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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable Maite Murphy, Circuit Court Judge

DEVONTE KE'WON ANDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000492

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
2018-GS-40-4073
2017-GS-40-5355-5358

State of South Carolina,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
Devonte Ke'Won Anderson,)
Defendant.)

January 16, 2020
Columbia, South Carolina

B E F O R E:
THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

A P P E A R A N C E S:
R. VANCE EATON, ASSISTANT SOLICITOR
Attorney for the Plaintiff
AIMEE J. ZMROCZEK, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced during these proceedings.)

1 JANUARY 16, 2020

2 (WHEREUPON, the hearing began at 3:47
3 p.m.)

4 MR. EATON: Devonte Anderson.

5 THE COURT: Are you ready?

6 MR. EATON: Yes, Your Honor.

7 THE CLERK: Raise your right hand, please.

8 (Defendant complies.)

9 THE CLERK: Do you swear to tell the truth,
10 the whole truth, and nothing but the truth, so help
11 you God?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Yes, sir?

14 MR. EATON: May it please the Court? Vance
15 Eaton, for the State.

16 This is Devonte Anderson and his attorney,
17 Aimee Zmroczek.

18 I have got with me Investigator Kimberly Wise,
19 of the Columbia Police Department, who made these
20 charges against Mr. Anderson.

21 He is here to plead guilty to attempted
22 murder, possession of a weapon during the
23 commission of a violent crime, possession of a
24 weapon by a person convicted of a violent felony,
25 armed robbery, and conspiracy, for a range of 15 to

1 20 years. The State is dismissing an unrelated CSC
2 with a minor in the third degree, Your Honor.

3 MS. ZMROCZEK: And, Your Honor, this was the
4 one that we had a status about for March.

5 THE COURT: On the trial docket?

6 MR. EATON: On a date -- about a third date
7 certain, actually, for March of this year.

8 MS. ZMROCZEK: I wanted to make sure, because
9 there were a bunch of e-mails back and forth. This
10 will then remove that from your calendar.

11 THE COURT: All right. Possession of a weapon
12 during a violent crime, criminal conspiracy,
13 assault and battery. You are pleading to attempted
14 murder or assault and battery of a high and
15 aggravated nature? I am missing something. I
16 have -- I only have -- how many -- it should be
17 five, or four?

18 MR. EATON: One, two, three, four, five.

19 THE COURT: I only have four. I only have
20 four indictments and four sentencing sheets. So is
21 he pleading to an ABHAN?

22 MR. EATON: So, Your Honor, we were about to
23 plead this a couple of times before. I haven't
24 seen the paperwork in months, so I apologize for
25 messing this up. Can we stand down for a second?

1 THE COURT: Because I am missing --

2 MS. ZMROCZEK: By an unlawful person.

3 THE COURT: What now?

4 MS. ZMROCZEK: The possession by an unlawful
5 person.

6 THE COURT: I'm missing that one. And I'm
7 also missing -- I have an ABHAN. I don't have an
8 attempted murder.

9 Why don't y'all look at it and figure it out?

10 MR. EATON: Let's just stand down for one
11 moment. I'm sorry.

12 THE COURT: Call another case.

13 (WHEREUPON, a break was taken at 3:51 p.m.)

14 (WHEREUPON, the hearing resumed at 4:03 p.m.)

15 THE COURT: It should be five charges?

16 MR. EATON: We'll do the ABHAN.

17 THE COURT: So we are not doing the attempted
18 murder?

19 MR. EATON: Right. The attempted murder is
20 reduced to ABHAN, Your Honor.

21 THE COURT: All right. Yes, sir?

22 MR. EATON: Do you want me to start over, Your
23 Honor.

24 THE COURT: Yes, sir.

25 THE CLERK: Do you want me to swear him again?

1 THE COURT: He has already been sworn, right?

2 THE CLERK: Right.

3 THE COURT: So you are still under oath.

4 Go ahead.

5 MR. EATON: Okay. So this is Devonte
6 Anderson, with his attorney, Aimee Zmroczek.

7 Mr. Anderson is pleading to assault and
8 battery of a high and aggravated nature down from
9 attempted murder, possession of a weapon during the
10 commission of a violent crime, possession of a
11 weapon by a person convicted of a violent felony,
12 armed robbery, and conspiracy, for a range of 15 to
13 20 years, Your Honor.

14 MS. ZMROCZEK: And the dismissal of the
15 unrelated charge.

16 MR. EATON: And the dismissal of an unrelated
17 CSC.

18 MS. ZMROCZEK: And he was previously served
19 with LWOP notice. Now they are going to revoke
20 that.

21 MR. EATON: Right. We are withdrawing the
22 LWOP. Obviously he is not going to trial.

23 THE COURT: All right. Is that correct,
24 Ms. Zmroczek?

25 MS. ZMROCZEK: That is correct.

1 THE COURT: Have you explained to your client
2 the charges contained in the indictments, the
3 possible punishment, and his constitutional rights?

4 MS. ZMROCZEK: I have.

5 THE COURT: And have you explained to him --
6 how does he wish to plead?

7 MS. ZMROCZEK: Guilty.

8 THE COURT: Do you agree with his decision to
9 plead guilty?

10 MS. ZMROCZEK: I do.

11 THE COURT: All right. You are Devonte
12 Anderson?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And you are pleading guilty to one
15 count of assault and battery of a high and
16 aggravated nature, possession of a weapon by a
17 felon, armed robbery, conspiracy, and possession of
18 a weapon during a violent crime. Do you understand
19 that? Is that correct?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And how old are you?

22 THE DEFENDANT: Twenty-five.

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

24 THE DEFENDANT: I made it to the 11th grade,
25 but I got my GED at Alvin S. Glenn.

1 THE COURT: All right. Are you on probation
2 or parole?

3 THE DEFENDANT: YOA.

4 THE COURT: He is on YOA parole?

5 THE PROBATION OFFICER: I don't think so.

6 No, Your Honor, his case would have been
7 closed.

8 MS. ZMROCZEK: I thought it had been closed.

9 THE COURT: All right. Within the last 24
10 hours, have you taken any medication, drugs, or
11 alcohol?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Listen closely to the Solicitor as
14 he states the facts.

15 MR. EATON: So, Your Honor, this happened on
16 June 26th of 2017. Mr. Anderson and his two
17 Co-Defendant brothers, Aaron and Khaliq Brown, and
18 an unidentified person, go to a hotel, the Baymont
19 Inn off of I-77, kind of over near Fort Jackson.
20 They responded to an online posting on the now
21 defunct website, Backpage. And that posting was
22 for sex. And they contacted this girl who posted
23 for sex on Backpage to come as though they were
24 going to come to the hotel room to have sex with
25 her.

1 Devonte Anderson goes in the room. And once
2 he is in there, he pulls out a gun to rob the
3 victim, this girl, Chisholm Loca, the victim. She
4 then pulls out what turns out to be a pellet gun in
5 defense. The two of them start to fight. And they
6 scrap in the room.

7 As this is happening, Aaron and Khaliq, his
8 Co-Defendants, we see on surveillance footage
9 coming down the hallway to the room putting gloves
10 on. So their role was going to be while he had her
11 at gunpoint, they were going to go through her
12 things and get her money.

13 That same camera that shows the Brown brothers
14 coming down the hallway shows Devonte Anderson and
15 the victim spilling out of the room. And in this
16 scrap, in this fight, he manages to wrench her
17 phone out of her hand. And he runs off, and the
18 Brown brothers run off. And they tell the clerk,
19 Somebody got shot back there.

20 The victim staggers out into the lobby and
21 falls down. She was shot in the gut. She ended up
22 having her spleen removed, multiple surgeries to
23 her abdomen. And she is in the hospital for a
24 month.

25 The Brown brothers and Devonte Anderson are

1 initially identified because of footage in the
2 hotel, the Brown brothers. Someone recognizes
3 them, I think an SRO.

