mr. Shell, you would be
25 presumed innocent. That means that I would tell the jury

1 that in the eyes of the law you haven't done anything
2 wrong until they say you have done something wrong. Do
3 you understand that?

4 KASHAWN SHELL: Yes, sir.

5 THE COURT: You would also be able to challenge the
6 evidence against you. For example, they're telling me
7 that you confessed to the police. Did you give a
8 confession to them?

9 KASHAWN SHELL: Yes, sir.

10 THE COURT: You understand, Mr. Shell, that you
11 could challenge that confession at trial. You could say,
12 Judge, we don't want the jury to hear about that
13 confession. They didn't read me my Miranda Rights, or
14 they threatened me, or they did something bad to make me
15 confess. You realize if that's the case, then maybe I
16 would decide that the jury would not even hear about that
17 confession. Do you understand? Do you get what I'm
18 saying?

19 KASHAWN SHELL: Yes, sir.

20 THE COURT: So any evidence at trial, you could
21 challenge all that evidence and you could present any
22 defense like, hey, it wasn't me who raped and robbed
23 these people. It was somebody else. Do you understand
24 that's a defense you could offer at trial?

25 KASHAWN SHELL: Yes, sir.

1 THE COURT: Have you talked to your lawyers about
2 any possible defenses you may have? Y'all talked about
3 defenses?

4 MR. CHEHOSKI: We have, Your Honor.

5 MS. ZMROCZEK: We have, Your Honor.

6 THE COURT: Now, Mr. Shell, you realize that when
7 you plead guilty, and that's what you're doing here
8 today, that's what I'm hearing you want to do; is that
9 right?

10 KASHAWN SHELL: Yes, sir.

11 THE COURT: When you plead guilty, you waive the
12 right to do all the stuff I have just described. You
13 won't get a jury trial. Do you understand that, sir?

14 KASHAWN SHELL: Yes, sir.

15 THE COURT: You want to give up all those rights and
16 plead guilty?

17 KASHAWN SHELL: Yes, sir.

18 THE COURT: Mr. Shell, are you happy with the way
19 that Mr. Chehoski and Ms. Zmroczek have tried to help
20 you?

21 KASHAWN SHELL: Yes, sir.

22 THE COURT: Have you talked to them enough?

23 KASHAWN SHELL: Yes, sir.

24 THE COURT: Do you want any more time to talk to
25 them?

1 KASHAWN SHELL: Yes, sir.

2 THE COURT: All right. You want a few moments. Go
3 ahead and speak to them for a few moments if you wish.
4 Go right ahead. Do y'all need a brief break? Y'all go
5 right ahead, okay? Y'all just step outside. As soon as
6 you're ready just let us know, okay? While we're at
7 break on that, we can do a few other things if you all
8 have them ready.

9 * * * * *

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1 THE COURT: Going back on the record in Mr. Shell's
2 cases. Mr. Shell, I have given you some additional time
3 to talk to your lawyers. Have they been able to answer
4 your questions?

5 KASHAWN SHELL: Yes, sir.

6 THE COURT: Is there anything that you're able to
7 let me know about that y'all discussed or any concerns
8 that you have?

9 MR. CHEHOSKI: No, sir.

10 MS. ZMROCZEK: No, sir.

11 THE COURT: Do you need any more time to talk to
12 them or they've answered --

13 KASHAWN SHELL: I'm good.

14 THE COURT: You're good. All right. Now, are you
15 totally happy with the help that your lawyers have tried
16 to give you?

17 KASHAWN SHELL: Yes, sir.

18 THE COURT: Do you have any complaints to make
19 against them?

20 KASHAWN SHELL: No, sir.

21 THE COURT: Any complaints to make against the
22 police, law enforcement, anybody in court, any complaints
23 to make against anyone about how you've been treated?

24 KASHAWN SHELL: No, sir.

25 THE COURT: And aside from dismissal of some of the

1 other charges against you, has anyone promised you
2 anything in terms of what kind of sentence you're gonna
3 get?

4 KASHAWN SHELL: No, sir.

5 THE COURT: Mr. Shell, are you pleading guilty of
6 your own free will because you did commit these crimes?

7 KASHAWN SHELL: Yes, sir.

8 THE COURT: You need to ask me about anything we've
9 talked about?

10 KASHAWN SHELL: No, sir.

11 THE COURT: Do you need to ask your lawyers about
12 anything?

13 KASHAWN SHELL: No, sir.

14 THE COURT: Are you sure you don't want a jury
15 trial?

16 KASHAWN SHELL: Yes, sir.

17 THE COURT: So you want to plead guilty?

18 KASHAWN SHELL: Yes, sir.

19 THE COURT: I find there's a basis for this plea, it
20 is freely, voluntarily, knowingly, and intelligently
21 made. Mr. Shell is capable and able to enter this plea
22 and I will accept it. Did the victims want to relate
23 anything to me from this?

24 MS. PATTERSON: No, sir.

25 MS. MILES: No, sir.

1 THE COURT: I will turn it over to you, Ms.
2 Zmroczek. Do you want to go first?

3 MS. ZMROCZEK: I'll let Mr. Chehoski.

4 THE COURT: Mr. Chehoski. Okay. Go ahead.

5 MR. CHEHOSKI: Thank you, Your Honor. Mr. Shell
6 stands before you. He did complete the 12th grade and he
7 has been on disability. He's been in custody since his
8 arrest on December 11th of 2017. That's 709 days. And
9 as you heard there was full cooperation with the police
10 in both cases given that was recorded. I think it was
11 both recorded via audio means.

12 You saw the evaluation report. You saw there's a
13 history of both intellectual disability and mental health
14 issues, Your Honor, and he also has ongoing issues with
15 alcohol. It's my opinion that the alcohol would
16 exacerbate the symptoms and also there was some drug use
17 as well. In the past his mother has initiated probate
18 proceedings with him and for his mental health issues,
19 Your Honor.

20 Your Honor, in my meetings with Mr. Shell he had
21 indicated that he did not want a jury trial and wanted to
22 accept responsibility from the early going, as early as
23 March of 2018, and Ms. Patterson had made her offer
24 almost a year ago. Due to the moving parts I think
25 several different prosecutors before Ms. Miles had

1 handled this case prior to her being assigned and just
2 getting everybody's schedule aligned is why this took so
3 long.

4 Your Honor, I want to point to the second row over
5 my left shoulder. There are several people there that
6 are - for Mr. Shell that are here in his support.

7 Your Honor, we did discuss going to trial in this
8 case. A couple of things did happen intervening namely
9 we got the DNA report back that showed a match to
10 Mr. Shell's DNA as part of the rape kit. Your Honor,
11 there would have been a possible defense for consent
12 given the nature of the meeting and - the nature and the
13 purpose of the meeting along with some inconsistencies in
14 the statements that the victim had gave, but to avoid
15 that and take advantage of the offer Mr. Shell is before
16 you to admit responsibility for what he has done and, in
17 fact, has been consistent from the day that he was
18 originally arrested and met with law enforcement.

19 Your Honor, I'm asking the Court to consider
20 leniency in this case. We understand that he does have a
21 mandatory minimum of 10 years. We are asking for that
22 minimum 10 year sentence, give him the credit for the
23 time he has served. I know there are several family
24 members who would like to address the Court. I'll let
25 Ms. Zmroczek go next, then I'm sure there are several

1 family members that would like to speak.

2 THE COURT: Ms. Zmroczek.

3 MS. ZMROCZEK: Thank you, Your Honor, and Mr.
4 Chehoski. Once Mr. Shell was arrested, he was arrested
5 obviously in Lexington first, then we had some issues
6 getting him served, but he was served with the Richland
7 charges so we would ask that since the sentences are
8 recommended to run concurrently that he get credit for
9 all 709 days. So a lot of this slowness has been on our
10 end. He was originally assigned Bobby Bank who is a
11 public defender in Richland. There are multiple
12 co-defendants in the Richland case and when they learned
13 that a PD, Mr. Chehoski had him in Lexington, they went
14 ahead and assigned the case to me, and then there's been
15 quite some turnover in the Richland Solicitor's Office,
16 but Ms. Miles has been able to get up to speed on the
17 case.

18 So, one of the things that we had discussed was this
19 potential, an explanation, not necessarily an excuse for
20 the actions, but there is some question. I don't have
21 any proof of it. They shut Back Page down shortly after
22 this which I have another case with, too. When the
23 government shut it down, you can't get anything that was
24 on there anymore and so there is some question as to
25 whether or not the victim in the Richland case was also

1 providing services and I think this is the importance
2 where Mr. Shell's disability comes in is that maybe
3 there's not that next level of understanding that even if
4 it's a prostitute, you know, they could still change
5 their mind, and so that a lot of the defense issues that
6 we were talking about had to deal around that.

7 And also, Mr. Shell, speaking with his family,
8 obviously they had great concerns about us getting him
9 evaluated. They provided us with a lot of the paperwork,
10 I think I handed it up. You can see it goes back for
11 years. I even got his Alvin S. Glenn detention records
12 for the time that he was in there, and the voices were
13 very bad in there as well which is why the Haldol is so
14 important.

15 He was asking about doing a rehab program. The
16 problem that I have with ordering him to ATU is that
17 they're gonna send him down to Lieber and I think that,
18 although that's where the ATU program is, the mental
19 health down there is terrible. I would much rather him
20 be at Broad River, and I know you can't direct where he
21 goes, but I think that as long as he can stay, I know
22 that I have several clients in Broad River right now,
23 that they're there specifically because they get not just
24 the medication but they get counseling and they get to
25 talk to a trained psychiatrist out there and I think

1 that's what Mr. Shell really needs because the problem is
2 he gets thrown into environments where he is obviously
3 easily malleable to criminal minds. And that doesn't
4 excuse his criminal mind, but when you throw things like
5 Back Page and they're wanting to have sex and those kinds
6 of things, like I said, it's hard for him to really
7 differentiate.

8 He knows right from wrong, but it's just hard for
9 him to grasp all of those things and that's another
10 reason why it's taken so long. And I know that his
11 parents do want an opportunity to speak, but even
12 speaking with his dad just recently he was lamenting if I
13 had just kept him in North Carolina because he had just
14 gotten a job and he wasn't gonna be around all these
15 people and I said, yeah, you know, because obviously the
16 things that he faces after this, I think that it's gonna
17 be, you know, he's gonna have the lifetime monitoring and
18 with the csc first he's gonna have the lifetime GPS
19 monitoring and there's always the potential of a civil
20 commitment. I don't think that this is an inappropriate
21 case but, you know, that's something that we'll have to
22 deal with at the end of his sentence.

23 And being that there's no hard knowledge of her
24 being on Back Page, I understand Richland's unwillingness
25 to reduce it because he is 24. In fact, we have the same

1 birth date, obviously many years apart. But he had just
2 turned 24 while he was in jail and I have gotten to know
3 him and he's, I mean, the most gentle and kind person,
4 you wouldn't -- When I met him the first several times I
5 kept going, what? What? And then I even asked
6 Mr. Chehoski with Mr. Shell's permission to share his
7 discovery because, you know, it's just not what you would
8 expect from him.

9 10 years is still a very long time and especially
10 when you're battling mental health and the intellectual
11 disabilities that he's battling, my concern is that the
12 longer he's in there, the worse it's gonna be and not
13 that it's gonna be a field day anyway and it's not
14 supposed to be. He knows that.

15 So again, even though they are very, very serious
16 charges and we have let him know that just because he's
17 pleading here by himself his co-defendants are still
18 going to be sentenced. That was one of the things that
19 he had an issue with and, you know, and them encouraging
20 him and those kinds of things are again all just - they
21 go to mitigation which is what we were trying to explain
22 to him. And certainly the self medication with the
23 alcohol and marijuana and who knows what else they lace
24 marijuana with these days I think has also contributed to
25 some of the serious poor choices that he's made.

1 With that being said, we would also ask for the 10
2 year minimum sentence and the credit for the days that
3 he's done.

4 THE COURT: Very good. I'm happy to hear anything
5 his parents may want to tell me or his brother or anyone
6 who is here on his behalf.

7 MS ZMROCZEK: I know his mom Lashonda wanted to
8 speak. If you can just come right here and make sure you
9 speak really loud because he has to take down everything
10 you say.

11 LASHONDA SHELL: Okay. Thank you, Your Honor.

12 THE COURT: Yes, ma'am.

13 LASHONDA SHELL: I'm Lashonda Shell, Kashawn Shell's
14 mother. Uhm, he's the second of four kids I have. Uhm,
15 I am his mother. I raised four intelligent children.
16 One who graduated from business and is now in military
17 school. My other one is a pharmacy tech. My son who
18 graduated college at 17 and went to serve his country,
19 the one that he was talking about, my son Marquel, at the
20 age of 17. Kashawn, when he was born, they told me he
21 was gonna be disabled, wouldn't be able to read, write or
22 do anything. I strived and I pushed hard. Tutored him
23 after school and everything. It took a family as we're a
24 family to raise him.

25 When my son was getting ready, when he went to

1 college, I wanted Kashawn to have that same feeling that
2 he could be an adult, too, just like the rest of his
3 siblings. I never wanted to treat him different. In
4 doing so maybe I dropped the ball and threw him out there
5 too fast, but he was doing good for several years until
6 my nephew came home and brought some friends and started
7 hanging around him. I was unaware of it, but at the time
8 I know Kashawn was seeking help because he went to stay
9 with his father. Uhm, while he was in that home he was
10 being bullied, he was being mistreated. They stabbed
11 him. He called the police, Richland County, twice
12 looking for help to get them boys evicted out from where
13 he was staying.

14 So when she said that he wanted to get away, like
15 the lady said, it was right, but he just didn't know what
16 to do. So when the boy say, get in the car, he followed
17 them, but not just him. They also took another 14 year
18 old - well, he was 12 at the time, a 12 year old in the
19 back seat with him. At that time that's when I see the
20 probate, they trying to remove him legally from the home
21 'cuz the man threatened that I would have to pay back pay
22 if I take him out of the home.

23 So, you know, at that time I was in probate. He was
24 with Lexington disability special needs and in two months
25 they was this close to finding him a place to stay, a new

1 place where it's gonna be out of town. I said I don't
2 care. Just move him from that environment so it would be
3 done legally. It was this close, one month until this
4 situation happened, and where I even have testimony,
5 proof, texts, everything on my phone proving that the
6 other guy who called out to my nephew and asked did he
7 snitch. Did he tell you I had the gun?

8 There's so much that's driving me crazy right now
9 because I'm feeling like it's just so much that's to be
10 told and it's not all coming out. Nobody said, you know,
11 it's like I got voice recordings from these people.
12 Yeah. We told Kashawn to come on. One of them
13 influenced it. They played on -- Even after he got
14 locked up, they used his credit. They spent his social
15 security that came on the card for two months. I had to
16 get all that things done and I feel like, yes, he's done
17 wrong. He shouldn't let people listen to him, but that's
18 something he don't know. He just wanted friends. But at
19 the same time at least he had sense to know he wanted to
20 get away from those people, but it shouldn't went this
21 way.

22 And sometimes I feel like I failed. I was a little
23 too late of removing him and I apologize, son, but I
24 don't think he was just alone and I just wish - he do
25 need to be back on his medical treatments. I do think he

1 need counseling to know how to be his own person and it's
2 okay to say no. It's okay to know that you don't have
3 any friends out there. And if anybody else bullies you,
4 you get more serious help. But we tried. We tried to
5 get the house invaded twice just to remove those people.
6 Richland County, they play like they arresting them and
7 they'll let them go because they told us just to
8 cooperate with them. I tried everything and I'm sorry.

9 THE COURT: I'm very sorry, ma'am. Sir, if you
10 could just give me your name please.

11 CASSIUS COLWELL: My name is Cassius Colwell.
12 Kashawn is my son, my only son. Uhm, his mother was
13 talking about, you know, the environment he was in. And
14 I'm sorry, sir. I do reside in Charlotte, North Carolina
15 also. Okay. So there was - everything she's saying is,
16 I have been a witness to. She has done her best, uhm,
17 and I see, you know, I have my father in my home, my
18 mother and my father, they're there also, and by me, I
19 see what could happen if you -- I see, I mean, a child
20 can go any kind of way. There are kids that been -- I
21 mean, everything came out all right. But, you know, in
22 his case, you know...

23 You know, I remember one time I was at the house. I
24 just got home from work, 3:00 in the morning. Uhm, his
25 mother called me and said where he was staying at said

1 some guy was talking about pulling a gun out on him and
2 shooting him. I put on my shoes and I rode down there
3 and the police came and I spoke to the guy that actually
4 threatened him. So to jump, to fast forward, I know what
5 kind of people that was around that he didn't even want
6 to deal with. He didn't even want to deal with them, but
7 he - and I know a lot of this has something to do with
8 me, you know, his parents, you know.

9 He's not getting the best of both worlds. She done
10 struggle. She done - she done did her part. I work
11 hard. I work hard. I'm a truck driver so I was always
12 on the road. Always on the road and, uhm, so... But
13 then I realized that, you know, I would love to go
14 fishing with my son, take him fishing and do all the
15 things that, you know, I should be doing, you know.
16 Money isn't everything.

17 So, you know, I just ask you to be, you know,
18 somewhat lenient on his time. I'm not -- Of course,
19 everything that was told up here is bad. It's bad and
20 it's wrong. It's wrong, you know, and I understand that,
21 you know, but I just, I'm begging for that time to do
22 these things. I mean, I know that he got, you know, but,
23 you know, 10 years is a long time. You know, I'm 45 now
24 and it's not about me at all, but it's about him getting
25 out at 36, 37, whatever, you know.

1 I didn't have really no time with him. I took him
2 up to Charlotte and he got himself a job, well, you know,
3 a job and he was doing good and it's not because of his
4 family. It's because of the people that he knew down
5 here out here on the street, you know. And I mean,
6 that's what -- I mean, the Judge ordered him to stay down
7 here because, uh, his mother actually had, you know, uhm,
8 she was over him so, you know, that's what it was, so if
9 he would have been up there and not here so thank you.

10 THE COURT: Thank you, Mr. Colwell. Yes, ma'am,
11 your name please?

12 LASHONDA COLWELL: May it please the Court. I am
13 Lashonda Colwell. I am Kashawn Shell's aunt. Cassius
14 Colwell is my brother. I just wanted to give you a
15 little background. As a child Kashawn was the one to
16 step up with his cousins like, I'll do it. I'm bold
17 enough, you know, and I think in certain instances he
18 doesn't understand the consequences or the weight of the
19 consequences of certain things. Uhm, both of our
20 families are God fearing families. We are in church. We
21 pray for our family. We try to have everyone together
22 for family events and, uhm, and I just - just knowing
23 growing up and from what I'm hearing about threats and
24 other people involved, conspiracy charges not being
25 brought, I feel like there's something more to it.

1 I'm an officer of the court myself and I just want
2 you - I'm hoping that you are listening to the facts of
3 everything that's going on and will be taking that into
4 consideration. Of course, we're family. We love him and
5 we're gonna speak highly of him, but we just want you to
6 know that there are other things going on and that's why
7 they spoke like they did and I hope that you take that
8 into consideration today.

9 THE COURT: Thank you, ma'am.

10 MS. ZMROCZEK: And, Your Honor, just to clear a few
11 things up, I think that there were conspiracy charges but
12 they were being nolle prossed as a part of these as well
13 and again, those only carry five years and I think as you
14 can see as he gets emotional when his parents speak and
15 they feel like they're letting him down, he feels like
16 they're letting them down as well. He was obviously an
17 enticing target for these people because he gets a check
18 every month and that's what was paying everybody's rent
19 and everybody's habit and so unfortunate. One of the
20 things that he talked about to me, he said, I shouldn't
21 have spoke. He's not even smart enough to realize, you
22 know, him telling what he knew and maybe leaving out the
23 coercion and the threats because he was just trying to be
24 as honest as he could and couldn't even do the
25 malingering. But it is certainly there. You know,

1 nothing that he's doing is an act. I think that he's
2 just one of those unfortunate people that falls right on
3 the cusp of someone, you know, that knows it's wrong but
4 unfortunately didn't have the wherewithal.

5 THE COURT: The requisite social skills to resist
6 the influences of others.

7 MS. ZMROCZEK: Exactly.

8 THE COURT: Got you. All right. Mr. Chehoski,
9 anything else?

10 MR. CHEHOSKI: Nothing further, Your Honor.

11 THE COURT: Solicitor?

12 MS. PATTERSON: Yes. Yes, sir. And I think
13 Ms. Zmroczek said it best. He was interviewed by two
14 officers, Your Honor. They were very polite to him, gave
15 him his rights. He never once during the interview said
16 that any of these other co-defendants made him do this.
17 The simple fact that he would even record the sexual
18 assault, Your Honor, that is malicious in my mind. He
19 stated again that he knew the girls were scared. He
20 could tell it by the look on their faces but yet he
21 continued to assault them. He wanted to get caught so he
22 would be stopped. Well, when they were arrested on
23 December 11th, they were outside of a Red Roof Inn so who
24 knows if that was gonna be the next victim, Your Honor.
25 I just want Your Honor to understand that although we

1 have reduced these charges and these girls may have been
2 on a social media app in our case, you know, we still
3 take these cases very seriously, Your Honor.

4 THE COURT: As well you should. I'm with you a
5 hundred percent.

6 MS. MILES: And, Your Honor, in that regards, the
7 defendant and the co-defendants, they did -- well, the
8 defendant gave a confession to this and did speak about
9 the fact they met these victims on Back Page. Nowhere in
10 that statement or in anything that we have was there
11 anything about my victim in Richland County being on Back
12 Page. I believe that the defendant was fine about
13 admitting the other ones were, that would have been
14 something that he would admit, you know, also admitted to
15 and we don't believe that raping prostitutes is okay in
16 any form, but we also don't want the fact that she could
17 possibly be a prostitute being used as mitigation
18 inappropriately.

19 As far as -- We don't disagree that there are mental
20 issues that provide for suggestibility but in our case he
21 is the sole person that goes to that door both times. He
22 is the one who shows up with that gun by himself without
23 those defendants. He is the one who holds her at
24 gunpoint while she is crying and sexually assaults her,
25 Your Honor, and we just want you to be aware that he did

1 this. He let other people in at a later point in time,
2 but he is the one that showed up on his own with that gun
3 and raped her at gunpoint.

4 THE COURT: All right. I think I understand
5 everybody's position quite well. Mr. Shell, is there
6 anything that you wanted to say, sir? Anything that you
7 wanted to tell me?

8 KASHAWN SHELL: No.

9 THE COURT: Ms. Zmroczek, I think these are your
10 records so I'll let you have those back. So I'm gonna
11 make a copy of the evaluation that the Court has a part
12 of the court's file.

13 MS. ZMROCZEK: As well as the checklist?

14 THE COURT: Yes.

15 MS. ZMROCZEK: Thank you.

16 THE COURT: Correct me if I'm wrong. The sex
17 offender registry is automatic? I don't need to note
18 that, correct?

19 MS. MILES: Yes, sir, Your Honor. And I don't
20 believe that the electronic monitoring is a csc first. I
21 think it's with a csc with a minor first.

22 MS. ZMROCZEK: Right. But it's the highest here.

23 MS. MILES: Yes. The whole monitoring thing.

24 THE COURT: Before I pronounce sentence, I want to
25 make a couple of things abundantly clear. I know that

1 this hasn't been stated this way, but obviously, and I
2 don't take anything that the defense counsel has said
3 regarding this incident to imply what I'm suggesting, but
4 obviously regardless of what somebody does for a living
5 whether it's a prostitute or not or whatever the case
6 may be, no one can ask to be raped so to the extent that
7 that has been floated out there, the Court does not take
8 that into consideration in any way, shape or form, the
9 nature or the character of the victims because obviously
10 no one asks to be raped. I don't care what their
11 vocation may be or what it is that they're doing.