4 They catch up -- well, Devonte Anderson shoots
5 himself in the hand too. So they catch up with the
6 Brown brothers and Devonte Anderson. He had been
7 shot in the hand. He ends up talking to
8 Investigator Wise.

9 He says that he came there for sex. He sort
10 of skirts around that there was -- you know, he
11 doesn't disagree that he was there to rob her, but
12 he never really admits to it.

13 One of the Brown brothers, Aaron, though,
14 tells Investigator Wise, eventually admits that
15 they went there with the plan to rob this victim.

16 We had this on the trial docket at least a
17 couple of times. Last year we did a Stand Your
18 Ground hearing before Judge Cooper, in which Judge
19 Cooper denied Mr. Anderson's request to judicially
20 dismiss the charge. Mr. Anderson testified, so did
21 the victim.

22 The feds actually looked at this case. I had
23 kind of insisted on 20 years leading up to today,
24 but we agreed to do this plea with this range of 15
25 to 20, but I want to make it clear that the victim,

1 Investigator Wise, and the State, we are asking for
2 20 years.

3 THE COURT: Sir, do you agree with the facts
4 as stated by the Solicitor?

5 THE DEFENDANT: More or less.

6 MS. ZMROCZEK: There are some minor
7 inconsistencies, none that withdraw the elements
8 of --

9 THE COURT: I need to hear it from him. What
10 is it that he does not agree with?

11 MS. ZMROCZEK: I believe one was the gunshot.
12 I think she may have -- I think it may have been
13 her pellet gun that went through his hand. I don't
14 think he shot himself. I mean, it happened so
15 fast.

16 THE COURT: But he shot her?

17 MS. ZMROCZEK: Oh, absolutely.

18 THE COURT: Is that correct?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right. Anything else you
21 disagree with?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: All right. Armed robbery carries
24 between 10 and 30 years; assault and battery of a
25 high and aggravated nature carries up to 20 years;

1 the unlawful carrying of a pistol -- possession of
2 a firearm by a felon carries five years; criminal
3 conspiracy, five years; possession of a weapon
4 during a violent crime carries five years. I could
5 run those all consecutive and you would be looking
6 at 65 years. Do you understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Knowing that, do you still wish to
9 plead guilty?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You understand that the armed
12 robbery is classified as a violent most serious
13 offense, meaning under our two-strike law that you
14 could be served with life without parole. I am
15 assuming they did, that is what you said, right?

16 MR. EATON: Right. So he already had strikes,
17 Your Honor.

18 THE COURT: On the serious offenses, it is a
19 three-strike law. Sir, if you were to get any
20 future offenses classified as serious or most
21 serious, you could face life without parole. Do
22 you understand that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Knowing that, you still wish to
25 plead guilty?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. You understand when
3 you plead guilty you give up certain important
4 constitutional rights. You have the right to a
5 jury trial. At a jury trial the State would have
6 to prove you guilty beyond a reasonable doubt. You
7 and your attorney would have the opportunity to
8 cross-examine any witnesses that they would
9 present. You would not have to testify. The
10 burden would be upon the State to prove you guilty
11 beyond a reasonable doubt. If you gave any
12 incriminating statements, you would have the right
13 to challenge the admission of those statements.
14 But by pleading guilty, you waive your right to a
15 jury trial. Is that what you wish to do?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: I see your case is scheduled for a
18 jury trial in March, but by pleading guilty you are
19 waiving your right to that jury trial. Is that
20 what you wish to do?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And you have been represented by
23 Ms. Aimee Zmroczek. Are you satisfied with her
24 representation?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Do you need any more time to speak
2 with her?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Has she done everything for you
5 that you feel she could have done or should have
6 done?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Are you completely satisfied with
9 her services?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Has she met with you for as long
12 as necessary for her to properly represent you?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And you are completely satisfied
15 with her services?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Is anyone forcing you to plead
18 guilty today?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: And are you pleading guilty of
21 your own free will?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And has anyone offered you
24 anything in exchange for your plea other than the
25 State's offer?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: And you are entering this plea
3 freely and voluntarily?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And no one is threatening you to
6 plead guilty? No one has coerced you to plead
7 guilty today?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: All right. Have you understood my
10 questions?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Have you answered them truthfully?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And is there anything you want to
15 ask me about what we have just gone over?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: All right. And you wish for me to
18 accept your plea to these charges?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right. I find that there is a
21 substantial factual basis for this plea. I also
22 find that the Defendant's decision to plead guilty
23 is freely, voluntarily, knowingly, and
24 intelligently made. He is represented by counsel
25 to whom he has indicated to me he is completely

1 satisfied with.

2 I will accept your plea.

3 Prior record?

4 MR. EATON: Yes, Your Honor. His prior record
5 consists of -- he has a 2013 stolen vehicle,
6 failing to stop for blue light. 2014, false
7 information to police. 2015, weapon at school.
8 And then later in 2015, strong armed robbery,
9 attempted armed robbery, and kidnapping. The
10 attempted armed robbery and that kidnapping were
11 the basis for the prior strikes that he had. And I
12 did --

13 THE COURT: What did he serve on those?

14 MS. ZMROCZEK: That was the Y.

15 MR. EATON: That was the Y.

16 THE COURT: Okay.

17 MR. EATON: I actually looked those up. In
18 that case he pled down from armed robbery.

19 THE COURT: They pled it down to a Y?

20 MS. ZMROCZEK: I think they pled it down.

21 MR. EATON: Well, the strong arm was a Y.
22 Here is what happened. YOA on the strong arm, time
23 served on attempted armed robbery and kidnapping.
24 That is what he got. The allegations in that case
25 were that he was robbing people on Benedict campus

1 with a gun.

2 THE COURT: All right.

3 MR. EATON: I do have a letter from the victim
4 whenever you would like to see it.

5 MS. ZMROCZEK: I think we have a copy of it.

6 THE COURT: All right.

7 MR. EATON: In regards to her, Your Honor, she
8 lives in, I want to say Indiana. She has flown
9 down. She flew down obviously for the Stand Your
10 Ground hearing. She's been very cooperative and
11 active in this case. She was honestly an unlikely
12 person to find prostituting online. She is in
13 college now. She had, you know, kind of lost her
14 way. But she is a really sweet girl. And will
15 continue to be involved in the prosecution of Aaron
16 and Khaliq.

17 THE COURT: All right, thank you.

18 Yes, ma'am?

19 MS. ZMROCZEK: Thank you. May it please the
20 Court? I'm going to hand up -- and my client also
21 wants an opportunity to address the Court, but he
22 had written down his thoughts -- I did share a copy
23 with the Solicitor -- so I'll hand that letter up,
24 as well as, as he told you, he did receive his GED
25 while he was in Alvin S. Glenn.

1 I'll let you read the letter first, and then
2 I'll talk about the rest.

3 (Pause.)

4 THE COURT: Yes, ma'am?

5 MS. ZMROCZEK: Your Honor, he is now 25. And
6 I have known him since I was appointed. 933 days
7 he has done in Alvin S. Glenn. And he hasn't taken
8 that time and just fiddled around. He got his GED.
9 He has a young child.

10 And, Your Honor, he is one of these children
11 that -- it is the same story. He had -- his living
12 situation, he has very little family support, but
13 it is not because -- he just has very little
14 family. His sister is very, very important and
15 active in his life. And she was going to be here.
16 She has a small child, so she couldn't come. The
17 child was ill and you can't have the child in
18 court. But she is very supportive of him. And she
19 has been in constant contact with me.

20 Obviously the whole -- the victim being on
21 Backpage -- and I saw the ad, and it was a lot --
22 and there were drugs in the room and also in her
23 system. I think that she, like the State has said,
24 had lost her way. I think this is a terrible
25 situation where a lot of kids have lost their way.

1 Mr. Anderson certainly regrets any bad things
2 that happened to him -- or to her, excuse me. And
3 knows that he has put himself in these situations,
4 especially with the LWOP notice. And he does take
5 that seriously.

6 He and I have had a lot of conversations. And
7 I have seen him grow, you know, over the two years.

8 We are aware that the State is asking for 20,
9 but we would ask the Court certainly to consider
10 something lower within the range. Obviously it is
11 still a long time while he is in prison. And he
12 knows it is going to be a dangerous place. And he
13 is young. But I think accepting responsibility,
14 understanding how serious all this was, and what it
15 could do to the rest of his life has made an impact
16 on him. And I believe he did want to address the
17 Court.

18 THE COURT: I will be glad to hear from him.

19 THE DEFENDANT: Thank you for hearing from me,
20 first of all.

21 THE COURT REPORTER: I'm sorry, I can't
22 understand.

23 THE DEFENDANT: Thank you for hearing from me,
24 first of all.

25 I did come in here today to plead guilty. I

1 been down there for like 30 months now at Alvin S.
2 Glenn.

3 And, you know, like, my first gig, like, was
4 2015, like they say, I have four armed robberies,
5 four kidnappings while at Benedict. And I got
6 caught with a gun on Benedict campus. They
7 allegedly said I was there committing robberies
8 just off some old cold cases in 2013 and 2014. So,
9 and she was my lawyer for that case. So that is
10 why all that came about.

11 Like, I'm not a bad person. Like, sure,
12 indeed, I made some wrong decisions in my life.
13 And I do feel for my victim. I'm not no hard
14 person. I don't have a cold heart, you know, like
15 I do feel and understand what the State is trying
16 to do, but at the same time I ask for your leniency
17 because I'm 25 because, like, I ain't take this
18 time to play around with it. Like, when I was out
19 there, I ain't realize that I had a lot to lose and
20 not more to gain. And it took a toll on me and I
21 had to sit down for a period of time for me to open
22 my eyes up. And now I realize that I was living
23 wrong and I shouldn't have left my daughter. I got
24 a second chance to come home, two or three years
25 old. But my household is so rough and so

1 difficult, like, it is like basically like every
2 kid that is growing up in poverty. Like, I don't
3 have no choice words to explain really to make you
4 understand where I'm coming from. I can just
5 basically tell you that, like, I had pain, I ain't
6 had no good life. You know, like my mama and them,
7 they didn't ever treat me like a son, they want to
8 treat me like a person instead of a son or a
9 grandson or a nephew. They treated me as like a
10 boy. They treated my sister and my brother
11 differently, they made me like an outlaw my whole
12 life. So it is not that I wanted to be in the
13 streets. I feel like it came to me, like. I done
14 took different routes. I done took different
15 routes to try to maneuver around it. I used to
16 work, like, I used to work. I take people in. I
17 got a good heart, you know. Like, I try to do
18 things to help people out. But me helping people
19 out, I break my back for them when they wouldn't do
20 the same in return. So I always got -- excuse my
21 language -- I got the ass end of the stick.

22 So, I mean, I just ask for leniency because
23 now I feel like, I got a little girl, she's four, I
24 feel like if I catch this 20 years, my little girl
25 will be 19. Like, I already missed four years of

1 her life due to being incarcerated. Like, but now
2 I have to man up and I really want to get out there
3 and live for her.

4 And, like, if I get some leniency and, like,
5 she will be like 12, 13, just hitting high school,
6 like that is still -- that is still bad, but I
7 don't feel like that is worse because I still get
8 to see her graduate, like I still get to see her
9 like do a lot more than I can see her doing when
10 she is 19, 20 when she is grown.

11 Like, I mean, I accept full responsibility.
12 True indeed, I accept full responsibility. But at
13 the same time, I just ask for your leniency.

14 THE COURT: All right, thank you.

15 MS. ZMROCZEK: Thank you, Your Honor. Just in
16 closing, Your Honor, just to hear him talk and to
17 see him grow and to listen to his sister. And in
18 the 933 days, not one time has his parent or
19 grandparent ever tried to reach out and talk to me
20 and help this child. And he and I have had a lot
21 of discussions. And obviously 15, 17 years is a
22 long time. So we would just ask that the Court
23 consider that in your sentencing.

24 THE COURT: All right. Anything else from the
25 State?

1 MR. EATON: No, Your Honor.

2 THE COURT: All right. On Indictment
3 2017-GS-40-5355 and 5356, sir, you will be
4 sentenced to the State Department of Corrections
5 for 18 years. On Indictment 2018-GS-40-4073,
6 2017-GS-40-5358, and 2017-GS-40-5357, five years.
7 All sentences will run concurrent. You will be
8 given credit for the 933 days that you served at
9 Alvin S. Glenn Detention Center. All right.

10 MS. ZMROCZEK: Thank you.

11 THE COURT: Good luck to you.

12 MR. EATON: Thank you, Your Honor.

13 (WHEREUPON, the proceedings were
14 concluded at 4:25 p.m.)

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(END OF TRANSCRIPT)

WITNESSES

(S) Kimberly D Wise-Lewis
- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601536

ACTION OF GRAND JURY
TRUE BILL

Keith B.

Foreperson of Grand Jury

Date:

SEP 14 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017GS4005355

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017

105

THE STATE
vs.

Devonte Ke'Won Anderson

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 present and future rights to the Grand Jury.

Defendant

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Devonette W. M. ...
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

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

10-30

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.
Devonte Ke'Won Anderson

INDICTMENT/CASE#: 2017GS4005355
A/W#: 2017A4021601536
Date of Offense: 6/26/2017
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

AKA: _____
Race: BLACK Sex: M Age: 24
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: 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 Presentation to Grand Jury. (defendant's initials)

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

ATTEST: [Signature] 79921 [Signature] [Signature] 77113
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

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

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

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

TOTAL \$ 1218.75

Clerk of Court/ Deputy Clerk Jeanette McBride

Court Reporter: McCurdy

PTUP _____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel. Proviso requires \$500 be paid during probation and shall be collected any other fees.

Presiding Judge [Signature]

Judge Code: C.C.C.P&G.S.

Sentence Date: 7/16 RICHLAND COUNTY SOUTH CAROLINA

CERTIFIED TRUE COPY ORIGINAL FILED
[Signature]
C.C.C.P&G.S.
RICHLAND COUNTY SOUTH CAROLINA

WITNESSES

(S) Kimberly D Wise-Lewis
- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601537

ACTION OF GRAND JURY

TRUE BILL

Keith BA

Foreperson of Grand Jury
Date: **SEP 14 2017**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4005356

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017
105

THE STATE
vs.

Devonte Ke'Won Anderson

Indictment for
ATTEMPTED MURDER

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

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

Defendant

I 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.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jesse W. M. Smith
C.C.C. P&G.S.
RICHLAND COUNTY
SCOUT 8

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 13, 2017,
 the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Devonte Ke'Won Anderson did in Richland County on or about June 26, 2017, did with the intent to kill, attempt to kill CHINEOU NWOKAH with malice aforethought, either expressed or implied. All in violation of SC Code of Laws § 16-3-29 (1976, as amended).

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



DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
Jeanette W. McBride
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#: 2017GS4005356

Devonte Ke'Won Anderson

A/W#: 2017A4021601537

AKA: _____

Date of Offense: 6/26/2017

Race: BLACK Sex: M Age: 24

S.C. Code § : 16-03-0029

DOB: [REDACTED] SS#: _____

CDR Code #: 3410

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: Assault & Battery of a High & Aggravated Nature

CONVICTED OF or PLEADS

SENTENCE SHEET

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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

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

ATTEST: [Signature] 79921 [Signature] [Signature] 7A 193
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 10 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:

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 SCDPPPS _____

Recipient: _____

*Fine: \$ _____

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

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

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

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

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

Proviso (Public Def/Probation) \$500 \$ _____

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

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

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

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

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

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Jeanette McBride B

Court Reporter: McCunely

_____ 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

prmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel,

Proviso requires \$500 to be paid during probation and shall be collected by _____

any other fees.

Presiding Judge [Signature]

Judge Code: 2101 C.C.C.P.&G.S.