12 I've had to take a number of things into account,
13 Mr. Shell, in the sentence that I have imposed. I will
14 acknowledge that you have no real prior record of any
15 kind, really nothing at all and from a review of the
16 records your functional IQ is 48 and they may describe it
17 as mild mental retardation. I know that use of the word
18 mild is somewhat of a mischaracterization. Mild
19 intellectual disability is anything but and that does
20 explain why and how these events can take place. If you
21 were someone who is simply a crazed individual lusting
22 after people, looking to do violence, this incident would
23 have taken place when you were 15, 16, 17, 18, not when
24 you were 21 or 22, so it stands to reason that it's your
25 IQ of 48 and probably the influence of other people who

1 caused you to commit this crime.

2 At the same time, Mr. Shell, understand, this is a
3 very violent and a very serious incident that we are
4 talking about here that takes place over the course of
5 only a couple of hours across two counties, but it is
6 absolutely terrifying for the women who were involved
7 with this and I can't turn a blind eye to that and the
8 Solicitor's observation that it was you who came to the
9 door in Richland unaccompanied, that's a valid point and
10 so it's not a situation where I'm able to simply say,
11 hey, it's okay, you get the minimum on this kind of an
12 offense because it is very, very serious.

13 At the same time, you are accepting responsibility
14 and you did that the moment that law enforcement started
15 talking to you so I have taken that into account, too.

16 Mrs. Shell, this ain't your fault, okay? Sometimes
17 life just deals people a bad set of cards and they find
18 themselves in a bad situation and there's nothing that
19 you can do as a mother or, sir, as a father to keep this
20 kind of thing from happening so please try not to blame
21 yourselves.

22 I've taken all of this into consideration,
23 Mr. Shell. On all the charges what I have done is give
24 you a straight 18 years, okay, sir? So you have 18 years
25 that you have to do. You, of course, get credit for 709

1 days that you have served in jail. All sentences will
2 run concurrently with each other. That's the sentence of
3 the Court, Mr. Shell. I do however wish you luck and
4 hope that when you get out, this kind of thing is not
5 allowed to repeat itself, all right? Good luck to you,
6 sir.

7 KASHAWN SHELL: Yes, sir.

8 MS. ZMROCZEK: Can you note on there, I know that
9 they don't care, but if he could get placed at Broad
10 River where they have the best --

11 THE COURT: I'll make a notation that mental health
12 treatment is needed. Solicitor, I'll let you take this
13 back to Richland.

14 MS. MILES: Okay.

15 THE COURT: We'll take a brief break so Mr. Shell's
16 family can leave. We will be back in 10 minutes to
17 finish up today's business, okay?

18 (Whereupon, Court's Exhibit #1 marked for
19 identification and received in evidence.)

20 WHEREUPON, THE HEARING WAS CONCLUDED.

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 20th day of November, 2019.

11 I FURTHER CERTIFY that the forgoing 40 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 17th day of January, 2021.

17

18

By:s/Steven E. LeBlanc

19

20

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

21

22

23

24

25

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

HONORABLE FRANK R. ADDY, JR., CIRCUIT COURT JUDGE

Indictment No(s):2018-GS-32-01633
2018-GS-32-01634

RECEIVED

DEC 03 2019

SC Court of Appeals

The State,.....Respondent.

V.

Kashawn Aurellius Shell,.....Appellant.

NOTICE OF APPEAL

Kashawn Aurellius Shell, appeals his guilty plea and sentence in this case. The sentence was imposed by the Honorable Frank R. Addy, Jr. on November 20, 2019. The court reporter was Steven E. LeBlanc, P. O. Box 184, Lexington, SC 29071


Jason S. Chehoski
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202 E. Main Street
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(803) 785-8873

OTHER COUNSEL OF RECORD:

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Lexington County Courthouse
Lexington, SC 29072

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

HONORABLE FRANK R. ADDY, JR., CIRCUIT COURT JUDGE

Indictment No(s): 2019-GS-32-01633
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SC Court of Appeals

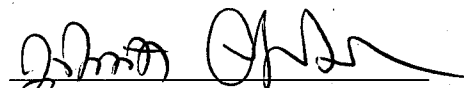
The State,.....Respondent.

V.

Kashawn Aurellius Shell,.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Rhonda W. Patterson by depositing a copy of it in the United States Mail, postage prepaid, on November 25, 2019, addressed to Rhonda W. Patterson, Assistant Solicitor, Lexington County Courthouse, Lexington, SC 29072.


Jason S. Chehoski
Assistant Public Defender
202 E. Main Street
Lexington, SC 29072
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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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January 15, 2020

Mr. Jason Scott Chehoski, Esquire
Lexington County Public Defender
202 E. Main St.
Lexington SC 29072

Re: The State v. Kashawn A. Shell
Appellate Case No. 2019-002028

Dear Counsel:

This Court has received your explanation for appealing.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this Court.

Very truly yours,

V. Claine Allen, Deputy

CLERK

cc: Robert Michael Dudek, Esquire
Rhonda Wallace Patterson, Esquire
Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire

STATE OF SOUTH CAROLINA

vs.

KASHAWN AURELLIUS SHELL.

Defendant.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALSIndictment No(s): 2019-GS-32-01633
2019-GS-32-01634**RECEIVED**

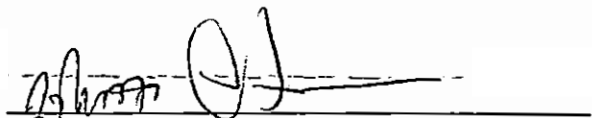
JAN 24 2020

SC Court of Appeals

RULE 203(B) EXPLANATION

Pursuant to Rule 203(B)(iv), the undersigned asserts that he does not have a good faith basis to believe that any issues are properly before the Court of Appeals, and the undersigned did not object to the sentence or file a motion to reconsider the sentence. Nevertheless, the undersigned consulted with the Appellant about his right to appeal, and after consultation, the undersigned has filed the instant appeal at the request of the Appellant because the Sixth Amendment requires counsel to follow the Appellant's request. See *Frazer v. South Carolina*, 430 F.3d 696, 706 (4th Cir. 2005) ("A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as 'an active advocate on behalf of his client.'" (quoting *Anders v. California*, 386 U.S. 738, 744 (1967))).

Respectfully submitted,



Jason S. Chehoski
Assistant Public Defender
202 East Main Street
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Lexington, South Carolina
April 16, 2019

COPY

The South Carolina Court of Appeals

The State, Respondent,

v.

Kashawn Aurellius Shell, Appellant.

Appellate Case No. 2019-002028

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.

V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Kashawn Aurellius Shell, 382844

Jason Scott Chehoski, Esquire

Robert Michael Dudek, Esquire

Rhonda Wallace Patterson, Esquire

Alan McCrory Wilson, Esquire

William M. Blich, Jr., Esquire

FILED

February 25, 2020



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 12, 2020

The Honorable Lisa M. Comer
205 East Main Street
Suite 128
Lexington SC 29072

REMITTITUR

Re: The State v. Kashawn A. Shell
Lower Court Case No. 2018GS3201633, 2018GS3201634
Appellate Case No. 2019-002028

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Kashawn Aurellius Shell, 382844
Jason Scott Chehoski, Esquire
Robert Michael Dudek, Esquire
Rhonda Wallace Patterson, Esquire
Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Indictment Nos.: 2019GS4007852 and 2019gs4007853

The State,

Respondent,

v.

Kashawn Aurellius Shell,

Appellant.

RECEIVED

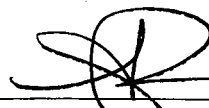
NOV 26 2019

SC Court of Appeals

NOTICE OF APPEAL

Kashawn Aurellius Shell appeals the sentences in these cases. The sentences were imposed by the honorable Frank R. Addy, Jr. on November 20, 2019.

November 26, 2019



Aimee J. Zmroczek, Esq.
P.O. Box 11961
Columbia, South Carolina 29211
Telephone: 803-400-1918
Fax: 803-403-8005
aimee@ajzlawfirm.com
Attorney for Appellant

Other Counsel of Record:
Bethany Miles
Assistant Solicitor, Fifth Judicial District
PO Box 192
Columbia, SC 29201
Attorney for Respondent
(803)576-1800

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Indictment Nos.: 2019GS4007852 and 2019gs4007853

State of South Carolina,

Respondent,

v.

Kashawn Aurellius Shell,

Appellant.

RECEIVED

NOV 26 2019

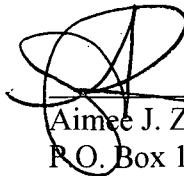
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Bethany Miles by depositing a copy of it in the United States Mail, postage prepaid, on November 26, 2019, addressed to her office at:

PO Box 192
Columbia, SC 29201

November 26, 2019



Aimee J. Zmroczek, Esq.

P.O. Box 11961

Columbia, South Carolina 29211

Telephone: 803-400-1918

Fax: 803-403-8005

aimee@ajzlawfirm.com

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Indictment Nos.: 2019GS4007852 and 2019gs4007853

State of South Carolina,

Respondent,

v.

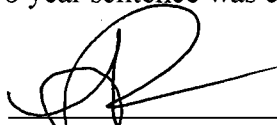
Kashawn Aurellius Shell,

Appellant.

**STATEMENT OF BASIS FOR APPEAL FROM
GUILTY PLEA PURSUANT TO RULE 203(d)(1)(B)**

Pursuant to South Carolina Appellate Court Rule 203(d)(1)(B), Due to Appellant's intellectual disability, Appellant's family feels that the 18 year sentence was excessive.

November 26, 2019



Aimee J. Zmroczek, Esq.
P.O. Box 11961
Columbia, South Carolina 29211
Telephone: 803-400-1918
Fax: 803-403-8005
aimee@ajzlawfirm.com
Attorney for Appellant

Other Counsel of Record:
Bethany Miles
Assistant Solicitor, Fifth Judicial District
PO Box 192
Columbia, SC 29201
Attorney for Respondent
(803)576-1800

RECEIVED

NOV 26 2019

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Indictment Nos.: 2019GS4007852 and 2019gs4007853

State of South Carolina,

Respondent,

v.

Kashawn Aurellius Shell,

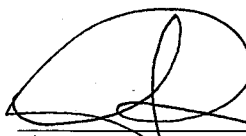
Appellant.

PROOF OF SERVICE

I certify that I have served the STATEMENT OF BASIS FOR APPEAL FROM GUILTY PLEA PURSUANT TO RULE 203(d)(1)(B) on Bethany Miles by depositing a copy of it in the United States Mail, postage prepaid, on November 26, 2019, addressed to her office at:

PO Box 192
Columbia, SC 29201

November 26, 2019



Aimee J. Zmroczek, Esq.
P.O. Box 11961
Columbia, South Carolina 29211
Telephone: 803-400-1918
Fax: 803-403-8005
aimee@ajzlawfirm.com
Attorney for Appellant

RECEIVED
NOV 26 2019
SC Court of Appeals



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 02, 2019

Ms. Aimee Jendrzejewski Zmroczek, Esquire
PO Box 11961
Columbia SC 29211

Re: The State v. Kashawn A. Shell
Appellate Case No. 2019-001969

Dear Counsel:

This Court has received your explanation for appealing.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this Court, or this appeal will be dismissed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire
Bethany Bedenbaugh Miles, Esquire
Robert Michael Dudek, Esquire

RECEIVED

55

DEC 16 2019

SC Court of Appeals

My name is Hashawn Shell, and I'm 24 years old. I feel I should get an appeal because I'm a young man who made a very bad mistake in life that cost me 18 years of my life. I was influenced by rap songs and peers from my environment that being a thug was the way to be cool. Now I know that being cool is having education, having a job and a family. Most of all cool is having your freedom. I'm not a bad person, I was just confused on what cool was and this is most definitely not it. This time I've been in here has been a eye opener. Everybody makes mistakes I was just blind to the consequences. I'm not the person that committed that armed robbery. Physically I am but mentally I'm not that person. I was just trying to be somebody I'm truly not. Now I understand who I truly am and it's not a inmate. I am a loving, caring person who deserves a other chance to the world my true color

The South Carolina Court of Appeals

The State, Respondent,

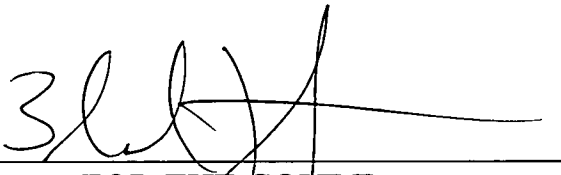
v.

Kashawn Aurellius Shell, Appellant.

Appellate Case No. 2019-001969

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

cc:

Kashawn Aurellius Shell, 382844

Alan McCrory Wilson, Esquire

William M. Blitch, Jr., Esquire

Bethany Bedenbaugh Miles, Esquire

Robert Michael Dudek, Esquire

Aimee Jendrzewski Zmroczek, Esquire

FILED

February 5, 2020



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
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www.sccourts.org

February 21, 2020

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: The State v. Kashawn A. Shell
Lower Court Case No. 2019GS4007852, 2019GS4007853
Appellate Case No. 2019-001969

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. A. Kitchings", written in a cursive style.

CLERK

Enclosure

cc: Kashawn Aurellius Shell, 382844
Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire
Bethany Bedenbaugh Miles, Esquire
Robert Michael Dudek, Esquire
Aimee Jendrzewski Zmroczek, Esquire

FILED
FORM-5

STATE OF SOUTH CAROLINA

2020 NOV 20 PM 4:07

IN THE COURT OF COMMON PLEAS

County of Lexington

Kashawn A. Shell SCDC# 00382844

LISA M. COMER
CLERK OF COURT
LEXINGTON, SC

2020CP3203906

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 Ridgeland Correctional Institution
2. Name and location of Court which imposed sentence Lexington County General Sessions
3. Name(s) of co-defendant(s) (if any) Gaillard Jr., Charles and
Bickley, Zachary Malik
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 19GS40007852
 - (b) 18GS3201634

- (c) 18GS3201633
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) _____
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 5, 2020
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. n/a
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective assistance of plea counsel-failure to inadequately investigate the facts and circumstances surrounding the alleged sexual conduct and robbery and defendant's history of
- (a) mental illness before advising him to plead guilty
- (b) ii. Allege objection to sentence, iii. Advise defendant of answers to judge. Alleged error available under any common law, statutory or other writ, motion, petition, proceeding or remedy may institute without paying filing fee
- (c) Discovery of exonerating after plea; Issue raised regarding insufficient evidence to support a conviction could not have been raised originally; pleas were not knowingly and intelligently entered
11. State concisely and in the same order the facts which support each of the grounds set out in (10): Alleged victim erroneously identified defendant as sexual aggressor when she had consensual sex with him before rape by at least one other co-defendant
- (a) _____
- (b) Alleged victim mistakenly identified Defendant in room when robbery occurred
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. n/a
- ii. _____
- 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

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) ineffective assistance - Defendant was not advise of the right to switch lawyers
- (b) Pleas were not intelligently entered - Defendant did not have Capacity to raise
- (c) issue was not raised until after a hearing regarding new evidence

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? n/a
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes (with a rule 203(B) Explanation
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

- (a) the name and address of each attorney who represented you:
 - i. Jason S. Chehoski Eleventh circuit Public Defenders
202 East Main Street Lexington, SC 29072
 - ii. Aimee Jendrzewski Zaroczek, Esquire
PO Box 11962 Columbia, SC 29211
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea and sentencing hearing
 - ii. _____
 - iii. _____

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

Dismissal of State Cases.

Alternatively, Proper advisement of Plea and additional
Plea hearing, sentence reduction/hearing

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

NO

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

I, Lashonda Shell POA for Kashawn Shell, 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.

Lashonda Shell POA for Kashawn Shell

SWORN to and subscribed before me this 16th
 day of November, _____.

Linda A. Turner (L.S.)
 Notary Public

My Commission Expires: 05/13/2024

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

I, Kashawn Shell, 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.

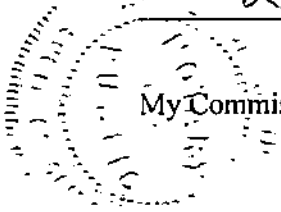
Kashawn Shell P&A for Kashawn Shell
Applicant

SWORN or affirmed to and subscribed before me this
16 day of November, _____.

Linda A. Swiner

Notary Public

My Commission Expires: 05/13/2024



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
	)	
Kashawn A. Shell, SCDC #382844,	)	Case No. 2020-CP-32-3906
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION FOR A
	)	MORE DEFINITE STATEMENT
	)	(COUNSEL APPOINTED)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Kashawn A. Shell (Applicant) on November 20, 2020, the State makes this return:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington and Richland County Clerks of Court.¹ Applicant was arrested on December 11, 2017, following an investigation into a series of sexual assault and armed robbery incidents occurring in West Columbia and Columbia. During its July 2018 term, the Lexington County Grand Jury indicted Applicant for armed robbery (2018-GS-32-1633) and first-degree criminal sexual conduct (2018-GS-32-1634).

On November 20, 2019, Applicant appeared before the Honorable Frank R. Addy, Jr., and pleaded guilty to lesser-included offenses of attempted armed robbery and second-degree criminal sexual conduct. Applicant also waived jurisdiction and presentment to the grand jury and pleaded

¹ Because Applicant pleaded guilty to the Lexington and Richland charges at the same time and the events giving rise to the charges occurred on the same night, the State submits Applicant's PCR claims should be litigated in a single action so long as Applicant waives jurisdiction on the record at the outset of the evidentiary hearing.

guilty to Richland County indictments for first-degree criminal sexual conduct (2019-GS-40-7852) and armed robbery (2019-GS-40-7853). The State dropped Lexington kidnapping, possession of a weapon during the commission of a violent crime, and criminal conspiracy charges and Richland kidnapping, possession of a weapon during the commission of a violent crime, first-degree assault and battery, and first-degree burglary charges in exchange for Applicant's plea.

Jason Chehoski, Esquire, represented Applicant on the Lexington charges and Aimee Zmroczek, Esquire, represented him on the Richland charges. Assistant Solicitor Rhonda Patterson of the Eleventh Circuit Solicitor's Office and Assistant Solicitor Bethany Miles of the Fifth Circuit Solicitor's Office prosecuted the case. In addition to the *nolle prossed* charges, the State agreed to run the Richland and Lexington sentences concurrent. Judge Addy ultimately accepted Applicant's plea and sentenced him to concurrent terms of eighteen years' imprisonment on all charges.

Applicant filed a timely notice of appeal. Counsel Chehoski stated in his Rule 203(d)(1)(B)(iv) explanation that he did not have a good faith basis to believe any issues were properly before the Court of Appeals, citing *Frazer v. South Carolina*, 430 F.3d 696, 706 (4th Cir. 2005) ("A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as 'an active advocate on behalf of his client.' ") (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)).

On February 5, 2020, the Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation as to why an appeal from his guilty plea should proceed. *Shell v. State*, (S.C. Ct. App. filed Feb. 5, 2020). The case was remitted back to the circuit court on February 21, 2020.

Applicant also appealed his Richland County convictions. Counsel Zmroczek stated in her Rule 203(d)(1)(B)(iv) explanation that Applicant's family felt the eighteen-year sentence was

excessive due to Applicant's intellectual disability. On February 25, 2020, the Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation as to why an appeal from his guilty plea should proceed. *Shell v. State*, (S.C. Ct. App. filed Feb. 25, 2020). The remittitur was issued on March 12, 2020.

Applicant commenced this PCR action on November 20, 2020.²

II. FACTS

The events giving rise to the Lexington County charges began on December 6, 2017, at approximately 4:46 PM. (Plea Tr. 10). The victims were twenty-three year-old Ginger and twenty-four year-old Courtney. (Plea Tr. 10). Ginger was messaged on a social media app called Black Page by Applicant. (Plea Tr. 10). They agreed to meet at the Quality Inn located at 2516 Augusta Road in the West Columbia area of Lexington County to have sex. (Plea Tr. 10). Applicant arrived at the hotel with his Lexington County co-defendant, Charles Gallart. (Plea Tr. 10). Upon their arrival, Gallart and Courtney went to Gallart's vehicle to smoke marijuana while Applicant stayed behind with Ginger. (Plea Tr. 10). Once they were alone, Applicant pulled out a revolver and ordered Ginger to lie on the bed. (Plea Tr. 10–11).

Ginger stated to law enforcement that Applicant made her have sex with him while presenting the gun the entire time. (Plea Tr. 11). After he had sex with her, he used her phone to call Courtney back up to the room. (Plea Tr. 11). When Courtney and Gallart came back to the room, Applicant pointed the gun at her. (Plea Tr. 11). He then ordered Courtney and Ginger to lie on the floor while he and Gallart searched the room. (Plea Tr. 11). They took both woman's cell phone and approximately \$200.00 in cash. (Plea Tr. 11). Applicant recorded the entire incident on

² It appears Applicant's mother filed the application on his behalf. The plea transcript indicates Applicant's mother has initiated probate proceedings on Applicant's behalf due to his mental health issues. (Plea Tr. 22, 28–30).

his cell phone. (Plea Tr. 11). After law enforcement arrived, Ginger was taken to the hospital where a SANE kit was completed. (Plea Tr. 11).

The events giving rise to the Richland County charges occurred that same night at a hotel in Columbia. (Plea Tr. 12–13). The circumstances were different in that the victim did not know Applicant or have any arrangements to meet up with him. (Plea Tr. 13). She was simply staying in a hotel room. (Plea Tr. 13).

The victim, Mikayla [REDACTED], told law enforcement Applicant knocked on her door. (Plea Tr. 13). When she answered, Applicant apologized, telling her he had the wrong room. (Plea Tr. 13). Applicant left and returned to the room approximately five minutes later. (Plea Tr. 13). This time he knocked on her door, he had a gun in his hand. (Plea Tr. 13).

Applicant identified himself as a police officer and told Mikayla to let her in. (Plea Tr. 13). She stated the gun appeared to be of the type carried by law enforcement. (Plea Tr. 13). Applicant then held her at gunpoint while three co-defendants entered the room. (Plea Tr. 13). Applicant then grabbed her by her shirt, pushed her into the bathroom, and sexually assaulted her. (Plea Tr. 13). Another one co-defendant sexually assaulted her and forced oral sex on the victim. (Plea Tr. 13). Applicant stole forty dollars and marijuana. (Plea Tr. 13). Mikayla was twenty-years old and was unknown to Applicant. (Plea Tr. 13).

On December 11, 2017, Applicant and Gallart were arrested by the Lexington County Sheriff's Department at the Red Roof Inn located off Berryhill Road in Lexington. (Plea Tr. 11). The hotel is known as a hot spot for drugs and prostitution. (Plea Tr. 11). Applicant and Gallart fit the descriptions of the perpetrators described by Ginger and Courtney. (Plea Tr. 11). The men were questioned by West Columbia Investigator Chris Morris and Sergeant Voss with the Richland County Sheriff's Department regarding the armed robbery and sexual assault incidents. (Plea Tr.

12). Both confessed, but Applicant admitted to most of the same facts reported by the victims. (Plea Tr. 12, 14).

Applicant stated that he and Gallart split the money, and that he used his share to pay his rent. (Plea Tr. 12). Applicant told law enforcement he knew the victims were very scared and that he knew what he was doing was wrong. (Plea Tr. 12). Applicant apparently confessed to his brother as well. (Plea Tr. 12). He also told law enforcement he wanted to be caught so he would stop. (Plea Tr. 12). DNA found on vaginal and rectal swabs taken from Ginger matched DNA taken from Applicant. (Plea Tr. 12).

III. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

- (10) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) “Ineffective assistance of plea counsel – failure to inadequately[sic] investigate the facts and circumstances surrounding the alleged sexual conduct and robbery and defendant’s history of mental illness before advising him to plead guilty”
 - (b) “Allege objection to sentence”
 - (c) “Advise defendant of answers to judge. Alleged error available under and common law, statutory or other writ, motion, petition, proceeding or remedy may institute without paying filing fee”
 - (d) “Discovery of exonerating after plea; issue raised regarding insufficient evidence to support a conviction could not have been raised originally; pleas were not knowingly and intelligently entered”
- (11) State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) “Alleged victim erroneously identified defendant as sexual aggressor when she had

consensual sex with him before rape by at least one other co-defendant”

- (b) “Alleged victim mistakenly identified defendant in room when robbery occurred”

- (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) “Ineffective assistance – defendant was not advise[sic] of the right to switch lawyers”
- (b) “Pleas were not intelligently entered – defendant did not have capacity to raise”
- (c) “Issue was not raised until after a hearing regarding new evidence”

Applicant requests relief as follows:

“Dismissal of state case. Alternatively, proper advisement of plea and additional plea hearing, sentence reduction/hearing.”³

Attached to this return and incorporated by reference are the Lexington and Richland County Clerk of Court records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, a full and complete record of Applicant’s direct appeal, including the plea transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Plea Counsel, Generally

Applicant’s claims of ineffective assistance of counsel are without merit. The Sixth and

³ The relief Applicant seeks is not available on post-conviction relief—the only relief available would be a new trial on the original indictments. *See* S.C. Code Ann. § 17-27-20(b); *Singleton v. State*, 313 S.C. 75, 85–86, 437 S.E.2d 53, 59 (1993) (discussing section 17-27-20(b) and the appropriate relief in PCR cases); *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating that even under the assumption that all the allegations were true, the relief to be granted on PCR is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (“We now clarify the proper remedy is a new trial.”).

Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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

As aforementioned, the applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of “were outside the wide range of competence” demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the applicant must establish that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Id.* Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must

show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

B. Involuntary Guilty Plea

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the

admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *see also Wolfe*, 326 S.C. 158, 485 S.E.2d 367 (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment

upon him, or is motivated by fear of greater punishment.” *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

Nonetheless, 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.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and

that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 485 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

Surmounting *Strickland's* high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.' "). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

C. Insufficiency of the Evidence

To the extent Applicant alleges Counsels were ineffective for advising Applicant to plead

guilty because the victim mistakenly identified Applicant as the perpetrator, the State submits this allegation is without merit. In *Brady*, the United States Supreme Court explained:

Often the decision to plead guilty is heavily influenced by the defendant's appraisal of the prosecution's case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted. Considerations like these frequently present imponderable questions for which there are no certain answers; judgments may be made that in the light of later events seem improvident, although they were perfectly sensible at the time. The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision. A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action.

Id. at 756–57.

Here, Applicant waived his right to raise innocence or misidentification as a defense when he pleaded guilty and waived his right to a jury trial. *See Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (explaining that a plea waives all non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence and claims of a violation of a constitutional right prior to the plea) (citing *Rivers v. Strickland*, 264 S.C. 121, 213 S.E.2d 97 (1975)). Accordingly, this allegation is without merit.

D. Failure to Investigate

Applicant contends Counsels were ineffective for failing to sufficiently investigate the facts and circumstances of the case. As discussed below, the State is presently without sufficient information to fully respond to this claim because Applicant does not indicate with any specificity what Counsels should have investigated and how he was prejudiced as a result.

“A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut

any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses “when it is reasonable to do so.” *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (“this duty is limited to a reasonable investigation”). Reviewing courts “should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing

process work in the particular case.” *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

E. Mental Health

To establish *Strickland* prejudice in the context of plea counsel’s failure to fully investigate the applicant’s mental capacity, the applicant “need only show a ‘reasonable probability’ that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.” *Matthews v. State*, 358 S.C. 456, 459, 596 S.E.2d 49, 51 (2004) (alterations in original) (quoting *Jeter*, 308 S.C. at 233, 417 S.E.2d at 596); *see id.* at 458–60, 596 S.E.2d 49, 50–51 (expanding the reasonable probability standard as the burden for proving both the deficiency of counsel and the prejudice prongs). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues which undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. *Garren v. State*, 423 S.C. 1, 13–14, 813 S.E.2d 704, 711 (2018).

“The test of competency to enter a plea is the same as required to stand trial”—the accused “must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him.” *Jeter*, 308 S.C. at 232, 417 S.E.2d at 596. Here, Applicant received an evaluation from the Department of Mental Health. (Plea Tr. 6). The DMH examiner found Applicant suffers from mild intellectual disability; however, he was found competent. (Plea Tr. 6). The Court further conducted an extensive colloquy with Applicant regarding his understanding of the plea proceedings.

Accordingly, the State submits Applicant's allegations regarding his competency to enter the plea are without merit.

F. Failure to Object to Sentence

Finally, Applicant's allegation Counsels were ineffective for failing to object to the sentence is without merit. Applicant received an aggregate eighteen-year sentence for multiple counts of armed robbery and criminal sexual conduct arising from two separate violent attacks. All for charges to which he pled are classified as violent under S.C. Code Ann. § 16-1-60 and most serious felony offenses under S.C. Code Ann. § 17-25-45. The eighteen-year sentence he received falls well within the statutory range, and applicant has not alleged in any way that this was an illegal sentence. *See State v. Sidell*, 262 S.C. 397, 205 S.E.2d 2d 2 (1974) (a judge has discretion in sentencing within statutory limits); *see also Cummings v. State*, 274 S.C. 26, 260 S.E.2d 187 (1979) (a sentence in not excessive if within statutory limitations and not the result of partiality, prejudice, or corrupt motive); *Wood v. State*, 257 S.C. 179, 184 S.E.2d 702 (1971). Accordingly, and because Applicant has failed to indicate on what basis Counsels could have objected, this allegation is without merit.

G. Conclusion and Action Requested

For the above-reasons, Applicant cannot satisfy either requirement of *Hill*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of plea counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. RESPONSE TO ALLEGATION OF ACTUAL INNOCENCE AND NEWLY-DISCOVERED EVIDENCE

The State submits Applicant's assertion he is being held in custody unlawfully as a result of newly-discovered evidence is without merit. However, as discussed below, the State is presently without sufficient information to fully respond to this claim because Applicant does not indicate with any specificity what Counsels should have investigated and how he was prejudiced as a result.

The Act states a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(C).

In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violations of constitutional rights. *State v. Rice*, 401 S.C. 330, 331–32, 737 S.E.2d 485, 485–86 (2013). An applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that:

(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014); *see People v. Schneider*, 25 P.3d 755, 761 (Colo.2001) (“A defendant who voluntarily and knowingly enters a plea accepting responsibility for the charges is properly held to a higher burden in demonstrating to the court that newly discovered evidence should allow him to withdraw that plea.”) (cited with approval in *Jamison*, 410 S.C. at 470, 765 S.E.2d at 130); *see also McMann v. Richardson*, 397 U.S. 759, 773 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). Crucially, “[a]n element of ‘newly-discovered’ evidence is that the evidence could not have been discovered before trial. *Ramirez v. State*, 413 S.C. 351, 373, 776 S.E.2d 101, 113 (Ct. App. 2015), *aff’d in part, rev’d in part*, 419 S.C. 14, 795 S.E.2d 841 (2017).

VI. MOTION FOR A MORE DEFINITE STATEMENT

The State submits Applicant’s claims of ineffective assistance of counsel and denial of due process violation are without merit. However, it is impossible for the State to adequately respond to Applicant’s allegations of ineffective assistance of counsel because Applicant has failed to set forth sufficient facts to “support each ground” or to explain with specificity the facts upon which his claims are based. S.C. Code Ann. § 17-27-50 (requiring an applicant to “specifically set forth the grounds upon which the application is based”).

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRPC and the Post-Conviction Procedure Act. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court”); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to

relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRPC (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRPC (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

VII. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

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

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC. *See also* Rules 15(a)–(b), SCRPC. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits

and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VIII. GENERAL DENIAL

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

IX. CONCLUSION

WHEREFORE, the State moves for a more definite statement and the opportunity to respond to the more definite statement if necessary. Once a more definite statement is provided, the State requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

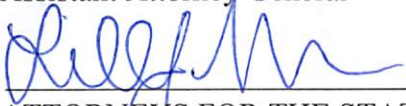
Respectfully submitted,

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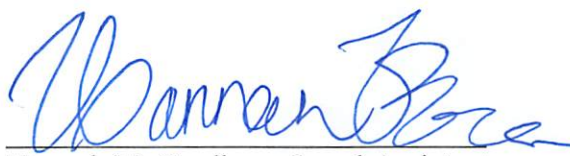
June 14, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2020-CP-32-3906
	)	
KASHAWN A. SHELL, #382844	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE 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 and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ola A. Johnson, Esquire
Ola A. Johnson, Attorney at Law
PO Box 549
Lexington, SC 29071

DATED this 14th day of June, 2021.


 Hannah M. Bradham, Legal Assistant
 For Respondent

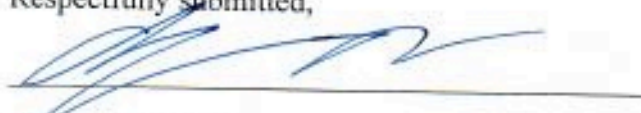
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
 KASHAWN SHELL,	)	 CASE NO.: 2020-CP-32-03906
	)	
Applicant,	)	
	)	
v.	)	AMENDMENT TO APPLICATION
	)	FOR POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief. This amended complaint adopts and includes all grounds in the original application filed November 20, 2020, by Applicant. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to Jason Chehoski and Aimee Zmroczek as follows:

1. Applicants counsel Jason Chehoski and Aimee Zmroczek failed to meet with the Applicant a sufficient number of times to review the evidence.
2. Applicants counsel Jason Chehoski and Aimee Zmroczek failed to provide discovery to applicant.

3. Applicants counsel Jason Chehoski and Aimee Zmroczek failed to properly investigate these cases to provide a defense for Applicant.
4. Applicants counsel Jason Chehoski and Aimee Zmroczek failed to call witnesses Tiffany and Patrick Folks.
5. Applicants counsel Jason Chehoski and Aimee Zmroczek coerced the Applicant into entering a guilty plea by statements they made including Mr. Chehoski stating he had to enter the guilty plea and both attorneys stated he would receive a sentence of 10 years incarceration.
6. Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



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This 29 day of September, 2022

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

KASHAWN SHELL,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-32-03906

CERTIFICATE OF SERVICE

I, Ola Johnson, hereby certify on that on September 29, 2022, I served a copy of the Amendment to Application for Post Conviction Relief on Lillian L. Meadows, Assistant Attorney General by Email and U.S. Mail to the following address:

Lillian L. Meadows, Asst. Attorney General

SC Attorney General's Office

P.O. BOX 11549

Columbia, SC 29211

9-29-22

Date


OLA JOHNSON

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
THE COURT OF COMMON PLEAS
C.A. NO. 2020-CP-32-03906

KASHAWN A. SHELL,

PLAINTIFF,

vs.

STATE OF SOUTH CAROLINA,

DEFENDANT.

H E A R I N G
BEFORE THE HONORABLE PERRY H. GRAVELY

DATE: DECEMBER 18, 2023
TIME: 9:54 A.M. - 11:19 A.M.
LOCATION: SOUTH CAROLINA CIRCUIT COURT 11
TRANSCRIBED BY: AMANDA WATSON

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

P R O C E E D I N G S

THE COURT: Morning.

MR. ZELENKA: Morning, Your Honor. First case is Kashawn Shell vs the of state of South Carolina. Mr. Shell made a pro se application November, 20th, 2020, and Mr. Johnson made an amendment more recently on September 29th 2022. This matter involves a combination of guilty plea involving Lexington County and Richmond County arising from incidents on December 11th, 2020 -- 2017 excuse me.

He appeared before Judge Addy on November 20th, 2019, and entered guilty pleas pursuant to plea negotiations to Lexington County cases attempted armed robbery, second degree criminal sexual conduct. And on Richland cases, first degree criminal sexual conduct and armed robbery. As part of the negotiations there were a number of cases that were dropped by both counties in the matter, and he received a sentence of 18 years on all the charges.

There was a notice of appeal filed and the matter was dismissed after (indiscernible) determination. In his application for post-conviction relief, he's alleging ineffective assistance of counsel, alleged failure to object to the sentence, claims that he was advised to give answers to the judge, and discovery of some information in his pro se determination.

In the amendments in September 2022, he's claiming that

1 his counsel failed to meet with him a sufficient number of
2 times, failed to provide discovery, failed to properly
3 investigate the cases to provide a defense, failed to call
4 witnesses Tiffany and Patrick Folkes (phonetic), and claims
5 he was coerced into entering a guilty plea after both
6 attorneys stated he would be given a ten-year sentence.

7 THE COURT: All right. Yes.

8 MR. JOHNSON: Thank you, Your Honor. Ola Johnson, I was
9 appointed to represent Mr. Shell. At this time, two things.
10 One, his mother -- he wanted his mother to be here. She -- I
11 was informed she's on the way. This family member just
12 informed me that. She's not here. I guess she's running
13 late. There was some car trouble or a flat tire or
14 something. He also indicated to me he wanted to make a
15 motion for continuance. I don't have a motion for
16 continuance, but he's got some issue he wanted to address and
17 askrd for continuance. And I told him he could do that.

18 THE COURT: All right. Mr. Shell, I'll be glad to hear
19 from you.

20 MR. JOHNSON: You have to stand up.

21 MR. SHELL: I forgot what it was.

22 MR. JOHNSON: Is she retaining counsel? Is that
23 what ---

24 MR. SHELL: Oh yeah. My mom wanted to be here because
25 she said she has some new evidence. (Indiscernible) like,

1 wait if -- till she get's here.

2 MR. JOHNSON: Is she retaining counsel? Is that what
3 you told me?

4 MR. SHELL: Yeah.

5 MR. JOHNSON: She is also retaining counsel according to
6 Mr. Shell. She is retaining counsel. (Indiscernible)

7 THE COURT: I mean, did you say she's on the way?

8 MR. JOHNSON: That's what his aunt just reported to me.
9 She -- I spoke to her yesterday, she said she was coming.

10 THE COURT: Well,---

11 MR. JOHNSON: Just now they informed me she's on the
12 way.

13 THE COURT: How far away is she?

14 MR. JOHNSON: 15 minutes. And that was five minutes
15 ago.

16 THE COURT: All right. State's position?

17 MR. ZELENKA: I would oppose to the motion of
18 continuance. I don't have any objection if we need to leave
19 the record open once she gets here today, if this case is
20 essentially ended. If that's okay with the Court. We've got
21 all the witnesses here from both the Richland case and the
22 Lexington case.

23 THE COURT: All right. Mr. Johnson, anything else?

24 MR. JOHNSON: Just, I ask the Court to consider that he
25 wants his mother present. He's also saying that she is

1 hiring counsel and bringing something that applies to this
2 case, but I don't know what it is.

3 THE COURT: Well, we'll be -- like said, I think we need
4 to go forward. I mean, it's been said. I mean, there's
5 nothing that I've heard that kind of warrants a continuance.
6 So, we'll go forward, and we'll leave the record open. If
7 anything you're -- when your mom gets here -- that we need to
8 put in. Okay? Motion for continuance denied and we'll go
9 forward.

10 MR. JOHNSON: Mr. Shell is my only witness.

11 THE COURT: Okay. You want to come forward?

12 MR. SHELL: Yeah.

13 THE COURT: All right. Will you raise your right hand.
14 Put your left on that Bible down there. I'm sorry. I liked
15 them better here. Why? I know. Do we have a Bible over
16 there? All right. Will you raise your right hand. Do you
17 solemnly swear to tell the truth, the whole truth, and
18 nothing but the truth, so help you God?

19 MR. SHELL: Yes, sir.

20 THE COURT: All right. State your full name for the
21 record.

22 MR. SHELL: Kashawn Shell.

23 THE COURT: All right.

24 D I R E C T E X A M I N A T I O N

25 BY MR. JOHNSON:

1 Q. Mr. Shell, do you remember who represented you in this
2 matter?

3 A. Yes, sir.

4 Q. Was that Mr. Chehoski and Ms. Zmorczek?

5 A. Yes, sir.

6 Q. Okay. Do you remember were they retained or appointed to
7 represent you? Were they -- were appointed to represent you?

8 A. Yes, sir.

9 Q. Okay. And in your original application, can you state --
10 testify about some of the grounds for your argument? You
11 said that there was an issue about you not being aware of
12 what was going on, or was -- you were not making an
13 intelligent waiver of your rights. Can you talk about that?

14 A. Can you say that again? My bad.

15 Q. Did you feel like your guilty plea was not voluntary?

16 A. Yes, sir.

17 Q. Why is that?

18 A. Well, when we was -- when we was -- when we was in that --
19 was in the back -- was in the back, him and -- I forgot her
20 name -- Aimee Zmorczek, she said -- they made me sign the
21 paper -- well, they didn't made me, but they told me sign the
22 paper. And told me I be getting ten years or whatever, if I
23 sign it. So I did that. And when we came back here and talk
24 in front of the judge, I forgot all about it because they --
25 he started doing all the talking and asking my mom this, and

1 asking other people this.

2 And when judge came up to me, I mean, judge said, do you
3 -- did anybody promise you anything? And I said, "No."
4 Because I forgot all about the little ten years that I
5 signed. But I felt like they could have just said, "Hold up,
6 Judge. Let me speak with my client. Hey, listen, you
7 remember we signed up for ten years."

8 Q. So who is it that stated you were going to get ten years?

9 A. Amiee Zmorczek and Jason Chehoski. We signed a paper.

10 Q. Okay. And when you put in your original application about
11 adviser rights to switch lawyers? What was that about? They
12 did not advise you of your right to switch lawyers?

13 A. I don't remember, that was a while back. I can't remember.

14 Q. Did you want to switch lawyers?

15 A. Yes, I did.

16 Q. Did they advise you that you can make that motion?

17 A. No, no. Oh, I see what you said. No, they didn't tell me
18 because I didn't know nothing about -- I can do that. I
19 didn't know.

20 Q. Okay. And about investigating the case. Did they hire a
21 private investigator to investigate the case?

22 A. I believe they did. I can't remember. I believe, I think
23 they did. But -- a white dude, some dude came up to the
24 county, whatever, but he didn't -- yeah, I believe he did.

25 Q. And talked to you?

- 1 A. Yes.
- 2 Q. You think that was an investigator?
- 3 A. I don't know.
- 4 Q. Okay.
- 5 A. I don't know.
- 6 Q. And did you receive any information about -- did they give
7 you discovery in the case, or review the evidence in the case
8 with you?
- 9 A. Jason Chehoski, he kept -- he came to the county a few times,
10 few times, discussed some things with me about 20 or 30, or
11 some other thing -- I can't really remember, that was -- my
12 mind not that good. Can't remember that good.
- 13 Q. Did you say 20 or 30 times?
- 14 A. Yeah. No, no, no. 20, 30 he kept telling me -- the plea.
- 15 Q. Oh, okay.
- 16 A. The plea -- what they were trying to get me, or whatever.
- 17 Q. Okay. How many times do you think he came to meet with you?
- 18 A. I can't keep counting on my fingers.
- 19 Q. Okay.
- 20 A. That's how long ago.
- 21 Q. What about Ms. Zmoorczek? Did she come speak with you?
- 22 A. Yeah, few times.
- 23 Q. Few times?
- 24 A. No, I know -- I know Jason, he came more than she did.
- 25 Q. Did they bring any evidence or give you copies of any of the

1 evidence?

2 A. No.

3 Q. They did not.

4 A. No.

5 Q. Did they show it to you.

6 A. No, not that I remember. Only thing I remember is Jason
7 bringing me some papers, showing me something. I can't
8 remember -- showing something.

9 Q. Okay. And did Mr. -- he said -- who was it that said you
10 were going to get ten years?

11 A. Aimee Zmorczek and Jason Chehoski. I got -- I signed the
12 paper for, I believe, I want to, say from Rich -- for
13 Richland and Lexington, but they say he was going to try to
14 run concurrent.

15 Q. And did they say it at the time you were signing the
16 sentencing sheet?

17 A. Yes.

18 Q. At that time. Did they say it any other time?

19 A. No, no.

20 Q. Okay. And they said -- did they say you were going to get
21 out in a certain number of years?

22 A. I don't remember.

23 Q. Okay. Was there anything else you wanted them to do in
24 relation to this case, calling witnesses or interviewing
25 anybody?

1 A. No.

2 Q. Okay. Anything else you'd like to add?

3 A. No.

4 Q. No more questions, Your Honor.

5 THE COURT: Cross examination?

6 MR. ZELENKA: Just a few questions, Your Honor.

7 C R O S S E X A M I N A T I O N

8 BY MR. ZELENKA:

9 Q. Mr. Shell, when you were appointed, were you appointed
10 Mr. Chehoski to represent you on the Lexington County? You
11 were, weren't you?

12 A. Oh yes. Yes, sir.

13 Q. And your representative, shortly after the incident in
14 December 2017 until 2019 ---

15 A. Sorry, can you say again?

16 Q. He was appointed to represent you shortly after you were
17 arrested in 2017; isn't that correct?

18 A. Yeah, I was arrested in 2017. Yes.

19 Q. Do you recall when you met with Mr. Chehoski, and he brought
20 some papers, and -- it would be around April 2018, and you
21 signed for the papers? Do you remember that?

22 A. Say again.

23 Q. Do you remember signing papers after Mr. Chehoski showed them
24 to you to concerning ---

25 A. Yeah, back here ---

1 Q. --- discovery papers, in your case?

2 A. The only papers I could remember signing is back here for
3 that ten years. I don't remember signing any other papers.

4 Q. You alleged failure to investigate, Mr. -- Ms. Zmorczek did
5 have a private investigator who assisted the defense; isn't
6 that correct?

7 A. Right. I believe he was a ...

8 Q. Okay. In your application, you said that you wanted your
9 defense teams to call Tiffany and Patrick Folkes. Who are
10 they?

11 A. Friends.

12 Q. They're friends?

13 A. Friends.

14 Q. And what could they have testified about?

15 A. What happened the night of the accident. I called them.

16 Q. The night of the incident?

17 A. Yeah. I called them and told them I was -- some dude wanted
18 me to ride with him, and I was scared, but I didn't want to
19 go to the police or nothing, because they had guns. That's
20 what -- they was there when I was -- when I was on the phone
21 with ---

22 Q. Okay. But they weren't at the scene? Were they at the scene
23 of the crime?

24 A. No, no, they wasn't at the scene. But, at that time, I was
25 in the house -- I was in the house with my friends, or

1 whatever, with them, and I called them.

2 Q. Okay. As far as the statements you gave the Court during
3 your hearing, you admitted to both the crimes, correct?

4 A. I believe so. I don't remember. I was on medicine.

5 Q. Your Honor ---

6 A. I was on medicine -- I don't remember. That's what I was
7 just telling him. I don't remember what I said when I read
8 my motion discovery. I don't remember.

9 Q. Okay. What medicine were you on at that time?

10 A. I got it written down. Haldol and Zyprexa. I was at the
11 county -- Haldol and Zyprexa, I believe. Haldol and Zypreza.