Sentence Date: [Signature]

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 26 2018
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) Kimberly D Wise-Lewis
- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601539

ACTION OF GRAND JURY
TRUE BILL

Keith B.
Foreperson of Grand Jury
Date:

SEP 14 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4005358

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017
105

THE STATE
vs.

Devonte Ke'Won Anderson

Indictment for
CONSPIRACY / CRIMINAL CONSPIRACY,
COMMON LAW CONSPIRACY DEFINED.

SC Code: 16-17-0410
CDR Code: 0049

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

Defendant

I 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.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Janette W. M. Bude
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

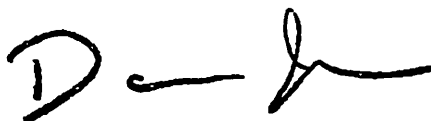
INDICTMENT

At a Court of General Sessions, convened on September 13, 2017,
 the Grand Jurors of Richland County present upon their oath:

CRIMINAL CONSPIRACY

That Devonte Ke'Won Anderson did in Richland County on or about June 26, 2017, combine with Aaron Brown and Khaliq Brown, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: armed robbery, in violation of Section 16-17-410, 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.



DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
Jeannette W. M. B. B. B.
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

0-5 yrs

IN THE COURT OF GENERAL SESSIONS

33

COUNTY OF Richland
 STATE VS.
Devonte Ke'Won Anderson
 AKA: _____
 Race: BLACK Sex: M Age: 25
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____
 *CDL Yes No CMV Yes No Hazmat Yes No

INDICTMENT/CASE#: 2017GS4005358
 A/W#: 2017A4021601539
 Date of Offense: 6/26/2017
 S.C. Code § : 16-17-0410
 CDR Code #: 0049

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
 TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

CONVICTED OF or PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §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] Solicitor 79921 SC Bar# Devonte Anderson Defendant [Signature] Attorney for Defendant 7793 SC Bar#

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

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.

933 days

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

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

SPECIAL CONDITIONS:

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

Recipient: _____

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

_____ 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: _____

TOTAL \$ 128.75
 Clerk of Court/ Deputy Clerk Jeanette McBride B. Macurdy
 Court Reporter: _____
 SCCA/217 (04/2018)

Appointed PD or appointed other counsel
 Proviso requires \$500 be paid to Clerk during probation and shall be original before any other fees.
 Presiding Judge J. McBride
 Judge Code: DIC 9.0.C.P.&G.S.
 Sentence Date: 1-16-2018
 RICHLAND COUNTY
 SOUTH CAROLINA

CERTIFIED TRUE COPY ORIGINAL FILED

WITNESSES

(S)

Kimberly Wise - CPD

ARREST WARRANT NUMBER

DP18523

ACTION OF GRAND JURY
TRUE BILL

B. J. Allen

Foreperson of Grand Jury

Date:

SEP 11 2018

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018GS4004073

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2018

105

THE STATE

vs.

Devonte Anderson

Indictment for
WEAPONS / SALE OR DELIVERY OF
PISTOL TO, AND POSSESSION BY,
CERTAIN PERSONS UNLAWFUL; STOLEN
PISTOL

SC Code: 16-23-0030

CDR Code: 2364

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

Defendant

I 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.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Joseph W. W. W. W.
C.C.C.P.A.G.S.
RICHLAND COUNTY
SOUTH CAROLINA
73

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 11, 2018,
 the Grand Jurors of Richland County present upon their oath:

**UNLAWFUL POSSESSION OF A WEAPON BY PERSON CONVICTED
 OF A CRIME OF VIOLENCE**

CDR: 2364 16-23-0030(B), 16-23-50

That Devonte Anderson did in Richland County on or about 6-26-17
 knowingly possess or acquire a pistol after having been convicted of a
 crime of violence defined in Section 16-23-10, S. C. Code of Laws, 2003,
 as amended, in violation of Section 16-23-0030(B), 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.



DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
Jeanette W. McBride
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

0-5 yrs

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
Devonte Anderson
 AKA: _____
 Race: _____ Sex: _____ Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2018GS4004073
 A/W#: DP18523
 Date of Offense: 6/26/2018
 S.C. Code § : 16-23-0030
 CDR Code #: 2364

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

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

in violation of § 16-23-0030 of the S.C. Code of Laws, bearing CDR Code # 2364

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: _____ 79921 _____ 7193
 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 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the 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 FTUP _____

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

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: \$ _____ Substance Abuse Counseling

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

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

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

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

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

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

Proviso (Public Def/Probation) \$500 \$ _____

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

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

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

§ 56-5-2942(I) (Vehicle Assessment) \$40/ca \$ _____

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

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Jeanette Mascolo

Court Reporter: McCurdy

SCCA/217 (04/2018)

Appointed PD or appointed other counsel. Proviso requires \$500 to be paid to Clerk during probation and shall be reported before any other fees.
 Presiding Judge _____
 Judge Code: 2110
 Sentence Date: 7/1/18
 CERTIFIED TRUE COPY
 ORIGINAL FILED
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

WITNESSES

(S) Kimberly D Wise-Lewis
- Columbia Police Department

ARREST WARRANT NUMBER

2017A4021601538

ACTION OF GRAND JURY
TRUE BILL

Keith D
Foreperson of Grand Jury
Date: **SEP 14 2017**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS4005357

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2017
105

THE STATE
vs.

Devonte Ke'Won Anderson

Indictment for
WEAPONS / POSS. WEAPON DURING
VIOLENT CRIME, IF NOT ALSO
SENTENCED TO LIFE WITHOUT PAROLE
OR DEATH

SC Code: **16-23-0490**
CDR Code: **0549**

After being fully advised as to my legal rights, I hereby waive my right to a trial by jury and to the Grand Jury.

Defendant

I 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.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
September 14, 2017
C.C.C. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

0-5

COUNTY OF Richland
 STATE VS.
Devonte Ke'Won Anderson
 AKA: _____
 Race: BLACK Sex: M Age: 24
 DOB: [REDACTED] SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2017GS4005357
 A/W#: 2017A4021601538
 Date of Offense: 6/26/2017
 S.C. Code § : 16-23-0490
 CDR Code #: 0549

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or 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] 79921 [Signature] [Signature] 7193
 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 5 days/months/years 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: \$ _____ days/hours Public Service Employment
 Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing

Recipient: _____

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

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Jeanette McBride
 Court Reporter: McCludy
 SCCA/217 (04/2018)

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] C.C.C.P.&G.S.
 Judge Code: 214
 Sentence Date: 7/1
 RICHLAND COUNTY SOUTH CAROLINA

FILED TRUE COPY

(c) 2017GS4005358, 2017GS4005356, 2017GS4005355

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Sentenced on January 16, 2020 I was sentenced to five

(b) years ran concurrent with my 18 years 85% violent

(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?

no I did not cause if me being naïve I knew nothing about it.

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. N/A

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. N/A

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I've just recieved my Post Conviction Relief form 5 paper

(b) _____

(c) _____

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

(a) Ineffective Counseling

(b) _____

(c) _____

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

(a) I have copies of text messages from my attorney to my

(b) sister proving my attorney lack of due diligence and concern

(c) for my best interests. Inconsistencies in my motion which - see reverse side

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

Should have been brought to light and taken into consideration during the actual plea bargaining process. An example (which is a fact) of this lack of interest is clearly demonstrated by the fact that I first signed a plea of 10-20 years in November 2018. My attorney then placed me on the court docket in January 2020 and when presented with I thought I would've had my original plea agreement. I noticed my attorney had modified the plea agreement and my attorney scratched out my original plea which was 10-20 years I originally signed for and replaced it with a 15-20 year sentence. She ineffectively actually committed a fraud and perjured herself when she stated to the judge that she had a plea signed by me of 15-20 years. Because I signed no such plea. She refused to remove herself from my case (pursuant Rule 1.1b(b)(4) conflict between client and lawyer. I even wrote clerk of courts and written up a motion to relieve counsel. She did not exercise due diligence in the pursuit of fact pertaining to my case, as I had only talked to her a handful of times. She claim the P.I. she hired showed me the video footage of my case and that he spent four hours with me. That is a lie we was in booth 4 at Alvin S. Glenn talking for maybe an hour tops and through plexiglass not once did he show me the video footage in fact he said Aimee would show me. We just discuss some key factors in my case. In her negligence she blatantly ignored the fact that the victim could not and did not point me out when first shown the photo line-up. And then asked if according to the photo line-up pictures if I was the individual who committed the crime against her. Secondly based on (Rule 407) case in point: Seer 1.1 competence, legal skill, knowledge, practice, thoroughness, and preparation below standard set forth by (Rule 407) rules of professionalism. 1) Lack of thorough competence, practice and prep.: an example of this would be the failure to notice that the victim's name on my True Bill Indictment for my Attempted Murder have a name spelled Chineou Nwokah which is a different name from my True Bill Indictment for my Armed Robbery which has Chisom Nwokah. The name they have on my True Indictment for Attempted Murder is different from any name in my motion not only spelled differently, but it have more letters and it's not listed on my victim's K alias so this can not be a type-o. Any attorney having paid close attention and thoroughly reviewed my files with the competence, legal skill, knowledge of my case and preparation and utmost concern for my best interest would have noticed such an error, and would not have changed my plea agreement without first consulting with me about such decision about my life if my attorney really cared about my freedom, liberty and well being. See attached page 1

To further define the lack of concern for me by my attorney I have in my possession text messages between my sister and my attorney. The content in these texts is my sister voicing and showing her concern about my attorney's competence. My attorney stated "I'm done, I'll go see him this weekend but if he wants off that's fine with me". Where's the concern, instead she out of malice she took it upon herself to modify my plea w/o my knowledge or consent. That in itself is a violation of S.C. Law and/or Constitutional Law, in the form of fraud and possibly Forgery and several other laws. This is an example of criminal behavior not professional conduct that should be exhibited by a paid lawyer or any lawyer for that matter!

So yes I am filing this on the grounds of Ineffective Counsel as ground for A Post Conviction Relief Hearing.

Once again to reiterate the grounds are as follows.

* Violation of 6th Amendment Right
 * Conflict free representation and effective assistance of counsel

* 6th and 14th Amendment
 * To present a defense, equal protection, due process, due process clause and 5th Amendment Grand Jury rights were violated because of Ineffective assistance of counsel of record. State Articles I, section II, 3 and 14

* Rule 5 / Brady v. Maryland 373 U.S. 84 (1963)

I have the right to have the victim's credibility challenged by RAP sheet.

I have the right to have the victim's credibility challenged by hospital records.

search of the victim's purse resulted in the discovery of green leaf substance and a pink hued rock like substance which tested positive for marijuana and cocaine. This in itself presents a major challenge to the witness credibility and provides cause to use RAP Sheet. Also, hospital records to check for dictation problems. *see back side*

45

* After conflict arose with my counsel of record she failed to withdraw from the case per SCACR 1.2 SCOPE OF REPRESENTATION and Allocation of Authority Between Client and Lawyer, See Rule 1.1b (a)(3), Rule 1.1b (b)(4).

{ Where Attorney Should Withdraw From Case }

* South Carolina Court Rules of Professional Conduct (Rule 407)

- My attorney's failure to present a defense is because her Seer 1.1 competence, legal skill, knowledge, practice, thoroughness and preparation is below Rule 407 of professionalism.

* The exceptions to the Grand Jury prohibition against disclosure Rule 6(e) permits disclosure of Grand Jury material: (1) to Government Attorneys for use in the performance of their duties (2) to government personnel if necessary to assist government attorney's in their duties. (5) when the court permits disclosure at the request of a defendant seeking dismissal of an indictment because of invalid Grand Jury Actions. Request of defendant seeking dismissal of an indictment or Grand Jury material must demonstrate a Particularized need per Rule 6(e).

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

N/A

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

- i. _____
- ii. _____
- iii. _____

N/A

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

- (a) I was naive about all the different appeals and just got
- (b) knowledge about the PCR and I just received the necessary
- (c) documents to file my Post Conviction Relief properly

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? no trial
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
no

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

- (a) the name and address of each attorney who represented you:
 - i. Aimee J. Zmrocek (A.J.Z. Law Firm, LLC)
(Mailing Address) P.O. Box 11961 Columbia, SC 29211
 - ii. (Physical Address) 2003 Lincoln Street Columbia, SC
29201
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Guilty Plea for 18 years violent
Aimee J. Zmrocek
 - ii. _____
 - iii. _____

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

An adjustment of my time less than my current sentence
I will submit to a lesser sentence not to exceed over 15
years, 8 years would be gradually accepted for my relief.

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

No

STATE OF SOUTH CAROLINA)
)
County of Richland)

VERIFICATION

I, Devonte Ke'won Anderson, 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.

Devonte Ke'won Anderson 366426

SWORN to and subscribed before me this 17
day of June, 2020.

Melissa Spriggs (L.S.)
Notary Public

My Commission Expires: Dec. 1, 2020

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

I, Devonte Ke'won Anderson, 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.

Devonte K. Anderson
Applicant

SWORN or affirmed to and subscribed before me this
17 day of June, 2020.

Melissa Diaz
Notary Public

My Commission Expires: Dec. 1, 2025

NICHLEAND COUNTY
FILED
2020 JUL 27 AM 10:00
JEANNETTE W. MCBRIDE
C.S.P. & G.S.

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Devonte Ke'won Anderson, #366425,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2020-CP-40-3535

**RETURN
 (Counsel Appointed)**

2021 MAR 12 AM 11:00
 CLERK OF COURT
 FIFTH JUDICIAL CIRCUIT
 RICHLAND COUNTY, S.C.

In response to Applicant Devonte Ke'won Anderson's action for post-conviction relief (PCR) commenced July 27, 2020, Respondent, the State of South Carolina, makes this return:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted at the September 2017 term of the Richland County Grand Jury for armed robbery (2017-GS-40-5355), attempted murder (2017-GS-40-5356), possession of a weapon during the commission of a violent crime (2017-GS-40-5357), and criminal conspiracy (2017-GS-40-5358). Subsequently, Applicant was indicted at the September 2018 term of the Richland County Grand Jury for unlawful possession of a weapon by person convicted of a violent felony (2018-GS-40-4073). Applicant was represented by Aimee J. Zmrocek. Assistant Solicitor R. Vance Eaton of the Fifth Circuit Solicitor's Office prosecuted the case.

On January 16, 2020, Applicant plead guilty, pursuant to a negotiated plea agreement with the State, before the Honorable DeAndrea G. Benjamin.¹ Judge Benjamin sentenced Applicant to concurrent terms of eighteen years for armed robbery, eighteen years for ABHAN, five years for

¹ In exchange for Applicant's guilty plea, the State agreed to allow Applicant to plead to the lesser included offense of assault and battery of a high and aggravated nature (ABHAN) rather than attempted murder. The State also agreed to drop an unrelated criminal sexual conduct with a minor in the third degree charge.

possession of a weapon during the commission of a violent crime, five years for criminal conspiracy, and five years for unlawful possession of a weapon by a person convicted of a crime of violence. Applicant did not appeal.

II. FACTS GIVING RISE TO THE CONVICTION

The incident giving rise the charges occurred on June 26, 2017. Plea Tr. 8. At the guilty plea proceeding Assistant Solicitor Eaton gave the following factual recitation in support of the pleas:

Mr. Anderson and his two Co-Defendant brothers, Aaron and Khaliq Brown, and an unidentified person, go to a hotel, the Baymont Inn off I-77, kind of over near Fort Jackson. They responded to an online posting on the now defunct website, Backpage. And that posting was for sex. And they contacted this girl who posted for sex on Backpage to come as though they were going to come to the hotel room to have sex with her.