12 Q. And prior to the plea you were evaluated for mental health
13 for competency to stand trial; is that correct?

14 A. Yes.

15 Q. And Dr. Alicia Hall with the Department of Disabilities and
16 Special Needs, you're aware that she gave a report that
17 stated you were competent to stand trial. Do you remember
18 that?

19 A. No.

20 Q. You don't remember that?

21 A. No.

22 Q. You don't remember ---

23 A. I don't have a good memory like that.

24 Q. You don't have a good memory?

25 A. No.

1 Q. Okay. But you do remember that you were told you're going to
2 get ten years?

3 A. Right.

4 Q. Do you know whether that was that you were going to have to
5 get, a ten-year sentence, as the minimum sentence for armed
6 robbery?

7 A. I don't understand.

8 Q. You don't think that was it?

9 A. No, I'm saying I don't understand what you are saying.

10 Q. Okay. Court's indulgence. I have no further questions.

11 THE COURT: Redirect?

12 MR. JOHNSON: No sir, Your Honor. But at this time, it
13 looks like ---

14 THE COURT: You can step down. Thank you, sir.

15 MR. JOHNSON: --- my client's mother is here. I wanted
16 to step back ---

17 THE COURT: (Indiscernible) for a second.

18 (Indiscernible) Mr. Johnson?

19 MR. JOHNSON: My client. Asked for a break to go to the
20 bathroom, and there's some medications he has to take. And
21 he says he is having an issue. He would like to be able to
22 go to -- at this time. If that's allowed.

23 THE COURT: Yeah, that's fine. We'll let him -- that's
24 okay. Y'all coordinate that, please.

25 MR. JOHNSON: Your Honor, my client's mother is present

1 in the courtroom, and she spoke with me. There's an
2 indication they wanted to retain counsel and experts.
3 There's nothing additional that I have to offer at this time,
4 but they asked for this matter to remain open so that they
5 could do that.

6 THE COURT: I mean, they can make a showing on them. I
7 don't know that I want to just leave it open to have new
8 counsel come in and experts and all that at this point since
9 this was the time that it was scheduled. Mr. Zelenka?

10 MR. ZELENKA: Your Honor, respectfully, we started the
11 hearing. Mr. Johnson has been appointed for a significant
12 amount of time. He's filed an amendment. We began the
13 testimony. If he already had counsel, my position would be
14 different, but I'm afraid I would have to oppose a
15 continuance on the possibility that counsel might be retained
16 and experts might be sought. I apologize to the Court, and
17 to counsel, and to Mr. Shell, but there needs to be some
18 closure on this case.

19 THE COURT: Mr. Johnson?

20 MR. JOHNSON: Do you want to hear from Ms. Shell? She's
21 here in the courtroom.

22 THE COURT: Yeah, I'll be glad to hear from her. Do you
23 want to put her on the witness stand and ---

24 MR. JOHNSON: However you want to do it, Judge. Go
25 ahead and identify yourself. If you want to make a request

1 (indiscernible).

2 THE COURT: I don't know if she's technically
3 testifying. I don't know if I want to put her under oath,
4 then.

5 MR. JOHNSON: Yes, sir.

6 THE COURT: Why don't you just, you know, explain -- why
7 don't you have a seat here, explain to me what's going on
8 from your standpoint.

9 MS. SHELL: Basically -- oh, I'm sorry, thank you. Hi.
10 I'm Lashonda Shell. Mother of Kashawn ---

11 THE COURT: Can you spell that for her?

12 MS. SHELL: It's L-A-S-H-O-N-D-A.

13 THE COURT: All right. All right. Ms. Shell?

14 MS. SHELL: Given the -- I'm just basically, when this
15 court situation all started, I was told, "About ten years".
16 Given that it came to more ---

17 THE COURT: I'm sorry, I'm going to stop you here. This
18 does seem more along the lines of testimony, so I will put
19 you under oath.

20 MS. SHELL: Okay.

21 THE COURT: Okay? If you'll raise your right hand. Do
22 you solemnly swear to tell truth, the whole truth and nothing
23 but the truth, so help you God?

24 MS. SHELL: Yes, sir.

25 THE COURT: All right. Go ahead.

1 MS. SHELL: So, when we came to court, long -- I'm
2 trying to make a long story short, it wasn't like the
3 attorney -- from the charges and everything, even in
4 testimony from one of the victims, how she took the testimony
5 back and saying that it was fact he paid her. I thought that
6 would settle to why they were saying that it was going to be
7 a five to ten-year, because one of the persons got their
8 money back.

9 So it came out to be longer, and some of the stuff that
10 the attorney was telling us was -- was false. He told me to
11 take this certain plea or case because this will hold shorter
12 time than saying, you know, rather -- instead of saying -- I
13 had the attorney tell me that if -- it would come out better
14 on his record, if he said he brought a prostitute, versus
15 what the, you know what I'm saying -- what it was really
16 alleged that he did.

17 And in the police report, the witness even said -- I
18 mean the victim said he came and he actually brought her, and
19 then it was the friends that was with him. So, we thought
20 they was going to put them and only charge him for what he's
21 done, which was, brought the girl. And he didn't have
22 nothing -- because the other guy was charged with the
23 possession of weapons. He admitted it was his.

24 The other one's still out now, because he fled. But he
25 was the one who came into the robber and actually robbed when

1 he came upstairs, once he finished -- my son has -- has
2 disability. He was found incompetent only a few years, a
3 year or two before this when he was found competent. So, all
4 his life, I took him to the doctors monthly. I was one month
5 away from getting custody of him, because there's a mental
6 health -- the same place, saying he wasn't competent enough
7 to be by himself, or even you know -- so I had to get custody
8 of him, when all this fell down and hit me.

9 So -- and even in one of the cases, like the judge said,
10 how can I trial someone that doesn't even have -- don't even
11 know, what are we doing? Doesn't even have -- and he suffers
12 from bipolar, ADHD, ADD, all these other stuff that was in
13 his medical report, which is, I got about a whole bin full.
14 So, when he said five, ten years, he done served half of
15 that, I was like, okay. Then I'm maybe looking at another,
16 maybe two or three years he's going to be, you know, locked
17 up. Okay.

18 Then I can get him the professional help, because he
19 still has medical needs. Medical needs that the other judge
20 told him -- where to place him, and he's been placed in three
21 different correction centers, none from what the original
22 judge assigned him to be. So, that's another thing. So, if
23 we have all these things. He's not yet -- he's not getting
24 proper medical treatment in the facilities.

25 His roommate saved him from ODing himself, because when

1 they was giving him the medication, they just gave him his
2 own -- whole medications and told him to distribute himself.
3 I got a phone call. And I'm still calling around to figure
4 out why he's in those places that doesn't fit his needs,
5 according to what the Judge Addy said he's supposed to have,
6 where he's supposed to be.

7 But yet he's in leave -- he's this way, he's that way.
8 All this is not right. It's making sense so that I've been
9 betrayed by the (indiscernible) time, by that health, why
10 he's not getting proper medical there. He has scoliosis. He
11 was supposed to have got surgery. His back is like this.
12 He's not getting that surgery. He's done injured himself.
13 Had to get surgery on his hand because his mental -- where he
14 tried to abuse -- suicide.

15 They -- and when I get these reports and these messages
16 and these calls and whatever, it scares me because where he
17 was supposed to be originally upon sentencing they -- he's
18 not. Not only that, the sentence this time, it was not what
19 the man told me. That's why I went ahead and went forth,
20 because he didn't understand. He can't speak for himself.
21 That's written in black and white, that was stated.

22 And I felt betrayed because he has not went to one
23 hospital. He's been treated at three. I have paperwork from
24 all three hospitals of his condition. Nobody took that into
25 consideration. So, I felt like everything that should have

1 been took into consideration wasn't during that court time,
2 his mental health, the fact that he was found incompetent at
3 one time before. So, now we got conflicting paperwork. One
4 saying competent, one saying incompetent.

5 We have all these records saying that he can't even
6 think past the third grade level. We have new paperwork
7 saying I'm supposed to be getting custody of him the day
8 before he got locked up. He was actually working with the
9 police right before he got locked up, because I think he
10 always wanted to be undercover. I don't know where he got
11 this from. But he was working with Richmond County and
12 turning some bad guys in.

13 At the place that he was staying, it was an independent
14 place, and the owner died, so I was in the process of moving
15 him out. I got a phone call from Richland County, and they
16 were saying, well, "Kashawn has been working with us, with
17 taking some guys down. Guys that sold drugs inside the
18 place." That's when I was about to remove him, and I had to
19 get the custody paperwork to remove him.

20 THE COURT: I guess I need to, kind of, stick with ---

21 MS. SHELL: Yeah, I know, but it's just so much ---

22 THE COURT: -- why we should continue this case. Why
23 don't you talk about other lawyers and what expert?

24 MS. SHELL: Because I want to get another evaluation
25 done. I want a private evaluation done. Because it's like

1 the past evaluation conflicts with this evaluation. So, you
2 know, to even it out the third one, I think would be more
3 fair. Let the third person say, and we'll decide. Because
4 right now, one is saying incompetent, one is saying
5 competent. I just want a third evaluation.

6 THE COURT: All right.

7 MS. SHELL: And I want all the paperwork to be read and
8 presented and let his files -- his stories from the years be
9 read.

10 THE COURT: All right. Mr. Johnson, would you like to
11 ask her some questions?

12 D I R E C T E X A M I N A T I O N

13 BY MR. JOHNSON:

14 Q. Just, ma'am, you've indicated you want to retain counsel with
15 this PCR?

16 A. Yes.

17 Q. Okay. And you indicated you'd like to also have them
18 pursuing, retained experts to address this issue of
19 competence as it relates to PCR?

20 A. Yes.

21 Q. And you are requesting more time to do that?

22 A. Yes, sir.

23 MR. JOHNSON: Okay. That's all I have, Your Honor, and
24 that's what they've indicated to me, so.

25 THE COURT: All right. Mr. Zelenka, do you have any

1 questions?

2 C R O S S E X A M I N A T I O N

3 BY MR. ZELENKA:

4 Q. Have you approached any lawyers to represent your son?

5 A. Yes, sir.

6 Q. Who have you contacted?

7 A. I have two. I have actually, I've spoken with two and they
8 are only just waiting for me to make payment. One is Todd
9 Rutherford, and the other, I can't pronounce the last -- her
10 name, but I have it written down. And she's -- she's done
11 these several of times. I actually -- she was the one who
12 worked on a motion -- originally filed the paperwork, but, I
13 told her it was a time matter and that we will file and she
14 could continue.

15 Q. But at this time, you've not retained any lawyer, correct?

16 A. I have not paid them the money for it, yes, but I do have it.
17 I'm just trying to see if we can go forth through it. If we
18 can't, then today, that's when I would tell them that we can
19 proceed, and I can go ahead and say, "Hey, this is what I
20 need. I do need, y'all."

21 Q. Okay. When you were referring to the competency report
22 (indiscernible) this document?

23 A. I was actually given this document after the trial. They had
24 gave me -- so I was able to look at it, and then when I was
25 able to look at it, that's when I was like, I'm -- I got

1 confused. I'm not understanding, because how could they put
2 that out and who did it? That's when I started my
3 investigation on trying to figure out who was this person.
4 And I had some inside friends that actually looked into this
5 person who actually did the ---

6 THE COURT: Are you going to mark it?

7 MR. ZELENKA: I am.

8 THE COURT: Are you going to mark this as exhibit --
9 States, exhibit one?

10 MR. ZELENKA: State's exhibit one, competency to stand
11 trial evaluation, April 2nd, 2019. And, Your Honor, that was
12 also presented (indiscernible).

13 THE COURT: All right. Any objection?

14 MR. JOHNSON: No objection, Your Honor.

15 MS. SHELL: And I think I should have been -- obtained
16 to have that first, before the plea. I wasn't giving that
17 until after the fact.

18 THE COURT: All right. Let me see that. Do you need to
19 show that to her?

20 MS. SHELL: Yes, I would like to have it.

21 THE COURT: Use that one. So it's marked. All right.
22 State's one is in without objection.

23 (Whereupon, the above-described document was marked as State's
24 Exhibit No. 1.)

25 BY MR. ZELENKA:

1 Q. Ms. Shell, do you remember asking Jason Chehoski and Aimee
2 Zmorczek at the time that they were representatives to have a
3 mental health evaluation done of your son?

4 A. I'm finding -- the attorneys were the ones that was making
5 the decisions. I just follow. They said they're going to
6 have -- I just stated that my son does have mental issues.
7 They said they would get all the paperwork and everything
8 that they needed, all his records and everything, and they
9 would go forth, they would call me, or I would check back in
10 periodically to see what was going on, because I entrusted at
11 that time into them and to see, you know, what was going on.

12 Q. Okay. And they followed through with that, and had the
13 Department of Disabilities and Special Needs do a competency
14 evaluation to determine whether, in fact, your son was
15 competent to enter a plea or go to trial. And you're aware
16 prior to the plea that your son had been evaluated and had
17 been determined to be competent to stand trial; isn't that
18 correct?

19 A. Yes. They did inform me towards the -- well, about towards
20 the end, when we was about to go to court, because, again, I
21 had to be the one to keep reaching out to them, and that's
22 the part that was really frustrating, and to know where we
23 going, where we going from here. So, I think all of us stood
24 around at the day of trial outside, and that's when he said
25 he was found competent. And I wanted to know who found it,

1 and that's why I was like, I need a copy of the paperwork. I
2 should have had this done before, not the day of the trial.

3 Q. But again, you are not the client, were you?

4 A. Well, at that time, my client is mentally not aware or
5 knowledgeable of any of this. I'm his mother. I'm the one
6 who took care of his mental health evaluation and explained
7 and helped him understand things. And if he cannot explain
8 it, who's best to do it for his mother -- but his mother?

9 Q. You made a statement at the plea in litigation -- at the
10 guilty plea, didn't you?

11 A. Say that again?

12 Q. You appeared in front of the judge during the guilty plea
13 proceeding of your son and made statements to the Court about
14 that -- about your son, about his mental health concerns;
15 isn't that correct?

16 A. That is correct.

17 Q. Okay. And you explained your background, and your son's
18 father also appeared and made statements, Cashes Colwell
19 (phonetic); isn't that true?

20 A. Correct.

21 Q. And the aunt, Lashonda Colwell (phonetic) also made
22 statements?

23 A. Correct.

24 Q. And you made a reference to paperwork and seeing ten years on
25 the paperwork; did I misunderstand you?

1 A. Correct. At the day of the trial, they were saying that he
2 could get five to ten years, because I was asking, what were
3 we here for today? Because I didn't think was going through
4 a trial. I thought we was going through whether he was, you
5 know, incompetent at that time or not. I thought was going
6 through with something like that. A motion. You know, I'm
7 not really good in law. I'm good in dental, but not law.

8 So, at that time, when I came they told me, "Oh, well,
9 we're going to do the actual sentence today." I was like,
10 What do you mean? They say, "This is a day we decide we're
11 going to go through." And I was like, "Okay. So, what are
12 we looking at?" He said, five -- between five to ten years.
13 At that time, you know, it was devastating. But, you know,
14 imagine being side-swiped and seeing more. That's even more
15 devastating.

16 Q. Who told you that they were looking at a sentence between
17 five and ten years?

18 A. The attorney, Jason -- was this Jason -- however you
19 pronounce his name. Mr. Jason Chehoski.

20 Q. Both of them said five to ten years?

21 A. Yes, Mr. Chehoski and Ms. Aimee, she said -- she was -- now,
22 she was nice, and she was saying, and I can't take her
23 character away from her, because she really understood.
24 Because, as you know, someone that's knowledgeable and
25 dealing with someone with mental health, only they can

1 understand. So, she tried her best. I will give her that.

2 But I wasn't satisfied with the other attorney at all.

3 Because I was like -- it was just like a mean vibe, like,

4 this is what it's going to be. This is how it got to be.

5 This is how it got to be, but I have no say so.

6 Q. But you never saw anything in writing that said he was going
7 to receive a ten-year sentence, correct?

8 A. I never saw anything in writing. I trusted the attorney as a
9 verbal and they told me, this is the minimum that they did.
10 The maximum is ten years that they get. And that's what I
11 believed.

12 Q. You heard the maximum was ten years?

13 A. Was ten years. So, five to ten years.

14 Q. But you were sitting in court and heard the minimum was ten
15 years, up to 30 years; isn't that correct?

16 A. Once I sat into court, correct.

17 Q. Okay.

18 A. And the judge started going over the time sentence for the
19 charges or whatever. But yes.

20 Q. The judge -- there was a discussion about getting special
21 treatment in the Department of Corrections, and the judge
22 said he would note to request corrections -- to get him in a
23 place where he could have mental health counseling, correct?

24 A. Correct. Proper treatment, placed in a mental health
25 environment where he can receive special treatment,

1 medication, all that. For the first time none of that was
2 done. I had to call up to those places several times to
3 receive trip -- treatment for him.

4 Q. Okay.

5 A. And I just spoke with some of the nurses and each -- wherever
6 he was moved, and, you know, to try to -- they would say they
7 would work on it. They would try to get it -- COVID,
8 everything backed up. The (indiscernible) backed up. That's
9 why he wasn't receiving proper treatment in that jail. It
10 was a lot.

11 Q. Okay. I have no further questions, Your Honor.

12 THE COURT: (Indiscernible)

13 MR. JOHNSON: Not for this witness, Your Honor.

14 THE COURT: All right. Thank you. You may step down.

15 MR. JOHNSON: The Court allows it, my client, since she
16 raised the issue of treatment at SCDC, my client wanted to
17 testify about that. Will you allow me to recall him as a
18 witness?

19 THE COURT: I mean, treatment at SCDC, I'm not sure how
20 that would apply to the PCR. I mean, I realize you may have
21 some issues, but I'm not sure how that goes ---

22 MR. JOHNSON: Well, I guess it applies -- it links to
23 this thing in the allegation where he put in his original
24 application about understanding as intelligent waiver and
25 mental health problems -- or disability. (Indiscernible)

1 disability.

2 THE COURT: Well, I guess I'll let it -- I'll let you
3 recall.

4 MR. JOHNSON: All right. Mr. Shell (indisernible)

5 THE COURT: I guess let me -- let me roll over -- I
6 guess just kind of a motion continuance out there. Even the
7 fact is that there's no -- I've been in counsel retained now,
8 and one of the things that the -- the delay -- I mean, they
9 want a continuance is because to be able to hire some expert
10 in regards to evaluation. And I'm not sure an evaluation at
11 this point would be relevant when compared to an evaluation
12 that was done prior and submitted at the time of the hearing.
13 So, and I'll be glad to hear from you I just wanted to put
14 this on the record that, I will deny the motion for
15 continuance and but I'll let you go ahead and testify,
16 Mr. Shell.

17 R E D I R E C T E X A M I N A T I O N

18 BY MR. JOHNSON:

19 Q. Mr. Shell, basically at this time, can you testify about the
20 issue regarding your treatment, things you wanted to speak
21 about at SCDC, mental health treatment or disability
22 treatment that you received?

23 A. Yes, sir. Well, I'm at Lee correction institution, the worst
24 prison. Originally, they sent me to Lee so I could see
25 mental health every 30 days. But as I got there, I don't see

1 them, or nothing. And I had many breakdowns of wanting to
2 hurt somebody because they wanted to hurt me or whatever.
3 You know, I'd have people pull out knives and I tried to go
4 to mental health, and they don't do nothing about it,
5 whatever. They tell me different things. Leave it at that.

6 Q. Anything else you'd like to say about it? That's it? Okay.
7 Judge, we have nothing further.

8 THE COURT: All right. Any additional cross? All
9 right. Thank you.

10 MR. JOHNSON: Judge, that's all we have.

11 THE COURT: All right.

12 MR. ZELENKA: State will call Aimee Zmorczek.

13 UNNAMED SPEAKER: Do you solemnly swear or affirm the
14 statements you are about to make (indiscernible).

15 MS. ZMORCZEK: I do.

16 MS. ZMORCZEK: (Indiscernible) allergies.

17 THE COURT: It's going around.

18 D I R E C T E X A M I N A T I O N

19 BY MR. ZELENKA:

20 Q. Aimee, state your name for the record please.

21 A. Aimee (indiscernible) Zmorczek. Z-M-O-R-C-Z-E-K.

22 Q. What's your present occupation?

23 A. Criminal defense attorney.

24 Q. How long have you been practicing law?

25 A. Since 2008.

1 Q. And as part of your practice, what percentage of your
2 practice is involved in criminal defense?

3 A. 97 percent.

4 Q. And in that particular position, did you come to represent
5 Kashawn Shell?

6 A. I was appointed on his Richland charges, yes.

7 Q. How did that occur?

8 A. I just -- one of the ways I try to get back is to do the
9 contract every year. So, I signed up for the contract in
10 Richland and got his charges.

11 Q. As part of that responsibility did you have occasion to meet
12 with the Defendant?

13 A. I did. I did. And I sent my investigator down as well.

14 Q. Who was your investigator?

15 A. Brian Setree. Brian Setree.

16 Q. Okay. And how often did you meet with him if you recall?

17 A. I think it was like seven times that I had written down in my
18 notes.

19 Q. And in those meetings with your Defendant did he provide you
20 information about any defense he had to the Richland County
21 charges?

22 A. Not that were legally viable, yes.

23 Q. Okay. Not that were legally viable. What ---

24 A. The biggest thing that they -- that -- that he kept wanting
25 to talk about, was the status of the alleged victims and his

1 charges being prostitutes.

2 Q. And under that situation, how did that square with the other
3 charges he was also facing in Richland County?

4 A. Well, obviously his Lexington charges were way more serious
5 than his Richland charges that I recall. To be quite honest,
6 I remember meeting with Mr. Chehoski several times to try to
7 coordinate some sort of global resolution. That's basically
8 what I remember about it.

9 Q. And on those charges, he was asserting to you that he may
10 have had some connection through back page with this victim?

11 A. That's correct.

12 Q. And there was a factual dispute over that; is that also
13 correct?

14 A. Yes.

15 Q. Did your client admit to you that when he got to the Red Roof
16 Inn, he had knocked on the victim's door twice?

17 A. Yes.

18 Q. So the factual basis that he was given up to that point was
19 consistent with the state's version?

20 A. Yes.

21 Q. Other than whether she had prior connection with him, was
22 there any other factual issues that he presented to you,
23 other than the factual basis that State put in the record at
24 the time of the guilty plea?

25 A. None -- none -- none other than that.

1 Q. Okay. At some point in time, did you interact with that
2 assistant solicitor, Bethany Miles, in Richland County?

3 A. I did.

4 Q. And what are the circumstances of that communication with
5 her?

6 A. Typically, she has been very available. She's made herself
7 available to work with, which not a lot of solicitors do.
8 And so we talked -- we got together to talk about trying to
9 do a global resolution with his Lexington charges.

10 Q. And do you recall what the global resolution was?

11 A. Whatever we memorialized. I don't recall off the top of my
12 head. Sorry.

13 Q. Let me -- let me ask it this way. Did -- did you ever
14 indicate or learn from Ms. Miles that the State was agreeing
15 to a sentence of ten years for your client?

16 A. No, no, no. That was the mandatory minimum. I know we
17 talked about mandatory minimums, but no, there was never a --
18 whatever -- whatever, I'm sorry, I looked at it last night,
19 but I can't remember. But yeah, whatever was memorialized on
20 the record is what was the...