Devonte Anderson goes in the room. And once he is in there, he pulls out a gun to rob the victim, this girl, Chisholm Loca, the victim. She then pulls out what turns out to be a pellet gun in defense. The two of them start to fight. And they scrap in the room.

As this is happening, Aaron and Khaliq, his Co-Defendants, we see on surveillance footage coming down the hallway to the room putting gloves on. So their role was going to be while he had her at gunpoint, they were going to go through her things and get her money.

That same camera that shows the Brown brothers coming down the hallway shows Devonte Anderson and the victim spilling out of the room. And in this scrap, in this fight, he manages to wrench her phone out of her hand. And he runs off, and the Brown brothers run off. And they tell the clerk, Somebody got shot back there.

The victim staggers out into the lobby and falls down. She was shot in the gut. She ended up having her spleen removed, multiple surgeries to her abdomen. And she is in the hospital for a month.

The Brown brothers and Devonte Anderson are initially identified because of footage in the hotel, the Brown brothers. Someone recognizes them, I think an SRO.

They catch up -- well, Devonte Anderson shoots himself in the hand too. So they catch up with the

Brown brothers and Devonte Anderson. He had been shot in the hand. He ends up talking to Investigator Wise.

He says that he came there for sex. He sort of skirts around that there was -- you know, he doesn't disagree that he was there to rob her, but he never really admits to it.

One of the Brown brothers, Aaron, though, tells Investigator Wise, eventually admits that they went there with the plan to rob this victim.

Plea Tr. 8-10.

III. CURRENT APPLICATION

Applicant timely commenced this PCR action on July 27, 2020. Applicant asserts he is being held in custody unlawfully, alleging:

1. "Ineffective counseling"
 - a. I have copies of text messages from my attorney to my sister proving my attorney lack of due diligence and concern for my best interests. Inconsistencies in my motion which should have been brought to light and taken into consideration during the actual plea bargaining process.
 - b. Conflict of interest

Applicant requests relief in the form of "an adjustment of my time less than my current sentence. I will submit to a lesser sentence not to exceed over 15 years, 8 years would be gradually accepted for my relief."

Attached herewith and incorporated herein are the Richland County Clerk of Court records regarding Applicant's convictions, Applicant's SCDC records, the plea transcript, and the records of this PCR action. Respondent reserves the right to amend this return upon receipt of any relevant materials

IV. RESPONSE TO ALLEGATIONS

Applicant's allegations of ineffective assistance of plea counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained

prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

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). “[A] defendant entering a guilty plea 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 v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct

is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant’s mere speculation about what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice. *Id.*

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of trial 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. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been

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

Pursuant to section 17-27-150 of the South Carolina Code, 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. Further, 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. As noted above, 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. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VI. ALL OTHER CLAIMS

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

VII. CONCLUSION

WHEREFORE, the State requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

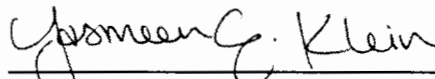
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

YASMEEN E. KLEIN
Assistant Attorney General

By:



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

March 9, 2021



March 9, 2021

The Honorable Jeanette W. McBride
Richland County Clerk of Court
PO Box 2766
Columbia, SC 29202-2766

Re: Devonte Ke'won Anderson, #366425 v. State of South Carolina
2020-CP-40-3535

Dear Ms. McBride,

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Yasmeeen E. Klein
Assistant Attorney General

YEK/em
Enclosure

cc: Scott Spivey, Esquire

State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2020-CP-40-3535

Devonte K. Anderson,)
Applicant,)
vs.)
The State of South Carolina,)
Respondent.)
_____)

Transcript of Record
VIA WEBEX

January 9, 2024

B E F O R E:

The Honorable Maite Murphy, Judge

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

Timothy L. Griffith, Esquire
Attorney for the Applicant

D. Russell Barlow, III, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter
Certified Verbatim Reporter - Master
Certificate of Merit

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I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Devonte K. Anderson	
Direct Examination by Mr. Griffith	7
Cross-examination by Mr. Barlow.	14
 Aimee Zmroczek	
Direct Examination by Mr. Griffith	19
Cross-examination by Mr. Barlow.	21
 Certificate Page.	 25

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
	No exhibits introduced.	

1 LAW CLERK: For the call of the case, this is Devonte
2 K. Anderson, the state, 2020-CP-40-3535.

3 THE COURT: Good morning, everyone.

4 MR. BARLOW: Good morning.

5 APPLICANT: Good morning.

6 THE COURT: Mr. Anderson, before we get started today,
7 there's a couple things that we need to discuss. First of
8 all, my understanding is that the court reporter, she's
9 trying to hop back on. If she doesn't have -- if she's not
10 able to get back on, we do have the recording capability
11 through the WebEx system, so that would be basically the
12 same. It can still be transcribed and everything that is
13 said during the hearing will be a matter of record, which
14 we can certainly obtain later. Do you have any problems or
15 objections to that if she's not able to hop back on?

16 APPLICANT: No, ma'am.

17 THE COURT: All right. Then the second thing I must
18 ask you is that you do have the right to have this matter
19 heard in person. By appearing here today via WebEx, you're
20 waiving that right and consenting to this matter being
21 heard here on WebEx. Is that how you wish to proceed
22 today?

23 APPLICANT: I mean, it's okay. I mean, y'all already
24 set it up, so, I mean, I'm ready to go and get it together.

25 THE COURT: Well, basically, what that means is that

1 we can either go forward today and have this matter heard
2 virtually, or if you don't feel comfortable with that, we
3 can move it to another day. The reason we're having to do
4 this virtually is obviously due to the, the weather storms
5 that were basically -- we thought we were going to be able
6 to be in person today, but unfortunately at the last minute
7 we had to change that. That decision is completely up to
8 you. If you'd rather be in person, we can reschedule this
9 case and, and have it heard at another time. Or if you're
10 ready to go forward today, we can proceed and go forward
11 with your case.

12 APPLICANT: I mean, my lawyer ready to go forward.
13 I'm ready to go forward.

14 THE COURT: Counsel, Mr. Griffith, do you have any
15 objections going forward or any concerns with going forward
16 here today?

17 MR. GRIFFITH: I have no concerns. If Mr. Anderson
18 would lower his mask when he talks, it would be easier to
19 understand him. It would be all right.

20 THE COURT: Thank you. Mr. Anderson. So, are you
21 ready to proceed virtually, Mr. Anderson? Then we have
22 your consent?

23 APPLICANT: Yes, ma'am.

24 THE COURT: All right, sir.

25 All right, counsel. you may call your first witness.

1 MR. GRIFFITH: Attorney General's office, are you
2 going to open the case and give the name or should I?

3 MR. BARLOW: Your Honor, do you want me to -- I know
4 that she called the case. So, you want me to give a brief
5 background in this case?

6 THE COURT: Sure.

7 MR. BARLOW: Okay. Your Honor, this is the case of
8 Devonte K. Anderson. It's case number 2020-CP-40-3535 out
9 of Richland county. He was indicted during the September
10 2017 term of the Richland County grand jury for armed
11 robbery; it was 2017-GS-40-5355. Attempted murder,
12 2017-40-5356; possession of a weapon during the commission
13 of a violent crime, 2017-40-5357; criminal conspiracy,
14 2017-GS-40-5358; and subsequently applicant was indicted at
15 the September 2018 term of the Richland County grand jury
16 for unlawful possession of a weapon by a person convicted
17 of a felony or a violent felony, 2018-GS-40-4073. He was
18 represented by Ms. Aimee Zmroczek, and assistant solicitor
19 R. Vance Eaton prosecuted the case.

20 Applicant was noticed with the state's intention to
21 seek life without parole. On January 16, 2020, the
22 applicant pled guilty pursuant to a negotiated plea
23 agreement with the state before the Honorable DeAndrea G.
24 Benjamin and in exchange for applicant's guilty plea, the
25 state agreed to allow him to plead to the lesser included

1 offense of assault and battery of a high aggravated nature
2 rather than attempted murder. The state also agreed to
3 drop an unrelated criminal sexual conduct with a minor
4 third degree, and Judge Benjamin ultimately sentenced Mr.
5 Anderson to concurrent terms of eighteen years for armed
6 robbery, eighteen years for ABHAN, five years for the
7 weapons charge, and five years for criminal conspiracy, and
8 five years for the unlawful possession of a weapon. And he
9 did not appeal.

10 He commenced this action timely on July, 27, 2020. In
11 his initial application, he had two allegations of
12 ineffective assistance of counsel. On January 3, 2024,
13 applicant's counsel provided some clarity on the
14 allegations, and he is requesting relief in the form of an
15 adjustment of his time other than his current sentence, and
16 he will submit to a lesser sentence not to exceed over
17 fifteen years. But eight years would be gradually accepted
18 for his relief.

19 Before this court are the Richland County clerk of
20 court records, his records from the South Carolina
21 Department of Corrections, his guilty plea transcript, and
22 the records of this PCR action.

23 THE COURT: All right. Thank you, counsel.

24 And, Mr. Anderson, I'm certain that your attorney has
25 discussed with you is that should you be successful in your

1 PCR application in this case, of course your case would
2 start over. So, the state could pursue the LWOP notice on
3 you and if you are convicted of those charges, you could
4 receive a life without parole sentence. Do you understand
5 that?

6 APPLICANT: Yes, ma'am.

7 THE COURT: And knowing that, do you wish to go
8 forward with this action?

9 APPLICANT: Yes, ma'am.

10 THE COURT: All right, counsel, you may call your
11 first witness.

12 MR. GRIFFITH: Thank you, Your Honor. I would call
13 Mr. Devonte Anderson.

14 THE COURT: All right, Mr. Anderson, if you would
15 please raise your right hand.

16 DEVONTE K. ANDERSON, BEING DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 THE COURT: All right, your witness.

19 DIRECT EXAMINATION BY MR. GRIFFITH:

20 Q. Okay, Mr. Anderson, you and I spoke on the phone
21 several times, and we went over your case and you talked to
22 me about your grounds seeking for your PCR, and I did talk
23 to you about the fact that if you win your PCR, that the
24 judge cannot change your sentence. The judge can merely if
25 you -- you're granted, you go right back to where you were

D. ANDERSON - DIRECT EXAMINATION BY MR. GRIFFITH

8

1 before you did your plea, and all the charges would still
2 be there.

3 But in the meantime, you talked to me about your
4 attorney. You had spoken to your attorney and your
5 attorney informed you -- you told me that your attorney
6 suggested going to trial. Is that right?

7 A. Yes. She suggested we go on try immunity trial back
8 in, I want to say, November 2018. Is it a 2018? Yeah,
9 2018. 2020 I left Alvin S. Glenn Detention, but I went --
10 I went to plead. It was a ten-twenty plea. She assured me
11 that -- she was, like, you know, they don't know where the
12 victim is at to -- you know, she hired a private
13 investigator, the solicitor office was hiring a private
14 investigator. She was, like, I highly suggest that we try
15 to move the trial. She also stated issues like, again, up
16 to you. I was, like, you got a good, good feeling about it
17 and you my lawyer. You're here to represent me. I'm going
18 to go with what you say.

19 So, she went back up, up front to the people that we
20 was going to try for a immunity trial. My plea was for ten
21 to twenty. She said she would hold out on that plea and it
22 just -- I don't know. I just -- I went to trial. I think
23 it was Judge -- I believe it was some out-of-town judge.
24 He listened to both parties. He was, like, you want to see
25 the, the case go to trial, it may be good because he liked

1 the defendant and he liked the victim's side of the story.
2 So, he was only -- I broke my ground because when -- I was
3 a felon and I had possession of a weapon in my possession.

4 THE COURT: Mr. Anderson, I don't want to interrupt
5 you, but could you speak up a little bit, please?

6 APPLICANT: Okay.

7 THE COURT: Thank you.

8 A. I lost my immunity, my immunity trial on the grounds
9 that I was a convicted felon and I was -- and I came there
10 with a gun, and I would just -- came home and I wasn't
11 supposed to have one. So, she went back in, her and Vance
12 Eaton. I don't know what they was doing, but I never
13 turned down my ten-twenty plea.

14 I went to court. When he kept saying, okay, you don't
15 want to take the twenty, he served me with LWOP papers or
16 whatever they may be. Then I was, like, well, let me just
17 get my ten and twenty plea. I never turned it down; that
18 plea should be still on the table.

19 Went for the plea date, you know, get my same -- my
20 same plea paper form. It was ten to twenty on there. She
21 scratch it out with fifteen to twenty. I go in front of
22 the judge. They gave me eighteen years.

23 Q. And, Mr. Anderson, you were under the impression that
24 you were being offered a plea deal of ten years to twenty
25 years. Is that correct?

D. ANDERSON - DIRECT EXAMINATION BY MR. GRIFFITH

10

1 A. Yes, sir.

2 Q. And you saw the -- where the plea deal was written
3 down and it said ten to twenty. Is that correct?

4 A. Yes, sir. On the file on my sentencing sheets, it was
5 ten to twenty. She scratched all of them out and put
6 fifteen to twenty and left me that -- left me in the
7 holding cell down there at the bottom of the court. Went
8 back up and I go up there, and they showed me a paper the
9 victim typed up, and they gave me eighteen.

10 Q. And so when you went up to plea, you noticed that the
11 plea sheet had changed from ten to twenty to fifteen to
12 twenty. Is that correct?

13 A. Yes, sir.

14 Q. Okay, and did you tell your lawyer that you wanted to
15 keep the ten to twenty?

16 A. Yes, sir, I did. I did. I was just -- I was so naive
17 and I was lacking in knowledge about what was really going
18 on. I came back here and got in with the law library,
19 going to it constantly, you know. I tripped myself up.
20 She -- I asked me about it. I was, like, how could this be
21 fifteen to twenty? It was just ten to twenty. I mean, you
22 ain't tell me that. You just kept saying he, he wanted to
23 give me twenty or life, you know.

24 She was, like, well, this, this what's going on. The
25 victim sent, sent this letter right here. She's, she's not

1 coming. She sent this letter saying that this is what she
2 wanted, and that's what that -- all that came about.

3 Q. Okay, and so your, your main complaint is that the
4 plea agreement was changed from ten to twenty to fifteen to
5 twenty and -- isn't that correct?

6 A. Yes, sir.

7 Q. And you believe that if the plea had remained at ten
8 to twenty that the judge may have given you less than
9 eighteen?

10 A. Right.

11 Q. And so, of course, your attorney probably told you
12 that it's, it's always up to the judge. Did she tell you
13 that?

14 A. Yes, sir.

15 Q. Okay, but you, you were hoping that you would get that
16 ten to twenty and the judge would give you the lower part.
17 Isn't that correct??

18 A. Yes, sir.

19 Q. Okay. Is there anything else you want to tell the
20 court that would help them to understand why you feel you
21 should have a new trial?

22 A. I mean, I feel like -- I feel like I should have a new
23 trial because, you know, Aimee Zmroczek, that's a good
24 lawyer, but I feel as if she didn't -- she didn't do her
25 due diligence on my case, you know what I'm saying?

D. ANDERSON - DIRECT EXAMINATION BY MR. GRIFFITH

12

1 Because her and my related -- my sister has transpired --
2 text messages, you know, going back and forth, and she's
3 saying that she would relieve herself on my case. She
4 didn't want to give me my motion discovery until it was
5 time for me to go to court. And I was in the county
6 thirty-one months altogether. I didn't get my motion
7 discovery, like, until my last eight months in the county.
8 Get, like, text messages saying -- well, between her and my
9 sister, but she'll relieve herself as counsel. She'll put
10 the motion in.

11 There no bad blood, no bad blood between her or none
12 of that, and she never put the motion in. Like, I asked
13 for her relieve counsel. I went to the clerk of courts to
14 relieve her of counsel to -- for everything. She never
15 relieved, relieved herself, never went to court to relieve
16 her as my counsel. Nothing. So, I feel like she's lacking
17 due diligence. She didn't do her best for me. Feel like
18 she sold me out.