21 Q. Do you have the transcript in front of you?

22 A. I do.

23 Q. Okay.

24 A. Yeah so, on page five of the plea transcript, it outlines
25 from lines 12 to 18. Well, really 23. It outlines the

1 agreement that we had and that she was dismissing
2 kidnapping, possession of a weapon during (indiscernible) of
3 a violent crime (indiscernible), and agreeing that the CSC
4 first degree and armed robbery run current with Lexington
5 charges.

6 Q. Okay. So, they were -- Richland County was agreeing to
7 dismiss kidnapping and -- and do you recall what the
8 sentencing range for kidnapping is?

9 A. Zero to 30.

10 Q. And burglary first, and what's the sentencing range for that?

11 A. 15 to life.

12 Q. 15 to life? Yes. And they were agreeing that the CSC and
13 armed robbery run concurrent to the Lexington charges.

14 A. And they were dismissing a weapons charge, which would have
15 been five years on top of whatever sentence.

16 Q. And prior to that being said, Mr. Shell was advised of the
17 mandatory -- that the first degree charge would carry up to
18 30 years and a minimum of 10 on page four; isn't that
19 correct?

20 A. That's correct.

21 Q. 10 to 30 on armed robbery?

22 A. Yes.

23 Q. And they were going to be 85 percent sentences, correct?

24 A. And a strike, yes.

25 Q. All right. And did you receive discovery from the State? If

1 you recall?

2 A. I did receive it. I don't recall exactly when, but.

3 Q. Did you share that discovery with the Defendant?

4 A. I did. In fact, I remember when my -- when Brian -- my
5 investigator went down, he actually came back with it,
6 because he didn't want -- he the client -- didn't want it in
7 the jail.

8 Q. Okay. What did you ask the investigator to do, if you
9 recall?

10 A. Just to -- so a lot of times, sometimes if we send somebody
11 else from our office that's still under that,
12 confidentiality, sometimes they'll remember something
13 different, or they just tell males or females differently.
14 So, I'll always send my investigator to try to make sure that
15 we're getting the same version of the story.

16 Q. Okay. In your investigation did -- or your communications
17 with your client, did you ever come up with the name of
18 Tiffany and Patrick Folkes at all?

19 A. Not that I recall, at all.

20 Q. Okay. Do you recall anything about what he testified on
21 examination today about communication with a phone call and
22 explaining what was going on?

23 A. None.

24 Q. Okay. And again, the -- did you ever tell Mr. Shell's mother
25 that your client was going to receive a ten-year sentence?

1 A. No. I mean, I think certainly we advised that that was going
2 to be the basement, and that's certainly what we were going
3 to ask for. But you know, we -- never in my 15 years did I
4 ever promise a sentence that I didn't -- that wasn't
5 negotiated.

6 Q. Okay. There's been a question about his -- his mental
7 status. What if anything did you do? And what was your
8 communication like, directly, with your client?

9 A. I do -- obviously we were aware of his mental status, and I
10 do believe that that was the whole basis for our mitigation.
11 I hate that he came back competent, but he did. And there
12 was nothing we could, you know, can't over -- unfortunately,
13 the bar is so low on that so we were hoping that our
14 mitigation -- because I do agree that it is frustrating for
15 him to have these issues and to not be able to get the
16 treatment that he needs.

17 Q. Okay. Upon receipt of the mental health evaluation of April
18 2nd, 2019, State's Exhibit 1, did you consider seeking
19 retention of a second evaluator?

20 A. Unfortunately not, based on what they put in there. They
21 didn't give me something that I could justify hiring an
22 independent evaluator for.

23 Q. Okay. When you had communications with him, did you have an
24 opinion based upon your experience as a criminal defense
25 lawyer that he understood the nature of the charges against

1 him?

2 A. Oh, I think, I mean -- I think at the time, that I didn't
3 have any questions or concerns about his competency when we
4 pled.

5 Q. Okay. Did you have any questions about his ability to
6 communicate with you and understand what you were talking
7 about?

8 A. No.

9 Q. And approximately how often did you meet with him?

10 A. Honestly, I just know the number of times. He was in
11 Lexington so it was easier, I think, for Jason -- or I don't
12 -- I can't remember exactly where he was housed. But I just
13 remember, for some reason, Mr. Chehoski was able to get there
14 more often than I was. But it was enough times that -- and
15 we were working together, we made sure that he didn't go
16 significant periods of time without a lawyer.

17 Q. Okay. At the time of the -- the plea, did you think he had
18 an understanding that there was still a possibility that he
19 would be receiving a sentence of up to 30 years or ---

20 A. I mean, it was repeated several times that day, yes.

21 Q. Did you repeat it to his mother also?

22 A. I mean, I know it was said in court, you know, that this was
23 the range, and that this is what we would be asking for, but
24 that was the range, yeah.

25 Q. Okay. But outside of court, you had that same discussion?

1 A. Yes.

2 MR. ZELENKA: No further questions.

3 THE COURT: Re-direct?

4 C R O S S E X A M I N A T I O N

5 BY MR. JOHNSON:

6 Q. Did your investigator interview the victims on this case?

7 A. I believe they declined to be interviewed.

8 Q. And did he try to interview any other witnesses?

9 A. I believe that he did -- everybody that we knew about that
10 was there, I mean, you know, that's what we do in every case
11 that we get in.

12 Q. Okay. Did you personally review the discovery with the
13 Defendant, Mr. Shell, or did you have your investigator do
14 that?

15 A. I believe Brian did the majority of it, but then we discussed
16 it afterwards.

17 Q. Okay. And do you know how long your meetings were with
18 Mr. Shell?

19 A. They would vary.

20 Q. Okay. Did you give him a physical copy of all the discovery?

21 A. I did, but that's what -- it was given back because he didn't
22 want it in the jail.

23 Q. Okay. Did you discuss a sentence of ten years as far as it
24 being a minimum on armed robbery with him?

25 A. I mean, if the words ten years came out of my mouth, it would

1 have been a mandatory minimum for armed robbery. Yeah.

2 Q. Do you feel like he had any discussions with him about that
3 to make sure he understood that was not going to be the
4 sentence? Or do you feel like you said anything that could
5 have given him that ---

6 A. I don't think there was any confusion. Obviously, I think
7 everybody wanted ten years. I think that's what -- that's
8 what the hope and desire was. But certainly there was never
9 a promise or a guarantee of that.

10 Q. Did you speak with his mother about the case?

11 A. Yeah, after I got permission, I did.

12 Q. Did you make any statements to her about a ten-year sentence?

13 A. Just that -- the same. That it would be the minimum.

14 Q. Okay. Do you know if Mr. Chehoski had any conversations
15 about ten years that you heard?

16 A. I don't. I don't know.

17 MR. JOHNSON: No more questions, Your Honor.

18 THE COURT: Redirect?

19 MR. JOHNSON: No redirect.

20 MR. ZELENKA: No redirect, Your Honor.

21 THE COURT: That wasn't your witness, that's right.

22 Thank you.

23 MS. ZMORCZEK: Your Honor, I was supposed to be in
24 (indiscernible) 20 minutes ago. Is it okay if I leave?

25 THE COURT: Yes. I don't think we ---

1 MS. ZMORCZEK: And if ---

2 THE COURT: Any objection to her leaving?

3 MR. ZELENKA: (Indiscernible)

4 MR. JOHNSON: (Indiscernible)

5 MS. ZMORCZEK: (Indiscernible)

6 THE COURT: All right. We will confirm that.

7 MS. ZMORCZEK: Thank you.

8 THE COURT: Would you like us to tell her you're on your
9 way?

10 MR. ZELENKA: State calls Jason Chehoski.

11 UNNAMED SPEAKER: Do you solemnly swear (indiscernible)

12 D I R E C T E X A M I N A T I O N

13 BY MR. ZELENKA:

14 Q. Mr. Chehoski, state your name for the record please.

15 A. Jason Chekoski.

16 Q. What's your present occupation?

17 A. I am the Deputy Public Defender for the 11th Circuit and the
18 Chief Public Defender for Edgefield, Saluda, and McCormick
19 counties.

20 Q. As public defender, your practice is 100 percent criminal?

21 A. That's correct.

22 Q. As part of that responsibility in December 2017, were you
23 appointed to represent Kashawn Shell?

24 A. Yes, sir.

25 Q. And as the arrest in that case was December 6th, 2017, so is

1 it correct to say you were appointed shortly after his
2 arrest?

3 A. Yes, sir.

4 Q. And do you recall how often you met with the applicant?

5 A. If I may refer to my notes. I try to meet with -- I tried to
6 meet with my clients about every 60 days. It was about 13 or
7 14 times.

8 Q. Okay. Thank you. And did your client -- in the meetings
9 with your client, did he indicate to you that he had a
10 defense to the charges?

11 A. He indicated multiple defenses that were inconsistent with
12 each other. He -- in our initial meeting, he stated he
13 couldn't have done the rape because he was gay. He had then
14 initially -- he wanted to pursue a mental health defense.
15 And then lastly, he wanted to pursue a defense where -- to
16 say that his confession was coerced.

17 Q. Okay. What happened to the coerced confession defense?

18 A. The coerced confession defense didn't get raised until
19 October 18th of 2019, so roughly two years after I'd been
20 representing him. This was the first he had brought it up,
21 and I kind of pushed back on it a little bit during our
22 meeting to suggest -- and to say I didn't think he was -- I
23 didn't think he was being truthful with me at the time.

24 Q. What was his reaction to that if you recall?

25 A. I think at that point, he dropped that line of defense.

1 Q. And how did he indicate to you that he thought it was
2 coerced?

3 A. Through a written note.

4 Q. And in the written note did he describe what he thought the
5 coercion was? Or to you?

6 A. He said that his -- (indiscernible) -- said his confession
7 was coerced and didn't want to plea to something he didn't
8 do.

9 Q. Okay.

10 A. I believe it was -- the note was three or four sentences long
11 at most.

12 Q. So he is basically saying it was false, and therefore must
13 have been coerced?

14 A. Right.

15 Q. Did he indicate to you sometime subsequent to that period
16 that he was, in fact, factually guilty of the charges?

17 A. Actually prior to that, he had indicated that he wanted -- he
18 did not want a trial and wanted to plead guilty.

19 Q. As a criminal defense lawyer, when a client indicates that to
20 you, what -- what steps do you then take? As far as
21 representation in the defense?

22 A. I usually open plea negotiations with the prosecutor. Try
23 and get the best deal possible for my client.

24 Q. And did you do that with prosecutor, Rhonda Patterson?

25 A. I did.

1 Q. And approximately when did you initiate that in contrast with
2 the guilty plea in this case, which was in November, 20th,
3 2019?

4 A. Right. It would have been in, I guess, earlier -- the
5 earliest I have this in September of 2019, a formal offer may
6 have been made earlier, but in -- in a range of November of
7 2019.

8 Q. Okay. And in your practice, what -- what do you describe as
9 an informal offer?

10 A. Typically, it's either a phone call or an email, something
11 that's memorialized that, you know, again, explains what
12 their offer is, if charges are being reduced or dismissed, or
13 any sentences that are being recommended as part of the plea.

14 Q. And was that formal offer consistent with what he ended up
15 pleading to?

16 A. Yes.

17 Q. Okay. With respect to providing discovery? Did you meet
18 with the client and provide discovery to him?

19 A. Yes.

20 Q. And how was that done?

21 A. I met with him in April of 2018. It was April 3rd. I will
22 bring a copy of the discovery in a manila envelope. I
23 provide Mr. -- provide my client with a waiver. And the
24 waiver is just to explain that there is sensitive information
25 that can negatively affect our case if it falls into the

1 wrong hands. At the same time, he has a right to discovery,
2 as it's his file, and if he wants a copy of the discovery,
3 ask him to sign the paper, understanding the risks that come
4 with it.

5 Q. Was a discovery provided to him?

6 A. Yes.

7 Q. Did he sign the waiver?

8 A. Yes.

9 Q. Did he keep the paperwork?

10 A. Yes. At least he never returned it to me. He may have sent
11 it off to family for them to keep it, but I'm not -- I don't
12 have any information that says he did that.

13 Q. Did you hire -- or did you use an investigator on this case?

14 A. I do not see that I did.

15 Q. And do you recall why you didn't?

16 A. I -- I don't have -- I don't have in my notes, anything that
17 indicated any witnesses that we would have needed to talk to
18 that was outside of the discovery or -- and that would be
19 likely to talk to us.

20 Q. The name in the application, Tiffany and Patrick Folkes was
21 listed as a ground for relief as to whether you called them,
22 communicated, or sort of called them at the time of the
23 guilty plea. Are you familiar with that -- those
24 individuals?

25 A. I am not.

1 Q. Were you present in court when the applicant testified about
2 who they are and what their role would have been?

3 A. I was.

4 Q. Would that cause you, based upon that information, to call
5 them either during the guilty plea proceedings or to pursue
6 them differently?

7 A. I don't see how they would have been helpful.

8 Q. How did the mental health evaluation occur?

9 A. It was -- I requested it after a meeting with Mr. Shell's
10 mother. Mr. Shell's mother had provided us with some medical
11 records that indicated that there was -- at least there was
12 possible mental health along with intellectual disability.
13 That would have been -- that I felt would have to be explored
14 further before we could be ready to proceed with the case.

15 Q. What did you do as a result of that information?

16 A. I requested a -- both a competency evaluation through DMH and
17 the Department of Mental Health and the Department of
18 Disability and Special Needs, along with a criminal
19 responsibility evaluation as well.

20 Q. Okay. Let me show you State's Exhibit Number 1. Let me ask
21 you, was that the evaluation that you received
22 (indiscernible)?

23 A. This is the report, yes.

24 Q. Did you take the opportunity to review the report?

25 A. I reviewed the report with -- with Mr. Shell. This was --

1 would have been -- I gave him a copy of the report on May
2 17th, 2019.

3 Q. And as a result of reviewing that report, did you consider
4 seeking a second evaluation?

5 A. I did not.

6 Q. And why is that?

7 A. I did not -- after reading the report and the details, I did
8 not feel that a second report would yield any different
9 results.

10 Q. Okay. And again, that report was on competency to stand
11 trial?

12 A. Correct.

13 Q. At any time, did you have difficulty in communicating with
14 your client?

15 A. I did not.

16 Q. And you met with him 13 to 14 times?

17 A. That's correct.

18 Q. Was his demeanor consistent throughout that time period, or
19 did it wax and wane?

20 A. I felt his -- I thought his -- his demeanor remained
21 consistent. He was always soft-spoken and polite and -- but
22 also easy to converse with.

23 Q. In those communications with him did you discuss the plea
24 negotiations that you would come to in September of 2019?

25 A. I did.

1 Q. Did you represent to him that he would receive a ten-year
2 sentence?

3 A. I did not. I did -- I think I mentioned that I thought, like
4 my expectation, I thought would be somewhere between 10 to
5 15. Again, that's just based on my experience and the judge.
6 It was certainly not a promise. But also, again, based on my
7 charges, he was not facing a mandatory minimum, but as he was
8 -- as we were doing this as a global resolution, he was. So,
9 that ten years was going to be the floor.

10 Q. And as a result of -- when you say as the result of a global
11 resolution, that's because of the armed robbery?

12 A. Correct.

13 Q. The part that was in Richmond County, carried the mandatory
14 minimum of ten?

15 A. That's correct.

16 Q. Did you have an opinion that your client understood?

17 A. Yes.

18 Q. That he was having a range?

19 A. Yes.

20 Q. And not a guaranteed sentence of ten years?

21 A. It was directly communicated to him by both myself and
22 Ms. Zmorczek that he was facing a mandatory minimum of ten
23 years. He was facing a maximum of 20 years on my charges,
24 but a maximum of 30 years on the Richland county charges.

25 Q. Did you share that information to his mother?

1 A. I did.

2 Q. What did you tell her?

3 A. Again, I don't remember the exact words, but we would have
4 all said that, "Look, there's a mandatory minimum of ten
5 years on that. That's certainly what we're going to be
6 asking for." But other than the -- other than the dismissal
7 of the charges that Ms. Zmorczek related and the reduction of
8 the charges that I had, there were no other negotiations in
9 terms of sentencing.

10 Q. Court's indulgence. At the conclusion of the case there was
11 a discussion concerning mental health treatment at the
12 Department of Corrections. Do you remember that?

13 A. I do not.

14 Q. Okay. Well, that's all the questions I have.

15 THE COURT: All right. Cross examination, Mr. Johnson?

16 MR. JOHNSON: Thank you, Your Honor.

17 C R O S S E X A M I N A T I O N

18 BY MR. JOHNSON:

19 Q. Did you attempt to interview the victims in the case?

20 A. No, sir.

21 Q. Isn't it true that if they had been interviewed, it's
22 possible they could have changed their story, affected the
23 State's case?

24 A. Yes, that's true.

25 Q. Okay. And what was the reason for not interviewing the

1 victims?

2 A. I don't feel like we -- we did not have good contact
3 information. We -- I didn't have a way to contact them.

4 Q. Investigators are capable of finding people though, correct?

5 A. Correct.

6 Q. But you did not ask the investigator to do that?

7 A. That's correct.

8 Q. So you didn't get any response from the victim refusing to
9 talk to you?

10 A. That's correct.

11 Q. Do you recall the conversation about -- you said that you
12 believed the range would be 10 to 15, did you do anything
13 with the client in writing regarding your expectation on the
14 10 to 15?

15 A. I did not. Again, it was an oral conversation where I said,
16 I think that the -- it was like, again, a belief based off my
17 experience in front of Judge Abby, what I thought would
18 happen. Again, it always comes with, you know, it's just a
19 belief and I could be spectacularly wrong on both ends.

20 Q. Okay. Did you make a statement about having to sign this
21 paperwork if you want a shot at the ten years, or anything
22 related to that kind of statement?

23 A. No.

24 Q. But the ten years was a minimum to your understanding?
25 Mandatory minimum.

1 A. It was a minimum under the -- for the armed robbery, which
2 was -- which was the man -- which would be the lowest he
3 would be able to get.

4 Q. And when you had discussions -- did you ever have discussions
5 with Ms. Zmorczek or were you separate when you spoke to him?

6 A. Can you clarify that please?

7 Q. Meeting at the same time or separate times?

8 A. I always -- whenever I met with Mr. Shell at the jail, it was
9 just me and him.

10 Q. And you never had anyone else assist you on the case meet
11 with him?

12 A. No. I -- no one else involved in my case met with him.

13 Q. When you went in, you said he signed to receive discovery,
14 did you give him all print discovery?

15 A. Yes.

16 Q. Okay. Did you have any audio, video, anything else that you
17 could have played for him?

18 A. There was a -- there was some audio. His statement to law
19 enforcement was on audio. We met at a later date to review
20 that.

21 Q. Okay. So you played that for him?

22 A. Yes, I did.

23 Q. And after reviewing the order regarding evaluation,
24 evaluation was done because there was some concern about his
25 ability to understand or communicate. Is that reasonable?

1 A. It's -- Mr. Shell's mother brought to my attention some
2 history of mental illness and, again, possible intellectual
3 disability, and also provided some records as well. And that
4 provided more than a sound basis to request the evaluation.

5 Q. Do you feel that your statements about an expectation of 10
6 to 15 could have caused confusion with him or what he was
7 actually going to receive?

8 A. No.

9 Q. No more questions, Your Honor.

10 THE COURT: You redirect?

11 MR. ZELENKA: Nothing on redirect. Thank you.

12 THE COURT: All right.

13 MR. ZELENKA: Your Honor, we've got both the solicitors
14 here, but in light of the testimony, I'm not going to call.
15 I'm going to rest on the record.

16 THE COURT: Anything else from the State?

17 MR. ZELENKA: Nothing else, Your Honor.

18 THE COURT: All right. Anything ---

19 MR. ZELENKA: And further, Your Honor, that's all we
20 have.

21 THE COURT: All right. Any comments?

22 MR. JOHNSON: Just, Your Honor, well, just in closing, I
23 will say Mr. Chehoski did discuss some statements he made
24 about the 10 to 15, I think that could have caused confusion
25 based on my client's situation. Other than that, I don't

1 have any.

2 MR. ZELENKA: Your Honor, I would respectfully submit
3 they failed in their burden of proof on all the allegations.
4 As you're well aware, under a *Hill v. Lockhart* double
5 standard or the double requirements are, whether those
6 deficiencies are shown, whether either of the counsel acted
7 outside the range of competence commanded of lawyers
8 practicing criminal law, and also that if they were
9 deficient, whether the applicant has proven that there's a
10 reasonable probability that the resolve of the pleading would
11 have been different, and that's determined that he would have
12 gone to trial rather than pled guilty.

13 With -- with the allegations that have been presented, I
14 think they failed in their burden of proof to show that there
15 was a lack of meeting with the Defendants, both Mr. Chehoski
16 and Ms. Zmorczek met with him a significant number of times.
17 Both of them and their offices provided discovery with him.
18 Went over the discovery with him and provided that discovery.
19 The claim that they had failed to investigate, both the
20 lawyers presented competent testimony that Ms. Zmorczek had
21 her investigator go out and meet with him, go over the
22 discovery.

23 She also had discussions with him about the facts of the
24 case. Mr. Chehoski further indicated that he met with the
25 individual 13 to 14 times, went over the facts of the case,

1 discussed possible defenses that he may have had, and
2 discussed the lack of viability to some of those defenses
3 under the facts and circumstances of the case. With respect
4 to Tiffany and Patrick Folkes, I would submit there's no
5 indication, and counsel Chehoski said that the information
6 the applicant presented from the witness stand would have not
7 have indicated steps that he felt he would have needed to
8 take as part of his investigation in the case.

9 The mental health matters that were suggested
10 throughout, there was a valid and competent mental health
11 evaluation done that determined, while the Defendant suffered
12 from some mental illness, alcohol and substance abuse, as
13 well as intellectual disability of the mild nature -- I think
14 it, in fact, was 48 IQ, that was presented to the judge,
15 Judge Addy at the time of the proceeding. He was well aware
16 of those matters when he both inquired of the applicant
17 during the guilty plea, and took those things into account in
18 mitigation.

19 And Judge Addy addressed the thorough mitigation that he
20 had in deciding what the sentence was going to be. There was
21 also the request made to have some mental health treatment if
22 he went -- a discussion at the plea concerning that alcohol
23 and drug abuse counseling did not do anything for what this
24 applicant needed, and Judge Addy said he would try to do what
25 he could do, but recognizing the Department of Corrections is

1 the ultimate placement of where Defendant is housed.

2 All those matters were competently represented by
3 Counsel at the time of the hearing. Finally, and probably
4 most importantly, I think, they failed in the burden of proof
5 to show that it was promised a flat sentence of ten years.
6 Both Counsel indicated that in their discussions with him,
7 they were also always talking about that it was a range to be
8 given, and that was not a guarantee.

9 At the time of the guilty plea, that range was expressed
10 to the Defendant while they were in court. The guilty plea
11 negotiations were set out on the record, which are consistent
12 with what both the attorneys testified about and what they
13 shared with the client. The client indicated, after all of
14 that, at the time of the plea, he desired to enter a plea.
15 There was a brief break, and they came back, and he continued
16 to desire to enter the plea after further discussions with
17 the client. Simply put, they failed to show that the guilty
18 plea that was presented was not freely and voluntarily
19 entered with the adequate assistance of trial counsel. Thank
20 you.

21 THE COURT: All right. I think I'd like to take this
22 under advisement and review the record and I'll let y'all
23 know my decision.

24 MR. ZELENKA: Thank you, Judge.

25 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Lexington

I, AMANDA WATSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in South Carolina Circuit Court 11, Lexington, South Carolina, on the 18th day of December, 2023.

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

AMANDA WATSON, TRANSCRIBER

**CAPACITY TO STAND TRIAL EVALUATION
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE**

DATE OF EVALUATION: April 2, 2019
NAME: Kashawn Shell
SCDMH #: 1004-3487
DATE OF BIRTH: [REDACTED] 1995
DMH EXAMINER: Rebecca A. Payne, M.D.
Fellow in Forensic Psychiatry
University of South Carolina School of Medicine
DDSN EXAMINER: Alicia V. Hall, Ph.D.
OTHERS PRESENT: Jason S. Chehoski, Esq. (attorney for the defendant)

PSYCHIATRIC DIAGNOSES:

Intellectual Disability, mild
Alcohol Use Disorder, mild, in a controlled environment

OPINION REGARDING CAPACITY TO STAND TRIAL

Mr. Shell currently has the capacity to stand trial.

DISPOSITION

Mr. Shell was returned to the Lexington County Detention Center at the conclusion of the evaluation.

IDENTIFYING INFORMATION

Mr. Shell is a 23-year-old African-American male who was seen at the Forensic Evaluation Service pursuant to a court order from the Lexington County Court of General Sessions. This court order requests an evaluation of his competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), and S.C. Code Ann. §44-23-410 (1976). He is currently charged with "Armed Robbery, Criminal Sexual Conduct 1st degree, Kidnapping (x2), Criminal Conspiracy and Weapons Possession during violent crime." According to the court order, it was issued for the following reasons: "Based upon

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meetings with the defendant and this defendant's medical diagnosis with mild mental retardation, mood disorder, attention deficit hyperactivity disorder and oppositional defiant disorder. Defense counsel has great concerns for this defendant's well being."

STATEMENT OF NONCONFIDENTIALITY

Prior to initiation of the evaluation, the defendant was warned of the limitations of confidentiality. The defendant was informed of the following: 1) This evaluation was ordered by the court; 2) this evaluation was not intended to provide treatment; 3) the evaluators were employed by the South Carolina Department of Mental Health (SCDMH) and the South Carolina Department of Disabilities and Special Needs (SCDDSN) and not paid by either his attorney or the solicitor in his case; 4) a report would be generated from this evaluation and sent to his attorney, the solicitor, and the judge in his case; and 5) the evaluators could be called to court to testify at a trial. After presentation of this information, the defendant was able to correctly answer questions regarding the nature and purpose of the evaluation and the limits of confidentiality. He voluntarily agreed to participate in this evaluation.

SOURCES OF INFORMATION

1. Order for Competency to Stand Trial Evaluation received by the Forensic Evaluation Services on February 25, 2019
2. Arrest Warrants issued by Lexington County on December 11, 2017:
 - a. 2017A3210202098 for Weapons/Unlawful carrying of a pistol
 - b. 2017A3210202104 County for Weapons/Sale or delivery of pistol to, and possession by, certain persons unlawful
3. Arrest Warrants issued by the Municipality of West Columbia on December 11, 2017:
 - a. 2017A3221100825 for Robbery while armed with a deadly weapons
 - c. 2017A3221100826 for Criminal sexual conduct/1st
 - d. 2017A3221100827 for Kidnapping - 16-3-910
 - e. 2017A3221100828 for Kidnapping - 16-3-910
 - f. 2017A3221100829 for Criminal Conspiracy - 16-17-410
 - g. 2017A3221100830 for Poss. Firearm/Knife during Violent Crime - 16-23-490
4. West Columbia Police Department Investigative Report for Case Number 1737712
5. Prosecutor's Summary Report for Case Number 1737712
6. Incident Report for Case Number 1737712
7. Voluntary Statements from alleged victims dated December 6, 2017
8. Voluntary Statement from a co-defendant, dated December 11, 2017
9. Statement from an alleged victim, dated December 7, 2017
10. Richland County Sherriff's Department Incident Report and Investigative Report for Case Number 1712040506
11. Case File Summary for Case Number 17-024651 from Lexington County Multi-Agency Narcotics Enforcement Team

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12. Lexington County Sheriff's Department Reporting Officer Narrative dated December 11, 2017
13. Lexington County Sherriff's Department Booking Report dated December 11, 2017
14. The defendant's South Carolina 3-Year Driver's record
15. Defendant's National Crime Information Center (NCIC) record
16. Records from Lexington County Detention Center (LCDC)
17. Records from Alvin S. Glenn Detention Center (ASGDC)
18. Records from Columbia Area Mental Health Center (CAMHC)
19. Records from Palmetto Health Baptist Emergency Room in 2013 (two visits) and 2015 (one visit)
20. Records from Palmetto Health Richland Emergency Room in 2015 to 2017 (seven visits)
21. Joint SCDMH-SCDDSN Competency to Stand Trial Evaluation conducted by Geoffrey R. McKee, Ph.D., ABPP (forensic psychologist) dated Mary 27, 2011
22. South Carolina Department of Mental Health (SCDMH) Episodes of Care report for the defendant (date unknown)
23. Richland County School District Two records from 2009 to 2011.
24. SCDMH Forensic Evaluation Service social work assessment conducted by Elizabeth Bluemle, LMSW on March 21, 2019 with information obtained from Ms. Lashonda Shell (the defendant's mother)
25. A 120-minute clinical forensic interview with the defendant conducted on April 2, 2019

Note: We reserve the right to alter our opinion should further information become available.

CLINICAL AND PSYCHIATRIC HISTORY

Mr. Shell was transported from the Lexington County Detention Center the morning of the evaluation. He was alert and oriented to person, place, and time. He stated that he has been incarcerated at Lexington County Detention Center since December 2017.

He described his mood as "sometimes sad and sometimes happy." The defendant stated that he was having difficulty with sleep, which he attributed to "the voices in my head." Mr. Shell described these voices as "whispers," and elaborated that he was unable to understand them. He reported that these primarily occur at night and not during the day. He stated that he was not presently experiencing the voices. Mr. Shell stated that he sleeps from the time after morning medications are administered and breakfast is served until approximately 1:00 or 3:00 P.M. He estimated that he typically sleeps seven to nine hours in a 24-hour period. He reported that he feels rested upon awakening. Mr. Shell reported that his appetite is adequate. He is unaware of weight loss or weight gain presently.

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He elaborated that he feels sad when he argues with his family and feels happy when "watching TV or talking with people." He denied current suicidal or homicidal thoughts, plan, or intent. The defendant described that he spends his time talking to his family on the telephone, watching TV, and going outside. He reported that he typically watches movies on channel 26 (FX) and the last movie he watched was the *Transformers*. He discussed some of the major characters in *Transformers*, including Bumblebee and Optimus Prime. The defendant reported that he plays Spades (a card game) with his cellmates. Mr. Shell elaborated that he "gets mad when I lose," and "stomps my foot and sighs." He stated that he has two cellmates and is currently housed on the mental health unit.

He described being placed on suicide watch on occasion during his incarceration for "throwing my shit on the wall," and that the "voices told me to do it, so I did it." He denied experiencing other command hallucinations. He stated that he is currently on medications to "keep the voices down in my head." He reported that his current medications began while at Lexington County Detention Center.

Mr. Shell is a limited historian in that he is unable to provide details regarding certain past psychiatric involvement. He reported that he has been psychiatrically hospitalized at Palmetto Baptist Hospital when he was 16 or 17. He estimated that he was hospitalized there "a couple of times." He described being admitted there once because he was mad at his mother. He reported that he was seen at Columbia Area Mental Health Center in the past for outpatient treatment, but was unable to provide details about this treatment. He described only that he "had a lot of problems." The defendant endorsed one prior suicide attempt when he was 17, at which time he cut himself with a knife. He reported that he was arguing and fighting with his family and intended to take his life. He stated that he did not seek treatment then and did not tell anyone about the suicide attempt. He did not recall whether he has had homicidal thoughts in the past.

The defendant endorsed symptoms consistent with psychosis, but frequently responded "I don't remember" when asked for details. He described that prior to his incarceration he was "hiding behind cars for no reason". He estimated that he began hearing whispers at approximately age 20, but "didn't tell anybody about it." He denied current or past visual hallucinations. He denied signs or symptoms that would be consistent with a manic or hypomanic episode, such as an elevated/expansive/irritable mood associated with a decreased need for sleep, an increase in goal-directed activity, talkativeness, and/or reckless and out-of-characteristic behavior.

Records from Lexington County Detention Center were reviewed. These records show that in December 2017, Mr. Shell was diagnosed with Bipolar Disorder; Delusional Disorder, Not Otherwise Specified; and Mild Mental Retardation. He was started on lamotrigine (Lamictal®, a mood stabilizer). He has been involved in several altercations during his incarceration. In March 2018, he was referred to orthopaedics after hitting a wall in anger and subsequently injuring his hand. In December 2018, he was observed

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to be hostile after he did not receive bond. He verbalized that he would like to remain in the mental health unit "due to hearing voices" and Zyprexa® (olanzapine, an antipsychotic medication) was initiated. The Medication Administration Record from March 2019 indicated that he was prescribed Zyprexa® and Haldol® (haloperidol, an antipsychotic) daily by Dr. Gilmore.

Records from Alvin S. Glenn Detention Center were reviewed. In April 2014, Mr. Shell was housed in the specialized housing unit and there was notation about "delusional ideations and presenting bizarre conduct." In June 2018, he was observed smearing feces in the cell and on himself. In July 2018, he was prescribed Zyprexa® and the associated diagnoses at that time included Bipolar Disorder, Type I, Most Recent Episode Manic; Personality Disorder, Not Otherwise Specified; and Developmental Delay. There is notation that Mr. Shell was on suicide watch in April, May, and June of 2018 and has the "tendency to verbalize SI when he is told no or does not get his way."

The medical record from Columbia Area Mental Health Center was reviewed. He was initially referred to Columbia Area Mental Health Center in January 2012 after an inpatient hospitalization at Palmetto Health Baptist Hospital in December 2011. The notes from Columbia Area Mental Health mentioned that Mr. Shell has a history of running away. There is notation that his aunt had custody at one point in time and that he had been expelled at least twice. Diagnoses during this treatment episode (from 2012 to 2017) include Impulse Control Disorder, Oppositional Defiant Disorder (ODD), and Attention Deficit Hyperactivity Disorder (ADHD). The record mentions that he was seen at "14 Med Park and informed he no longer has ADHD." In April 2015, he was brought in by his mother for problems with his behavior at home and for paranoid behavior. There was mention that Department of Disabilities and Special Needs (DDSN) was pursuing placement at that time also. There are no other reports or observed behaviors that would be indicative of a sign or symptom of psychosis in these records. The medications he was prescribed over this period included Trileptal®, (oxcarbazepine, a mood stabilizer) for "mood swings"; Depakote® (valproate, a mood stabilizer); and various stimulant medications.

The South Carolina Department of Mental Health Episodes of Care indicated that Mr. Shell has had nine treatment episodes beginning in April 2003. All of these treatment episodes have occurred at Columbia Area Mental Health Center. Associated diagnostic codes include Other Unknown and Unspecified Cause of Morbidity and Mortality, ADHD, ODD, Episodic Mood Disorder, Mild Intellectual Disability, and Nonpsychotic Mental Disorder. The records from Columbia Area Mental Health Center that were reviewed above constitute six of these treatment episodes.

Records from Palmetto Health Baptist and Palmetto Health Richland emergency departments were reviewed. Mr. Shell was seen at Palmetto Health Baptist Emergency Department twice in 2013 when he was approximately 17. Both of these visits were precipitated by behavioral outbursts at home. In March 2013, he was described as "very

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destructive" and spray painted some objects. In June 2015, he was seen at Palmetto Health Richland Emergency Department after he had an argument with his family and subsequently kicked and punched glass. He was seen again in July 2016 after an argument over his money. During this altercation, the record reflects that the "patient took hairspray and a lighter and started lighting things in the house on fire." There were other visits during these time periods that were not related to mental health complaints.

During his previous competency to stand trial evaluation that was conducted in 2011, Mr. Shell was 15 years old at the time. The evaluators opined that he was not competent to stand trial "due to his very low intelligence" and unlikely to be restored in the foreseeable future.

Ms. Lashonda Shell mentioned that the defendant began to show signs of paranoia in his 20's and believed that his mother and doctor were trying to poison him. At times, he would say things that "did not make much sense." She described that he would "bark like a dog sometimes," which began when he was an adult. She mentioned that he has been prescribed medications in the past including Depakote®; Remeron® (mirtazapine, an antidepressant medication); and Adderall® (amphetamine/dextroamphetamine mixed salts, a stimulant medication). She was worried about the health risks of medications and decided to take him off all of his medication when he was a teenager.

ALCOHOL AND SUBSTANCE USE HISTORY

Mr. Shell reported that he began drinking alcohol at age 17. He estimated prior to his incarceration he was drinking three to four nights out of a week. He estimated that he would drink approximately one 40-ounce beer per night. He described that he "got drunk easy." He endorsed symptoms of withdrawal and interpersonal problems with his family as a result of his drinking. Furthermore, he described placing himself in situations in which it was physically hazardous while intoxicated.

The defendant endorsed marijuana use approximately once per month. He stated that marijuana makes him sleep and he makes poor decisions while under the influence of marijuana, such as riding with individuals who were also intoxicated. Mr. Shell denied the use of other illicit drugs including cocaine, crack cocaine, heroin, prescription pills, LSD, synthetic marijuana, mushrooms, synthetic stimulants, or over-the-counter cold products.

MEDICAL HISTORY

Mr. Shell denied chronic medical problems. A review of the medical record indicates that he has scoliosis and has had several orthopaedic injuries in the past after punching objects. Specifically, he was seen in March 2018 by orthopaedics when he struck a metal door with his right hand while incarcerated at Lexington County Detention Center. His encounters at the Palmetto Health Richland emergency department revealed that he has

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had various complaints regarding pain in his left wrist, foot pain after a fight over marijuana, a suture removal after he was stabbed, and a BB gunshot wound in July 2017.

Mr. Shell is not currently on medications for a chronic or acute medical conditions. He stated that he has no known drug allergies.

FAMILY HISTORY

Mr. Shell reported that a maternal aunt has diabetes and arthritis. He was unaware of mental health problems, drug or alcohol use, or suicide attempts or completions in his family.

The social history obtained from the defendant's mother reported that he has a maternal great aunt with "Depression and Bipolar Disorder" and a maternal aunt with Depression. There is no known family history of substance use.

SOCIAL HISTORY

Mr. Shell stated that he was born in Columbia, South Carolina. He was unaware of problems with his mother's pregnancy or his delivery. He stated that he was unaware of problems with developmental milestones such as walking, talking, or toileting. The defendant reported that he has two sisters and one brother. He stated that his parents were not married or together at the time of his birth. He stated that his father currently lives in North Carolina with his stepmother and is a truck driver. He was raised with his aunt, his grandmother, his mother, and his three siblings mentioned above. He reported that he was in foster care for a short time for unknown reasons.

Mr. Shell described his time in school as "the good old days." He stated that he was in special education classes for the entirety of his education. He stated that he had few good friends and was considered a "troublemaker." He was unable to recall whether he had been suspended in the past. He believed that he had been expelled at least once. He stated that he went to school through the 12th grade (age 18) and received a certificate. He transferred schools several times and stated that he completed the 12th grade at Spring Valley. During his childhood, Mr. Shell reported that he ran away at least "five or six times" after arguments with his mother. He stated that the police would be looking for him and typically he was at a friend's house. He endorsed setting fires as a child and the fire department was called when he set a tree on fire. He denied cruelty to animals. He denied a history of physical or sexual abuse as an adult or child.

After he left school, Mr. Shell stated that he "minded my own business." He received disability benefits in childhood and adulthood. He was unaware of the condition for which he received a disability check. He described holding several jobs in the past including at Carowinds®, Burger King®, Zaxby's®, and Kubler Construction, Inc®. He stated that his longest job lasted "a few months." He stated that he was fired for arguing with

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management. He additionally stated that at Carowinds® he was caught "kissing females." He endorsed receiving services through Vocational Rehabilitation, but could not recall when. He stated that he has never lived on his own and that his mother is his payee.

Mr. Shell described that he is single, but has had romantic relationships with women in the past; he indicated that the longest relationship lasted one month. He stated that his relationships typically end because of arguing and cheating. He denied having children. Mr. Shell reported that he has a driver's license, which he stated that he obtained last year.

Records from Richland County School District Two were reviewed. These school records indicated that Mr. Shell attended special education self-contained classes since the 1st grade. These records also indicated that Kashawn "performed in the mental retardation range on the Wechsler Intelligence Scale for Children – 4th Edition (WISC-IV) with a full scale IQ of 48 and a verbal comprehension index of 57." An Individualized Education Plan (IEP) from April 2010 described that Kashawn "has had a 'long history of emotional and behavioral difficulties.'"

The defendant's National Crime Information Center (NCIC) report shows three prior arrests. The first arrest occurred in September 2015. He has been arrested in the past for Breach of Peace, Possession of Marijuana, and Violation of a Beginner's Permit.

The following information is gathered from the social work assessment:

Ms. Lashonda Shell reported that she was in a car accident when she was pregnant with the defendant. Mr. Shell exhibited developmental delays in motor skills, talking, and toileting. He was primarily raised by his mother. He would become angry when picked on by other children. He had a stutter in the past. The defendant has a history of running away from home and punching walls when he becomes angry. He was placed in foster care at age 5 when his mother was charged with truancy. Ms. Shell stated that the defendant has been receiving services from DDSN since he was in middle school. He graduated from Northeast High School and received a certificate. She described that he had numerous out-of-school suspensions and in-school suspensions for spitting, yelling, crying, and screaming in class. She denied that he was expelled. She indicated that the defendant passed his driver's license test after numerous attempts.

She mentioned that prior to his recent arrest, he reported that people in a car were driving slowly and looking at him, and that he thought they were out to get him. She also mentioned that he was "doing well"; she added that he was working at Zaxby's® and living with a cousin and some other roommates. She reported that the roommates were smoking marijuana in the house. She expressed concern that they were taking advantage of him and taking his money. She also stated that she believes the codefendants "wanted Kashawn to take the blame for the incident." She considers him to be a vulnerable adult and wishes to obtain guardianship.

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MENTAL STATUS EXAMINATION

Mr. Shell was alert and oriented to person and place. He was dressed in detention center attire and his grooming and hygiene were fair. His eye contact was adequate and he was cooperative over the course of the evaluation. His speech was a normal rate, tone, and volume. No tics or tremulousness were observed. He described his mood as "sometimes sad, sometimes happy." His affect (outward expression of emotion) was euthymic. His thought process was linear and goal-directed. At times, he was evasive about answers; he frequently responded "I don't know." He denied current suicidal or homicidal thoughts, plan, or intent. He denied current auditory or visual hallucinations, paranoia, ideas of reference, thought broadcasting, or thought insertion.

He was able to repeat three objects presented to him and recalled all three of the objects with prompting after a delay of five minutes. He was able to recall significant past personal information although he had difficulty as noted above with dates and details. However, we found no evidence of clinically significant long- or short-term memory impairment. He was aware of the current President and could name past Presidents. He was able to perform simple calculations using change and a spelling task, indicating adequate concentration. He was able to group similar objects into abstract categories; however, he had a concrete interpretation of proverbs. His judgment and insight were considered to be fair.

DIAGNOSTIC FORMULATION

Mr. Shell has been given numerous diagnoses throughout his lifetime and there has been a lack of diagnostic consistency across providers. After reviewing available records and conducting a clinical interview, it is our opinion that Mr. Shell does not meet diagnostic criteria for a mood disorder (e.g. Bipolar Disorder) or psychotic disorder (Psychotic Disorder Not Otherwise Specified).

In order to meet the criteria for a diagnosis of Intellectual Disability (ID), an individual must have concurrent deficits in intellectual and adaptive functioning, present before the age of 18. Mr. Shell's school psychological test results are commensurate with those of an individual with ID, as was his clinical presentation during this evaluation. He has deficits in adaptive functioning that are commensurate with his intellectual limitations. He attended special education classes throughout school and received a certificate. He has not been able to live independently and requires a payee to manage his monies. In addition, he has been a consumer of DDSN services. It is our opinion that he meets diagnostic criteria for Intellectual Disability, mild.

Mr. Shell endorsed that he was drinking three to four times per week prior to his incarceration. Furthermore, he described symptoms of withdrawal, interpersonal

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problems as a result of his drinking, and recurrent use in physically hazardous situations. As such, a diagnosis of Alcohol Use Disorder, mild is assigned.

CONCLUSION REGARDING CAPACITY TO STAND TRIAL

Mr. Shell was able to state several of the charges against him. He stated that he is alleged to "went to the hotel, robbed the girls, robbed those prostitutes." He believes that some of these charges are felonies, but is unaware of which ones. His attorney provided education that all of his charges are felonies with the exception of the Unlawful Carrying of a Weapon. Mr. Shell was aware that he could ask Mr. Chehoski should he have questions about his case.

Mr. Shell was able to identify Mr. Chehoski and described him as his attorney. Mr. Shell stated that Mr. Chehoski's role is to "help me with the case." He elaborated that he has met with Mr. Chehoski "a lot of times"; the defendant was able to provide the public defender's office telephone number from memory. Mr. Shell stated that he trusts Mr. Chehoski and believes that he is doing a good job. He verbalized that it is important to tell Mr. Chehoski the truth "so he can help me." Mr. Shell was aware that Mr. Chehoski would keep the information discussed confidential. The defendant stated that he sometimes has difficulty understanding what Mr. Chehoski says, but that he alerts Mr. Chehoski when this happens.

Mr. Shell was aware that the solicitor is the attorney "against me." He stated that the judge is a neutral party and that the judge's roles include issuing a verdict in a bench trial, sentencing, and keeping order in the courtroom. Mr. Shell was able to accurately describe appropriate courtroom behavior including being "nice and polite," and speaking "when the judge speaks to me." He needed education about the terms and definitions of *contempt of court* and *under oath*.

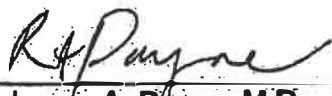
The defendant was able to state the pleas available to him including *guilty* and *not guilty*. He defined a guilty plea as stating "that you did it." He defined a *not guilty* plea as stating "that I didn't do it." Mr. Shell was aware he would receive a sentence if he pleaded *guilty*; he was aware that he would go to trial should he plead *not guilty*. Mr. Shell required education regarding the concepts involved in plea bargains or plea deals. He was able to retain a plea bargain involves pleading *guilty* in return for a lighter punishment. He was able to correctly answer questions regarding hypothetical plea bargains. He stated that he could consult with Mr. Chehoski about whether to take a plea bargain. A hypothetical crime with varying amounts of evidence with potential plea bargains was presented to him; he demonstrated a factual understanding of the hypothetical situation as well as the ability to manipulate the information regarding whether to accept or decline the hypothetical plea bargains. Mr. Shell was aware he is the one to ultimately decide whether to accept or decline a plea bargain.

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Mr. Shell required education regarding the number of individuals in a jury and the unanimous requirement for a jury verdict. He was able to adequately define a *witness* as "you seen it," referring to an accident or a crime. He was unaware of witnesses in his case, but he was aware that he could ask his attorney. He was aware that a witness is expected to tell the truth. He was given a hypothetical situation in which a witness was untruthful on the stand and how he would manage that situation. He stated that he would whisper his concerns to Mr. Chehoski. Mr. Shell defined *evidence* as "things they got on you" and provided the examples of "a knife or a gun or anything, use it against me." He was able to accurately identify examples of evidence and witnesses in a hypothetical situation presented to him. He stated that there is evidence (i.e. a gun) in his particular case.

Mr. Shell was able to state possible potential punishments other than incarceration. He was aware he could be put on probation or given an ankle monitor for house arrest. He was able to adequately describe the rules of probation, including meeting with a probation officer at regular intervals, paying probationary fees, not possessing weapons, and abstaining from drugs and alcohol. He was aware that should he violate probation he could be arrested and returned to jail or prison. Furthermore, he was provided education that should he be found guilty for the charge of Criminal Sexual Conduct, he could be required to register as a sex offender.

Although he required education about certain courtroom officials and procedures, it is our opinion that Mr. Shell exhibited adequate factual knowledge regarding the legal process and demonstrated a rational understanding of his case. He retained information as well as applied the information accurately as it pertained to his legal situation, as well as several hypothetical situations that were proposed. Given his lower intellectual functioning, he may require reeducation on courtroom officials and courtroom procedures. He would also benefit from complex topics being broken down into simpler, smaller topics using words that he could understand. The defendant understands the proceedings against him and he is able to assist his attorney in his own defense. Therefore, it is our opinion that he has capacity to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), and S.C. Code Ann. §44-23-410 (1976).



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RAP/dmc-6948/6949

D: 04/08/19

T: 04/09/19

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Kashawn A Shell, SCDC #382844,	)	Case No. 2020-CP-32-03906
	)	
Applicant,	)	AMENDED¹
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

This matter comes before this Court by a *pro se* application for post-conviction relief filed on November 20, 2020 by Kashawn Shell. The State made an initial Return on June 14, 2021. Ola Johnson was appointed to represent the Applicant on December 15, 2020. The Applicant filed an Amendment to the Application for Post-Conviction Relief dated September 22, 2022.

On December 18, 2023, an evidentiary hearing was heard before this Court. The Applicant was present and represented by his counsel, Ola Johnson. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Applicant, LaShonda Shell (the Applicant's mother), Aimee Zmroczek, and Jason Chehoski. At the outset of the hearing, this Court denied applicant's motion for continuance because the Applicant's mother was not present. The State opposed the motion. This Court initially denied the motion to continue. After the mother arrived, counsel for the Applicant advised the Court that the mother wanted to retain counsel and keep the matter open so that they could do that. Since no other counsel had been

¹ The Order of October 7, 2024 is amended to delete the reference to the Victim's name and correct several grammatical errors. The previous Order will be sealed as provided at the end of this Order.

retained at that time and the matter had been pending since 2020 without other counsel retained, the State opposed it. The Court denied the request.² At the conclusion of the hearing, the Court took the matter under advisement. After consideration of the record the Court issues as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington and Richland County Clerks of Court.³ Applicant was arrested on December 11, 2017, following an investigation into a series of sexual assaults and armed robbery incidents occurring in West Columbia and Columbia. During its July 2018 term, the Lexington County Grand Jury Indicted Applicant for armed robbery (2018-GS-32-1633) and first-degree criminal sexual conduct (2018-GS-32-1634).

On November 20, 2019, Applicant appeared before the Honorable Frank R. Addy, Jr., and pleaded guilty to lesser-included offenses of attempted armed robbery and second-degree criminal sexual conduct. Applicant also waived jurisdiction and presentment to the grand jury and pleaded guilty to Richland County indictments for first-degree criminal sexual conduct (2019-GS-40-7852) and armed robbery (2019-GS-40-7853). The State dropped Lexington County charges for kidnapping, possession of a weapon during the commission of a violent crime, and criminal conspiracy charges and Richland County charges for kidnapping, possession of a weapon during the commission of a violent crime, first-degree assault and battery, and first-degree burglary in exchange for Applicant's plea.

² During LaShonda Shell's PCR testimony, she indicated that she had not retained a lawyer and she indicated that she had two possibilities. One possibility she named was Todd Rutherford and another was not specifically named.

³ Because Applicant pleaded guilty to the Lexington and Richland charges at the same time and the events giving rise to the charges occurred on the same night, the Court finds Applicant's PCR claims should be litigated in a single action.

Jason Chehoski, Esquire, represented Applicant on the Lexington charges and Aimee Zmroczek, Esquire, represented him on the Richland charges. Assistant Solicitor Rhonda Patterson of the Eleventh Circuit Solicitor's Office and Assistant Solicitor Bethany Miles of the Fifth Circuit Solicitor's Office prosecuted the case. In addition to the *nolle prossed* charges, the State agreed to run the Richland and Lexington sentences concurrent. Judge Addy ultimately accepted Applicant's plea and sentenced him to concurrent terms of eighteen years imprisonment on all charges.

Applicant filed a timely notice of appeal. Counsel Chehoski on the Lexington County matter stated in his Rule 203(d)(1)(B)(iv) explanation that he did not have a good faith basis to believe any issues were properly before the Court of Appeals, citing Frazer v. South Carolina, 430 F.3d 696, 706 (4th Cir. 2005) ("A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as 'an active advocate on behalf of his client.'") (quoting Anders v. California, 386 U.S. 738, 744 (1967)). On February 5, 2020, the Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation as to why an appeal from his guilty plea should proceed. Shell v. State, (S.C. Ct. App. filed Feb. 5, 2020). The case was remitted back to the Lexington County circuit court on February 21, 2020.

Applicant also appealed his Richland County convictions. Counsel Zmroczek stated in her Rule 203(d)(1)(B)(iv) explanation that Applicant's family felt the eighteen-year sentence was excessive due to Applicant's intellectual disability. On February 25, 2020, the Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation as to why an appeal from his guilty plea should proceed. Shell v. State, (S.C. Ct. App. filed Feb. 25, 2020). The remittitur was issued on March 12, 2020.

Applicant commenced this PCR action on November 20, 2020.⁴

II. FACTUAL BASIS OF THE PLEA

The events giving rise to the Lexington County charges began on December 6, 2017, at approximately 4:46 PM. (Plea Tr. 10). The victims were twenty-three-year-old Ginger and twenty-four-year-old Courtney. (Plea Tr. 10). Ginger was messaged on a social media app called Black Page by Applicant. (Plea Tr. 10). They agreed to meet at the Quality Inn located at 2516 Augusta Road in the West Columbia area of Lexington County to have sex. (Plea Tr. 10). Applicant arrived at the hotel with his Lexington County co-defendant, Charles Gallart. (Plea Tr. 10). Upon their arrival, Gallart and Courtney went to Gallart's vehicle to smoke marijuana while Applicant stayed behind with Ginger. (Plea Tr. 10). Once they were alone, Applicant pulled out a revolver and ordered Ginger to lie on the bed. (Plea Tr. 10–11).

Ginger stated to law enforcement that Applicant made her have sex with him while presenting the gun the entire time. (Plea Tr. 11). After he had sex with her, he used her phone to call Courtney back up to the room. (Plea Tr. 11). When Courtney and Gallart came back to the room, Applicant pointed the gun at her. (Plea Tr. 11). He then ordered Courtney and Ginger to lie on the floor while he and Gallart searched the room. (Plea Tr. 11). They took both woman's cell phone and approximately \$200.00 in cash. (Plea Tr. 11). Applicant recorded the entire incident on his cell phone. (Plea Tr. 11). After law enforcement arrived, Ginger was taken to the hospital where a SANE kit was completed. (Plea Tr. 11).

⁴ It appears Applicant's mother filed the application on his behalf. The plea transcript indicated Applicant's mother has also initiated probate proceedings on Applicant's behalf due to his mental health issues. (Plea Tr. 22, 28–30).

The events giving rise to the Richland County charges occurred that same night at a hotel in Columbia. (Plea Tr. 12–13). The circumstances were different in that the victim did not know Applicant or have any arrangements to meet up with him. (Plea Tr. 13). She was simply staying in a hotel room. (Plea Tr. 13).

The victim, M [REDACTED] L [REDACTED], told law enforcement Applicant knocked on her door. (Plea Tr. 13). When she answered, Applicant apologized, telling her he had the wrong room. (Plea Tr. 13). Applicant left and returned to the room approximately five minutes later. (Plea Tr. 13). This time he knocked on her door, he had a gun in his hand. (Plea Tr. 13).

Applicant identified himself as a police officer and told M [REDACTED] to let her in. (Plea Tr. 13). She stated the gun appeared to be of the type carried by law enforcement. (Plea Tr. 13). Applicant then held her at gunpoint while three co-defendants entered the room. (Plea Tr. 13). Applicant then grabbed her by her shirt, pushed her into the bathroom, and sexually assaulted her. (Plea Tr. 13). Another one co-defendant sexually assaulted her and forced oral sex on the victim. (Plea Tr. 13). Applicant stole forty dollars and marijuana. (Plea Tr. 13). M [REDACTED] was twenty-years old and was unknown to Applicant. (Plea Tr. 13).

On December 11, 2017, Applicant and Gallart were arrested by the Lexington County Sheriff's Department at the Red Roof Inn located off Berryhill Road in Lexington. (Plea Tr. 11). The hotel is known as a hot spot for drugs and prostitution. (Plea Tr. 11). Applicant and Gallart fit the descriptions of the perpetrators described by Ginger and Courtney. (Plea Tr. 11). The men were questioned by West Columbia Investigator Chris Morris and Sergeant Voss with the Richland County Sheriff's Department regarding the armed robbery and sexual assault incidents. (Plea Tr. 12). Both confessed, but Applicant admitted to most of the same facts reported by the victims. (Plea Tr. 12, 14).

Applicant stated that he and Gallart split the money, and that he used his share to pay his rent. (Plea Tr. 12). Applicant told law enforcement he knew the victims were very scared and that he knew what he was doing was wrong. (Plea Tr. 12). Applicant apparently confessed to his brother as well. (Plea Tr. 12). He also told law enforcement he wanted to be caught so he would stop. (Plea Tr. 12). DNA found on vaginal and rectal swabs taken from Ginger matched DNA taken from Applicant. (Plea Tr. 12).

III. CURRENT APPLICATION

In his initial application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

- (10) State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) “Ineffective assistance of plea counsel – failure to inadequately[sic] investigate the facts and circumstances surrounding the alleged sexual conduct and robbery and defendant’s history of mental illness before advising him to plead guilty”
 - (b) “Allege objection to sentence”
 - (c) “Advise defendant of answers to judge. Alleged error available under and common law, statutory or other writ, motion, petition, proceeding or remedy may institute without paying filing fee”
 - (d) “Discovery of exonerating after plea; issue raised regarding insufficient evidence to support a conviction could not have been raised originally; pleas were not knowingly and intelligently entered”
- (11) State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) “Alleged victim erroneously identified defendant as sexual aggressor when she had consensual sex with him before rape by at least one other co-defendant”

- (b) “Alleged victim mistakenly identified defendant in room when robbery occurred”
- (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) “Ineffective assistance – defendant was not advise[sic] of the right to switch lawyers”
 - (b) “Pleas were not intelligently entered – defendant did not have capacity to raise”
 - (c) “Issue was not raised until after a hearing regarding new evidence”

Applicant requests relief as follows:

“Dismissal of state case. Alternatively, proper advisement of plea and additional plea hearing, sentence reduction/hearing.”⁵

In his amended application, the Applicant,. Through counsel, alleged the following:

1. Failed to Meet Sufficiently: “Applicants counsel Jason Chehoski and Aimee Zmroczek failed to meet with the Applicant a sufficient number of times to review the evidence.”
2. Failed to Provide Discovery. “Applicants counsel Jason Chehoski and Aimee Zmroczek failed to provide discovery to applicant.”
3. Failed to Investigate. “Applicants counsel Jason Chehoski and Aimee Zmroczek failed to properly investigate these cases to provide a defense for Applicant.”
4. Filed to call witnesses. “Applicants counsel Jason Chehoski and Aimee Zmroczek failed to call witnesses Tiffany and Patrick Folks.”
5. Promised 10 years incarceration. “Applicants counsel Jason Chehoski and Aimee Zmroczek coerced the Applicant into entering a guilty plea by statements they made including Mr. Chehoski stating he had to enter the guilty plea and both attorneys slated he would receive a sentence of 10 years’ incarceration.”

⁵ The relief Applicant seeks is not available on post-conviction relief—the only relief available would be a new trial on the original indictments. See S.C. Code Ann. § 17-27-20(b); Singleton v. State, 313 S.C. 75, 85–86, 437 S.E.2d 53, 59 (1993) (discussing section 17-27-20(b) and the appropriate relief in PCR cases); Gilstrap v. State, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating that even under the assumption that all the allegations were true, the relief to be granted on PCR is remand for a new trial); Smith v. State, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (“We now clarify the proper remedy is a new trial.”).

This Court has before it the Lexington and Richland County Clerks of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeals, the guilty plea transcript; the records of Applicant's initial PCR action; and the records of the current PCR action.

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 (1985).

Burden of Proof

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

Ineffective Assistance of Counsel

When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal

cases. “There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Strickland, 466 U.S. at 689. “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood, 338 S.C. at 110, 525 S.E.2d at 517).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, 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. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d

442, 444 (1999).

After careful review of the entire record, including the testimony and exhibits presented at the evidentiary hearing, and based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Below are this Court's rulings in regard to each of Applicant's specific allegations of ineffective assistance of counsel:

1. Failed to Meet Sufficiently: "Applicants counsel Jason Chehoski and Aimee Zmroczek failed to meet with the Applicant a sufficient number of times to review the evidence."

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if trial counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing *Easter*) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.") Mere speculation and

conjecture is insufficient to substantiate allegation that counsel's deficient performance was prejudicial. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

At the time of the guilty plea, Judge Addy stated he had been advised that an evaluation had been conducted by the Department of Mental Health of the Applicant. The April 2, 2019 evaluation found that Shell suffers from mild mental retardation. Judge Addy noted that there were additional mental health diagnosis, but Applicant's primary problem was mild intellectual disability. Tr.p. 6. The Court then inquired of Richland County defense counsel Zmroczek and Lexington County defense counsel Chehoski about whether they were able to communicate intelligently with Applicant about the charges and explain it to him in a way he understood exactly what is involved in this. Tr.p. 6. Each counsel confirmed that they had and that they were comfortable in going forward with the plea.

During the plea, the court inquired of the Applicant about the medications that he was taking - Haldol and Zyprexa- and Applicant confirmed that the Haldol was for the voices he sometimes heard and the Zyprexa was a mood stabilizer. Tr.p. 9. Shell was then asked by the court concerning his psychiatric and special needs issues, to describe in his own words why he was here. He stated that he was in court based upon his charges and for a plea. Tr.p. 9, l. 12-24. Shell when asked confirmed that he was guilty of the charges. Tr.p. 10, l. 1-3. After the factual basis was presented by Assistant Solicitor Patterson and Assistant Solicitor Miles, Applicant confirmed that he heard what the solicitors said about the case, that what they said is what happened, that he did not disagree with what was said, and that it was true. Tr.p. 14.

At that point, Judge Addy went through the Applicant's constitutional rights he was waiving by entering the guilty plea, including that he could have a trial and did not have to plead

guilty, that a trial was where other people determine his guilt, that there would be 12 people on the jury, the state would bring in witnesses and his lawyers could ask them questions, that he could bring witnesses that could be questioned, that he did not have to prove anything at trial that he could subpoena witnesses to court, that he would be able to testify, and if he wanted or not testify and the jury would be told not to hold the failure to testify against him. Judge Addy advised the Applicant that at the trial, he would be presumed innocent and the jury would be told in the eyes of the law he hadn't done anything. He advised Judge Addy that he wanted to waive those rights and plead guilty. Tr.p 18.

Judge Addy then inquired with Shell on whether he was happy with the way Mr. Chehoski and Ms. Zmroczek had tried to help him, and he affirmed that he was. Tr.p. 18, l. 18-21. He declared that he had talked with them enough, which he affirmed he had. When asked if he wanted to spend more time to talk with them, Shell declared he did. At that point the court gave a recess to allow them to talk. Tr.p. 18-19.

After the break, Shell confirmed with the Court that his counsel had answered his questions. Tr.p. 20, l. 1-5. Counsel advised the court that they had no concerns. Shell advised the judge that he did not need any more time to talk with them and he declared that he was good. He confirmed that he was totally happy with the help his lawyers had given him and that he had no complaints to make against them. Tr.p. 20, l. 11-25.⁶

⁶ In his *pro se* applicant, he makes a claim that he was not advised of his right to switch lawyers. The genesis of this confusing allegation is not clear. It was not raised in the amendment to the original application. However, there is no constitutional requirement that an applicant must be advised of his right to switch lawyers by his current lawyer. The right of an accused to effective assistance of counsel, however, does not extend to the appointment of counsel of choice, or to special rapport or even a meaningful relationship with appointed counsel. Morris v. Slappy, 461 U.S. 1, 13-14, 103 S.Ct. 1610, 1617-18, 75 L.Ed.2d 610 (1983). See State v. Boykin, 324 S.C. 552, 555, 478 S.E.2d 689, 690 (Ct. App. 1996).

Shell confirmed that he had not received any promise of anything in terms of the kind of sentence he would receive. Tr.p. 20, l. 25-p. 24, l. 4.

At the plea, Lexington County counsel Chehoski advised the Court that the Applicant completed the 12th grade and has been on a disability. Tr.p. 22, l. 5-7. He had full cooperation with the police. Tr.p. 22. He confirmed that in his meetings with Shell he had indicated that he did not want a jury trial and wanted to accept responsibility from as early as March 2018 when Solicitor Patterson made her offer. The situation was delayed because there was transfer with the Richland County prosecutors prior to Solicitor Miles involvement. Tr.p. 22-23. He asked for leniency and the 10-year minimum sentence. Tr.p. 23.

Richland County counsel Zmroczek confirmed that the recommended sentence was to run concurrently. She acknowledged that there had also been transfer of counsel and solicitors on the Richland County charges that added to the slowness. Counsel Zmroczek like Chehoski emphasized his disability and mental health needs and a request for treatment in the correctional facilities. Tr.p. 25-26. She noted that he would be subject to lifetime GPS monitoring and faced a possibility of civil commitment (Sexually Violent Predator proceedings). Tr.p. 26. She described the 24-year-old that she had met as a gentle and kind person. As with Chehoski, Zmroczek pointed out that the minimum of 10 years is a very long time for someone with Applicant's mental and intellectual disabilities. Tr.p. 27.⁷

⁷ During the plea, the defense in mitigation presented his mother, Lashonda Shell who described that at birth, it was recognized that the Applicant suffered from disabilities. Tr.p. 28. She blamed his nephew and their friends for leading him astray and led to his eviction from where he was staying. Tr.p. 29. She complained that even after he was locked up on these charges, the others used his credit card and social security benefits. Tr.p. 30. His father Cassius Colwell made a plea also. Tr.p. 31. He resided in Charlotte and learned from Applicant's mother that someone was talking about pulling a gun on him and shooting the Applicant. Tr.p. 31-32. He advised the Court that she and the Applicant had struggled, but he wanted to be doing things like fishing with his

During the PCR hearing, counsel Aimee Zmroczek testified that her notes reflected that there were seven meetings with the Applicant and that most of the meetings were with her investigators Brian Setree. Counsel Jason Chehoski testified that he met with the Applicant at least every 60 days after his appointment. The Applicant testified that that Mr. Chehoski came to the county jail a few times, but he did not keep count. He knows that Chehoski came and met with him more than Ms. Zmroczek.

This Court finds that the Applicant has failed in his burden of proof that there was a Sixth Amendment violation related to the number of meetings with the Applicant. During the plea, the Applicant indicated under oath that he was happy with the way counsel had tried to help him, and he affirmed that he was. Tr.p. 18, l. 18-21. In addition, he stated that he had talked with them enough which he affirmed he had. Tr.p. 18. When asked if he wanted to spend more time to talk with them, Shell declared he did. At that point the court gave a recess to allow them to talk. Tr.p. 18-19. After the recess, the Applicant confirmed that he did not need any more time with the Applicant.

These statements by the Applicant under oath at the plea carry a presumption of verity. Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” Dalton v State, 376 S.C. 130 at 137–38, 654 S.E.2d 870, at 874 (Ct. App. 2007) (internal citations and

son. He asked the court to be lenient. He recognized what the Applicant did was wrong, but 10 years is a long time. He apologized for not spending enough time with his son, but stated the judge ordered that he stay in S.C where his mother was. Tr.p. 32-33. Lashonda Colwell, his aunt, stated that both families were god-fearing. She described the Applicant as one who when growing up would step up and do things. She felt the Applicant, though, did not understand the consequences of his actions. As an officer of the court herself, she was hoping the court was listening and taking all the facts into consideration. Tr.p. 34. Judge Addy inquired of the Applicant who chose not to say anything. Tr.p. 37, l. 4-8.

quotation marks omitted); cf. Blackledge v. Allison, 431 U.S. 63, at 73–74 (1977) (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”). The Applicant has failed to prove any cogent reason why he should not be held to the truth of the statements made before Judge Addy on the need for further consultation.

This Court also finds credible Mr. Chehoski’s testimony about meeting with the Applicant at least every 60 days for the two-year period that he was representing him and around 13 to 14 times prior to the plea. Similarly, this Court finds credible that Ms. Zmroczek and/or her investigator met with him at least seven times prior to the plea.

This Court finds credible evidence to find that both counsels devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared. As additionally set forth below related to investigation and discovery, counsel were aware of the Applicant’s position of any possible defense to the charges and desired to plead guilty, the facts of the state’s version of the case as well as the discovery. Further, this Court finds that they were both aware of the Applicant’s mental status and had him evaluated by the Department of Mental Health who reported that he was competent to stand trial although he suffered from a mild intellectual disability.

This Court finds that counsel was not deficient in the number of meeting and adequacy of the meeting prior to the guilty plea which fell within the standards of competence of lawyers practicing criminal law. In addition, the Applicant has failed to show the existence of any prejudice under Hill v. Lockhart. He has failed in his burden to prove in showing that had there been

additional meetings with the Applicant by counsel, that there was a reasonable likelihood that the Applicant would have gone to trial on all the charges rather than plead guilty. His allegation must be denied.

2. Failed to Provide Discovery. “Applicant’s counsel Jason Chehoski and Aimee Zmroczek failed to provide discovery to applicant.”

In this allegation, the Applicant contends that he failed to receive the discovery from either counsel. This Court must conclude that he failed in his burden of proof factually and legally. During the PCR hearing the Applicant testified that Chehoski came to the county and discussed things with him. He stated that Chehoski did bring papers with him. However, he claimed he was never shown any evidence. Counsel Chehoski testified that he met with Applicant on April 3, 2018 and brought a copy of the discovery that he had received. He had the Applicant sign a receipt for it and provided a waiver to explain that there was sensitive information and that he understood the risks that came with receiving the discovery. Chehoski stated that Shell kept the paperwork and never returned it to him. In addition, Chehoski stated that he did not use an investigator in the case because he did not see any witnesses outside of the discovery that he needed to talk to or would likely talk to. The April 3 discovery was just written paperwork. Counsel Chehoski stated that he met with Shell on a later date with the audio statement he had given to law enforcement and they reviewed it together at that time. Counsel Zmroczek stated that after she received the Richland County discovery from the State that she had her investigator show it to the Applicant. However, when this was done, the Applicant indicated that he did not want to keep a copy of it at the jail and gave it back to them. She testified that she also went over the discovery with the Applicant at a later date.

This Court finds as a fact that both counsels provided access to the state’s discovery to Shell. The Court finds that each counsel’s testimony was credible on this issue. The Applicant’s

factual allegation is without factual merit since was provided with access to both discoveries and retained a copy of the Lexington County discovery. Counsel Chehoski also went over the audio statement of his admissions to law enforcement. He has failed to prove deficient performance or prejudice.

3. Failed to Investigate. “Applicants counsel Jason Chehoski and Aimee Zmroczek failed to properly investigate these cases to provide a defense for Applicant.”

The Court finds that the Applicant failed in his burden of proof on this issue related to the investigation. In his testimony, the Applicant made conclusory and conflicting statements on whether his counsels investigate their cases. As noted in the next allegation, he claimed that he wanted his defense team to call Tiffany and Patrick Folks, who were not at the scene of the incident, but whom he claimed he called the night of the incident and were there when he was on the telephone. He claimed he did not recall what he said because of his medicine. He acknowledged that Zmroczek had an investigator.

Counsel Zmroczek testified that in their meetings with the Applicant he was unable to present information that developed any legal defense to the charges. She noted that his biggest concern was the status of the victims. She noted that the facts she received were consistent with the state’s version of the facts. Concerning Tiffany and Patrick Folks, counsel claimed that she did not recall any discussion about them from the testimony she heard at the PCR hearing.

Counsel Chehoski testified that in his meetings with the Applicant he gave many versions that were inconsistent, including that he could not have committed the rape because he was gay. At one point, he suggested a mental health defense to counsel to assert that his confession was coerced two years after he began representing him. Chehoski stated he pushed back against this because he felt the Applicant was not being truthful. At that point, Applicant dropped that line of defense related to the confession. He had stated that it was coerced and that he did not want to

plead to something that he did not do, meaning to counsel that because his statement was false, it was coerced. He did not want to go to trial but to plead guilty. Counsel stated that he heard the comments from the Applicant at this PCR hearing about the Folks and their possible testimony for the first time. He stated that he was not familiar with them and from what the Applicant said, he did not know how they would have been helpful to the defense. Counsel Chehoski stated that he requested a mental health evaluation after meeting with the Applicant's mother. She provided some medical records with matters related to intellectual disability. He stated he received the 2019 evaluation (State Exhibit 1) and reviewed it with the Applicant and gave him a copy on May 17, 2019. Upon his review of the report, he did not request a second evaluation.⁸ Counsel Chehoski stated that he did not have difficulty communicating with the Applicant. He described his demeanor as consistent and soft spoken, polite and easy to converse with. Chehoski stated that he

⁸ To establish *Strickland* prejudice in the context of plea counsel's failure to fully investigate the applicant's mental capacity, the applicant "need only show a 'reasonable probability' that he was either insane at the time [the crime was committed] or incompetent at the time of the plea." *Matthews v. State*, 358 S.C. 456, 459, 596 S.E.2d 49, 51 (2004) (alterations in original) (quoting *Jeter*, 308 S.C. at 233, 417 S.E.2d at 596); *see id.* at 458–60, 596 S.E.2d 49, 50–51 (expanding the reasonable probability standard as the burden for proving both the deficiency of counsel and the prejudice prongs). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues which undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. *Garren v. State*, 423 S.C. 1, 13–14, 813 S.E.2d 704, 711 (2018).

"The test of competency to enter a plea is the same as required to stand trial"—the accused "must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him." *Jeter*, 308 S.C. at 232, 417 S.E.2d at 596. Here, Applicant received an evaluation from the Department of Mental Health. (Plea Tr. 6). The DMH examiner found Applicant suffers from mild intellectual disability; however, he was found competent. (Plea Tr. 6). The Court further conducted an extensive colloquy with Applicant regarding his understanding of the plea proceedings. Accordingly, the Court finds that Applicant's allegations regarding his competency to enter the plea are without merit.

did not seek to interview the victims in the case and did not have the information to locate them and did not ask an investigator to interview them.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. *Id.* Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). To establish prejudice based on failure to investigate or prepare for trial when the applicant enters a guilty plea, he must ordinarily present some evidence “that would have affected counsel’s advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it.” Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. Ard v. Catoe, 372 S.C. at 331, 642 S.E.2d at 597 (“this duty is limited to a reasonable investigation”). The United States Supreme Court also instructed reviewing courts to “keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with

heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

This Court must find based upon the credible evidence of counsel that the Applicant failed in his burden of proof in showing any deficient performance related to the investigation. As found previously, each counsel had an adequate number on personal meetings with the Applicant to go over the nature of the state's version of the case which were essentially consistent with the Applicant's version. In seeking to consider any available defenses, the counsel were unable to find factual or legal support for a defense. Counsel considered the existence of a mental health issue and were reasonable in seeking a mental health evaluation in assisting in the determination.

The Applicant failed to provide credible present evidence to show any deficiency in the case preparation. Although counsel failed to attempt to interview the victims in this case, it is understood that the victim's statements were included in the discovery provided to the defense which allowed him to become well-versed in the nature of the state's case within the standard of competence demanded of lawyers in criminal practice. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (Defense counsel's failure, prior to advising defendant to plead guilty on charges of criminal sexual conduct to interview victims did not constitute ineffective assistance of counsel, as nothing in record indicated that interviewing victims would have led to different result there was nothing to indicate that victim of sexual conduct would have retracted her version).

The only item he suggested was a claimed desire that Tiffany and Patrick Folks be contacted about being witnesses. However, this Court must find that Applicant has failed to credibly prove that they had any evidence to provide that was material to the defense or an investigative lead to further reliable evidence. In addition, neither testified before this court. This Court initially finds credible counsels' testimonies that the Folks names were not provided to the

defense as to being material witnesses. This Court can only speculate about the value of any further investigation which is inadequate. Moorehead, supra. (failure to conduct independent investigation does not constitute ineffective assistance of counsel when allegation is supported only by mere speculation as to result). This Court further noted that the Applicant stated under oath at the time of the plea that he agreed with the State's version of the facts. Tr.p. 14. See Blackledge v. Allison; Dalton v. State, supra.

This Court concludes that the Applicant has failed to prove deficient performance in the investigation prior to the entry of the guilty pleas by either of his counsel. Similarly, other than mere speculation, the Court must find that Applicant failed to meet his burden in showing the existence of any investigative failure, "that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." The allegation must be denied.

4. Failed to call witnesses. "Applicants counsel Jason Chehoski and Aimee Zmroczek failed to call witnesses Tiffany and Patrick Folks."

The alleged failure to investigate the Folks as potential witnesses is addressed above. The Applicant failed in his burden of proof in showing either deficient performance or prejudice under Strickland and Hill v. Lockhart.⁹ However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691. The Applicant failed in

⁹ In his *pro se* application he claims that there was a discovery of exonerating evidence after the plea and a claim that the victim allegedly erroneously identified the Applicant. No evidence was presented concerning this allegation in this proceeding. It must be considered abandoned as a claim of newly discovered evidence. It was not included in the amended application.

his burden of proof.

5. Promised 10 years incarceration. “Applicants counsel Jason Chehoski and Aimee Zmroczek coerced the Applicant into entering a guilty plea by statements they made including Mr. Chehoski stating he had to enter the guilty plea and both attorneys stated he would receive a sentence of 10 years’ incarceration.”

The Court must find that the Applicant failed in his burden of proof to show that either counsel advised the Applicant that he would receive a 10-year sentence. The record shows that he was facing a mandatory minimum sentence of 10 years and maximum of 30 years on armed robbery and on criminal sexual conduct first degree on the Richland County charges. Tr.p. 4, l. 6-13. On the sentencing sheets for each of the offenses, it stated that the plea was “without Negotiation or Recommendation” checked. During the plea proceeding, there was no reference that this was an agreed sentence of 10 years by any party. The Lexington Solicitor indicated the limitations of the negotiations related to the Lexington charges which included dismissals of several charges and pleading down from the criminal sexual conduct with a first charge to a criminal sexual conduct second charge. As to Richland County, there was an agreement expressed that the Richland County criminal sexual conduct charge and armed robbery charge would run concurrent with the Lexington County charges.

Importantly, the Applicant confirmed under oath at the plea when asked “aside from the dismissal of some cases, has anyone promised you anything in terms of the kind of sentence you’re going to receive” he answered “no, sir.” Tr.p. 21, l. 1-4. In his plea mitigation, counsel Chehoski requested the mandatory minimum sentence of 10 years with credit for time served. Tr.p. 23, l. 19-23. Counsel Zmroczek requested similarly 10 years mandatory minimum. Tr.p. 28, l. 1-4. She had already asserted that 10 years is still a very long time for a person with his disabilities. Tr.p. 27, l. 9-114. His father Cassius Colwell asked the Court to be lenient. Tr.p. 32, l. 17-18.

Judge Addy sentenced the Applicant to 18 years. In making his sentence, Judge Addy noted that he considered as relevant factors that Applicant had no real prior record, a functional IQ of 48, and probably under the influence of others. However, he also considered this to be a very serious incident that took place over two hours in two counties, which was terrifying to the women involved. He asserted "so it's not a situation where I'm able to simply say it's okay, you get the minimum on this kind of offense because it is very serious." Judge Addy further found mitigating his acceptance of responsibility the moment he met with law enforcement. Tr.p. 38-39.

During the PCR hearing, the Applicant claimed that counsel Chehoski initially told him 20 to 30 years to plead. Then later Applicant claimed that both counsel asserted that he would get ten (10) years to run concurrently and told him that on plea day when he was signing the sentencing sheet. LaShonda Shell claimed that when they came to court she thought he would receive 5 to 10 years. She claimed what counsel told her was false. She claimed counsel told her the plea was a better course because it would be shorter time, but it was longer. She also claimed that she did not see any paperwork that this would be a 10-year sentence.

Counsel Zmroczek stated she spoke with Solicitor Miles about making this case a global resolution with the Lexington charges. Zmroczek testified that there was never any indication on the part of the State that it was agreeing to a 10-year sentence. Counsel asserted that there was no confusion but the hope was to get 10 years, but it was not a guarantee or promise.

Counsel Chehoski testified that there was no plea sentencing agreement for a specific sentence. He said that he mentioned to the Applicant that his expectation would be somewhere between 10 and 15 years, but it was never a promise. On the Lexington charges he was facing a minimum of 10 years and a maximum of 20 years. He stated when he spoke with the mother that the defense was asking for the minimum sentence but there were no other negotiations.

This Court finds the Applicant has not met his burden of proof. This Court finds that the Applicant was advised that they were requesting the minimum sentence but that he was advised that he was facing the possibility of 20 years on the Lexington charges and thirty years on the Richland charges. Both lawyers testified that they never told Applicant or his mother that Applicant was going to receive a sentence of 10 years. Further, the Applicant, under oath at the time of the plea, admitted that there had been no promises given to him by counsel or anyone else that he would receive any particular sentence. His suggestion otherwise is not credible. The factual basis for this claim was not proven to this Court by credible evidence. Since the Applicant failed to prove the factual predicate, the allegation must be denied. The Applicant has failed to prove either deficient performance in each of his counsel's advice to the Applicant about the punishment he was facing and the consequences of any of the negotiations. Because the advice given was correct, he has failed to prove prejudice under Hill v. Lockhart. supra.¹⁰

¹⁰ In his *pro se* application he asserts that his counsel should have objected to the sentence of 18 years but does not declare what the objection should have been. If the underlying assertion is that there was a plea bargain for a 10-year sentence between the state and defense, as not within this allegation he has failed in his proof. If the objection was that the sentence was too long, the sentence given was within the statutory mandates for each of the crimes He has failed to meet the prejudice prong under Strickland v. Washington that there was a reasonable probability that had an objection been made to the 18 year sentence the result of the proceeding would have been different when he was facing up to thirty years on the criminal sexual conduct and armed robbery charges.

Applicant received an aggregate eighteen-year sentence for multiple counts of armed robbery and criminal sexual conduct arising from two separate violent attacks. All for charges to which he pled are classified as violent under S.C. Code Ann. § 16-1-60 and most serious felony offenses under S.C. Code Ann. § 17-25-45, thereby were considered 85% crimes. Tr.p. 4, l. 18-22. The eighteen-year sentence he received falls well within the statutory range, and applicant has not alleged in any way that this was an illegal sentence. See State v. Sidell, 262 S.C. 397, 205 S.E.2d 2d 2 (1974) (a judge has discretion in sentencing within statutory limits); see also Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979) (a sentence is not excessive if within statutory limitations and not the result of partiality, prejudice, or corrupt motive); Wood v. State, 257 S.C. 179, 184 S.E.2d 702 (1971). Accordingly, and because Applicant has failed to indicate on what basis Counsels could have objected, this allegation is without merit.

B. Involuntary Guilty Plea

In his initial *pro se* application, the applicant claimed that his guilty plea was not intelligently entered for the many of the reasons set forth in the earlier allegations addressed above. “[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969); Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. Brady v. United States, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant’s choice. *Id.* at 755; *see also* United States v. Smith, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one’s accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243. Additionally, the defendant “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman, 337 S.C. at 599, 524 S.E.2d at 624. The defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by

colloquy between court and defendant, between court and defendant's counsel, or both." State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); see also Wolfe, 326 S.C. 158, 485 S.E.2d 367 (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." Dover v. State, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." United States v. Cox, 464 F.2d 937, 942 (6th Cir. 1972) (citing Brady, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, Brady, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. Alford, 400 U.S. at 37.

Nonetheless, 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." Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977); see also Jamison v. State, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as

final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” Dalton, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. Blackledge, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

The voluntariness of a guilty plea, however, “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” Roscoe, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe, 326 S.C. at 165, 485 S.E.2d at 370; cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf.* Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.' "). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." Lee, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

This Court finds that the Applicant has failed in his burden of proving that the guilty plea was not voluntarily and knowingly entered. The Court incorporates herein by reference the findings and conclusions set for above. During the guilty plea Judge Addy thoroughly advised him of his understanding of the constitutional rights he was waiving by entry of his guilty plea, the possible punishment he was facing, his understand of the factual basis of the charges and his satisfaction of the performance he has received from his two counsel. Judge Addy was also aware of the mental disabilities of the Applicant based upon the competency to stand trial evaluation he had received from the Department of Mental Health. In addition, the Applicant and plea judge learned about the extent and limitations of the negotiations and the fact that he had no promised expectation of any particular sentence other than the fact that he was facing a mandatory minimum of ten years on two of the Richland charges and a maximum of thirty years on those charges, as

well as the possible punishments on the other charges that he was pleading guilty. The sentence he received was within the statutory mandates for each of the crimes. He has failed to show that his guilty plea was involuntary. As stated above there was no promise or offer from the State that he would receive a ten-year sentence. This claim must be denied where the guilty plea was knowingly and voluntarily entered.

CONCLUSION

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

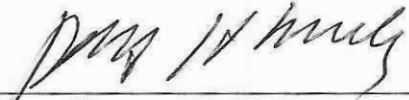
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991),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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.

November 18, 2024

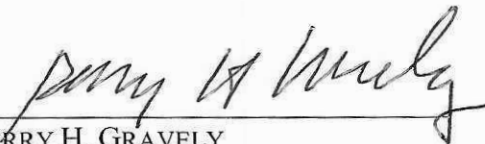


PERRY H. GRAVELY
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

Order to Seal Previous Order

This Amended Order shall replace the Order filed on October 7, 2024. Since the previous order contained the name of the victim, it shall be sealed and only reviewable upon Order of the Court.



PERRY H. GRAVELY
Presiding Judge
Eleventh Judicial Circuit

WITNESSES

West Columbia Police Department

Christopher J Morris

Law Enforcement Case #: 1737712

RWP

ARREST WARRANT NUMBER

2017A3221100825

ACTION OF GRAND JURY**TRUE BILL***[Signature]*Foreperson of Grand Jury
Date:

7-9-16

VERDICTForeperson of Petit Jury
Date:**DOCKET NO. 2018GS3201633****The State of South Carolina****County of Lexington****COURT OF GENERAL SESSIONS****JULY TERM 2018****THE STATE****vs.****Kashawn Aurellius Shell****CDR #: 0139****Indictment for****Armed Robbery****§ 16-11-0330(A)****S.R. Hubbard III, SOLICITOR****A TRUE COPY***[Signature]*
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Armed Robbery
§ 16-11-0330(A)

At a Court of General Sessions, convened on July 2018, the Grand Jurors of Lexington County present upon their oath:

That **Kashawn Aurellius Shell** did in Lexington County, South Carolina on or about December 6, 2017 knowingly and wilfully while armed with a deadly weapon having possession of an object which the victim reasonably believed to be a deadly weapon and alleging by actions or words that he was armed, to wit: a handgun, did feloniously take from the person or presence of Ginger [REDACTED] by means of force, threats or intimidation goods or monies being described as follows: cell phones and money with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended.

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



ASSISTANT SOLICITOR

WITNESSES

West Columbia Police Department

Christopher J Morris

Law Enforcement Case #: 1737712

RWP

ARREST WARRANT NUMBER

2017A3221100826

ACTION OF GRAND JURY**TRUE BILL**

Darryl B. Guy 7-8-18
 Foreperson of Grand Jury
 Date:

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO. 2018GS3201634**The State of South Carolina****County of Lexington****COURT OF GENERAL SESSIONS****JULY TERM 2018****THE STATE****vs.****Kashawn Aurellius Shell****CDR #: 0160****Indictment for****Criminal Sexual Conduct First Degree****§ 16-03-0652****S.R. Hubbard III, SOLICITOR****A TRUE COPY**

[Signature]
 Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Criminal Sexual Conduct First Degree
COUNTY OF LEXINGTON	)	
	)	§ 16-03-0652

At a Court of General Sessions, convened on July 2018, the Grand Jurors of Lexington County present upon their oath:

That **Kashawn Aurellius Shell** did in Lexington County, South Carolina on or about December 6, 2017 did commit a sexual battery upon the victim, G. W., and the victim did submit to the sexual battery but under circumstances of forcible confinement, kidnapping, robbery, extortion, burglary or any other similar offense or act, to wit; robbery and/or kidnapping; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976, as amended).

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
 STATE VS.
Kashawn Aurellius Shell

AKA:

Race: Black Sex: M Age: 23DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Irmo, SC 29063-8025DL#: [REDACTED] SID#: SC02185145*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Robbery / Attempted armed, or allegedly armed, robbery

INDICTMENT/CASE#: 2018GS3201633A/W#: 2017A3221100825Date of Offense: 12/6/2017S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin 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 § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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

ATTEST:

[Signature] 15969 Kashawn Shell [Signature] P250
 Solicitor 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 18 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 SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: A TRUE COPY☐ Set by SCDPPPSRecipient: Lex. Co. C.C.C.P., G.S. & F.C.

*Fine: \$ _____

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

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

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

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

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

Proviso (Public Def/Probation) \$500 \$ _____

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

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

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

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

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

TOTAL \$ 125Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (04/2018)

_____ 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,
 §Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge [Signature]Judge Code: 2159Sentence Date: 11-20-19

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.Kashawn Aurellius Shell

AKA:

Race: Black Sex: M Age: 23DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Irmo, SC 29063-8025DL#: [REDACTED] SID#: SC02185145*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sex / Criminal sexual conduct - Second degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS3201634A/W#: 2017A3221100826Date of Offense: 12/6/2017S.C. Code § : 16-03-0652CDR Code #: 0160

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0653 of the S.C. Code of Laws, bearing CDR Code # 0161☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☒ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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

ATTEST:

Solicitor 15969 SC Bar# 2185145 Defendant Kashawn Aurellius Shell Attorney for Defendant [REDACTED] SC Bar# 09330WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 18 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: 19-GS-40-7863 ; 7862, 18-GS-32-1633☒ 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 SCDoc.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPSRecipient: [REDACTED]*Fine: Lex. Co. C.C.C.P. G.S. & F.C.

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

_____ 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,
§Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2159Sentence Date: 11-20-19

WITNESSES

(S) Stephen S Faust
– Richland County Sheriff Dept

ARREST WARRANT NUMBER

2018A4010500231

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2019GS4007852

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2019
300

THE STATE
vs.

Kashawn Aurellius Shell

Indictment for
SEX / CRIMINAL SEXUAL CONDUCT -
FIRST DEGREE

SC Code: 16-03-0652
CDR Code: 0160

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

Kashawn Shell
Defendant

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

Defendant

Witness

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

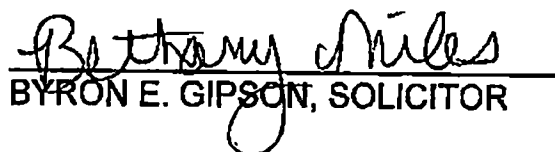
INDICTMENT

At a Court of General Sessions, convened on November 5, the
Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT, FIRST DEGREE

That Kashawn Aurellius Shell did in Richland County on or about
December 6, 2017, engage in sexual battery with MIKAYLA [REDACTED] by
using force to accomplish sexual battery and/or the victim submits to
sexual battery by the actor under circumstances while the victim was also
the victim of forcible confinement and/or kidnapping and/or robbery and/or
extortion and/or burglary and/or housebreaking and/or any other similar
offense(s) or act(s), in violation of Section 16-03-0652, S. C. Code of
Laws, 1976, as amended.

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


BYRON E. GIPSON, SOLICITOR

WITNESSES

(S) Stephen S Faust
- Richland County Sheriff Dept

ARREST WARRANT NUMBER

2018A4010500233

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2019GS4007853

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2019
300

THE STATE
vs.

Kashawn Aurellius Shell

Indictment for
ROBBERY / ARMED ROBBERY, ROBBERY
WHILE ARMED OR ALLEGEDLY ARMED
WITH A DEADLY WEAPON

SC Code: 16-11-0330(A)
CDR Code: 0139

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

Kashawn Shell
Defendant

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

Defendant

Witness

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on November 5, the
Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Kashawn Aurellius Shell did in Richland County on or about December 6, 2017, commit robbery by feloniously taking from the person or presence of Mikayla [REDACTED], by means of force or intimidation, goods or monies of Mikayla [REDACTED] such goods or monies being described as \$40 and marijuana, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC Code of Laws (1976, as amended).

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


BYRON E. GIPSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Richland

VS.

Kashawn Aurellius Shell

AKA:

Race: BLACK Sex: M Age: 24

DOB: SS#

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sex / Criminal sexual conduct - First degree

in violation of § 16-03-0652

of the S.C. Code of Laws, bearing CDR Code # 0160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. KS (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: Bethany Miles 78212 Kashawn Shell 77193
Solicitor 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 18 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: 19-65-40-7853 18-65-32-1634; 1633
☒ 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 SCDOP.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

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

TOTAL

\$125

Clerk of Court/ Deputy Clerk R. Ser ConnerCourt Reporter: Shane Hildreth

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4007852

A/W#: 2018A4010500231

Date of Offense: 12/6/2017

S.C. Code § : 16-03-0652

CDR Code #: 0160

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning NOV 26 2019

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:

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

Presiding Judge

Judge Code: 2159Sentence Date: 11-20-19

RECEIVED

SC Court of Appeals

198
STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.

Kashawn Aurellius Shell

AKA:

Race: BLACK Sex: M Age: 24

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Irmo, SC 29063

DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

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

(CSC w/minor 1st or CSC w/minor 3rd)

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

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

ATTEST:

Bethany Miles
Solicitor

78212
SC Bar#

Kashawn Shell
Defendant

[Signature]
Attorney for Defendant

77193
SC Bar#

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

for a determinate term of 18 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: 19-65-40-7852, 18-65-32-1634; 1633

☒ 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 SCDOC.

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

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

TOTAL

Clerk of Court/ Deputy Clerk: Lisa Conner

Court Reporter: Sandra Labrecque

SCCA/217 (04/2018)

10-30

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4007853

A/W#: 2018A4010500233

Date of Offense: 12/6/2017

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

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: Mental Health Treatment

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge: [Signature]

Judge Code: 2187

Sentence Date: 11-20-19