19 Q. So, you believe she just really didn't do her best for
20 you? Is that what you're telling the court?

21 A. Right.

22 Q. Okay. Now, you told me that -- I asked you about
23 whether you got to see your discovery or not, and you said
24 you got to see it a couple of months before the plea. Is
25 that correct?

1 A. Yes, sir. She, she kept saying, oh, I don't want to
2 give you your motion. She only -- I'm in the county
3 thirty-one months. She only came to see me three times.
4 She lied about one time. She said she sent an investigator
5 down there to me. Investigator never came, right?

6 She held my motion discovery. Like, I was trying to
7 help her with my case, but, you know, she said, oh, in --
8 you in the county. You don't understand. Guys jumping on
9 cases. I don't want you with your motion. Okay, you don't
10 want me with my motion, but you're not coming down here to
11 talk to me. You're not properly addressing me, and then
12 when I get my siblings to pull up on you, you know, y'all,
13 y'all going back and forth and arguing. So, my sister was
14 like, you know, just relieve yourself off my case. She
15 didn't want to do that. I have black and white
16 documentation with that.

17 Q. And you were telling me also that she, she was sending
18 emails back and forth with your sister, and tell us a
19 little bit about that.

20 A. Like, you know, like, I have, like -- my mom's not
21 really in my life. So, I had my sister, like, far as doing
22 like all my legal and all my handling and whatever. But,
23 you know, my sister was like, you know, what's the -- my
24 brother want his motion of discovery.

25 MR. BARLOW: Your Honor, at this point I'm going to

D. ANDERSON - DIRECT EXAMINATION BY MR. GRIFFITH 14

1 object to hearsay. We don't have these emails, and I don't
2 believe his sister's here to testify to these emails.

3 A. Right.

4 MR. GRIFFITH: Your Honor, I can't hear you.

5 (A PAUSE.)

6 MR. GRIFFITH: I can't hear Her Honor. It's muted.

7 THE COURT: Is that better?

8 MR. GRIFFITH: Now I hear you.

9 THE COURT: I will allow it briefly, but let's move
10 on.

11 MR. GRIFFITH: Great. Thank you, Your Honor.

12 Q. Mr. Anderson, is there anything else you want to let
13 the court know about why you feel you should have a new
14 trial?

15 A. I mean, that's all. That's all I have to say. I
16 mean, I got -- I got -- I got -- I got my text messages and
17 all my black and white still.

18 MR. GRIFFITH: Okay. I have no further questions.
19 Please answer any questions that the assistant attorney
20 general would ask.

21 THE COURT: Cross-examination.

22 MR. BARLOW: Thank you, Your Honor. May it Please the
23 court?

24 CROSS-EXAMINATION BY MR. BARLOW:

25 Q. All right, Mr. Anderson, what sentence did you

1 receive?

2 A. I received a fifteen to twenty, 85 percent. The judge
3 gave me eighteen years. She asked me how long before my
4 daughter walk across the stage and how old she was.

5 Q. She gave you eighteen years?

6 A. Yes. That's the time my girl could walk across the
7 stage.

8 Q. And you don't feel that the eighteen years was a good
9 deal for all of the charges that you were facing?

10 A. I mean, it's not really about how I feel, to be
11 honest. I mean, I feel like, yeah, you know, but at the
12 same time, I look at the loopholes trying to find a way out
13 of things.

14 Q. Mr. Anderson, would you agree with me that eighteen
15 years isn't life?

16 A. Repeat yourself, please.

17 Q. Would you agree with me that that life without parole
18 is much different than eighteen years, that eighteen years
19 is much better than life without parole, correct?

20 A. You're right. I mean, I'm back here. I got two
21 brothers back here. They got life that's younger than me
22 that's never going home. I think about them daily, every
23 day. I don't even, like, I don't know, like, announce my
24 time, telling nobody my time because I know I'm blessed. I
25 have a release date, 8/21/22. Got 99.99 years plus.

D. ANDERSON - CROSS-EXAMINATION BY MR. BARLOW

16

1 Q. Do you recall telling the court that you were
2 satisfied with Ms. Zmroczek's representation of you?

3 A. With Aimee, yes, I was satisfied with her
4 representation. I did say that.

5 Q. Okay. Do you recall telling the court that you needed
6 no more time with her?

7 A. I mean, we was right there in the court. I mean, what
8 time -- I was ready to go. I mean, I was in the county
9 thirty months. I didn't have no help, you know? I was
10 naive. I was ready to get everything done. I was -- I
11 just felt -- put God -- put it in God's hands.

12 Q. Do you recall telling the plea court Ms. Zmroczek did
13 everything you asked her to do?

14 A. I mean, I don't recall any of that.

15 Q. Okay. Do you recall telling the plea court that Ms.
16 Zmroczek had met with you a sufficient number of times to
17 properly represent you?

18 A. Repeat yourself.

19 Q. Do you recall telling the plea court that you had met
20 with Ms. Zmroczek a sufficient number of times for her to
21 properly represent you?

22 A. I don't know none of that. I was young and really
23 naive. I could have been just agreeing with any and
24 everything just to give her good credit, you know. That's
25 that ---

1 Q. Are you saying that you lied to the court?

2 A. No, I don't lie to no court. What is there to lie
3 about? I just say I don't remember.

4 Q. Okay. Let me ask you this. Why didn't you ask the
5 court to relieve Ms. Zmroczek at your plea?

6 A. Ask why I relieve her when?

7 Q. When you were at your plea hearing, why didn't you ask
8 to have her relieved then?

9 A. I mean, like I, like, I told my lawyer, I was naive.
10 I don't know nothing about the court. So, I didn't learn
11 anything about no amendment until I got back here.

12 You know, like, when you in the process of going
13 through all this, thirty months, thirty-one months sitting
14 in the county, and I didn't get no help. Only seeing her a
15 handful of times. Like, so everything that day and during
16 that transcript, she probably looked at it and I looked at
17 it and felt sympathy for her. So, I don't want to -- you
18 know, like, I have a heart, know what I'm saying, and I
19 don't want to de-credit nobody for the good work they do
20 do, you know what I'm saying?

21 But I'm just saying right is right, wrong is wrong.
22 She didn't -- I don't feel like she supported me enough. I
23 only seen her four times. Didn't get my motion discovery
24 until, like, eight, nine months. I have black -- I wish we
25 could have came in person. My sister was ready to come

D. ANDERSON - CROSS-EXAMINATION BY MR. BARLOW

18

1 down here to show you that I had back and white because you
2 said that wasn't on record. But, like, no, like.

3 Q. I just have one more question for you, I think.

4 Again, you, you had the opportunity to tell the court that
5 you were not satisfied, and you could have had her relieved
6 at that time. Instead, you chose to plead guilty.

7 A. Sir, I been so ready. I been just so ready, get it
8 all over with. You asked me the same question in a
9 different format. I don't want to be rude about it, you
10 know, like...

11 MR. BARLOW: Beg the court's indulgence. Your Honor,
12 I don't have any further questions for Mr. Anderson.

13 THE COURT: Anything further, Mr. Griffith? You're,
14 you're on mute.

15 MR. GRIFFITH: No redirect, Your Honor.

16 THE COURT: All right, sir, you may call your next
17 witness.

18 MR. GRIFFITH: Your Honor, I would call attorney Aimee
19 Zmerich [sic].

20 THE COURT: Good morning, ma'am.

21 WITNESS: Good morning, Your Honor.

22 THE COURT: If you would please raise your right hand.

23 AIMEE ZMROCZEK, BEING DULY SWORN,

24 TESTIFIES AS FOLLOWS:

25 THE COURT: All right, your witness.

A. ZMROCZEK - DIRECT EXAMINATION BY MR. GRIFFITH

19

1 MR. GRIFFITH: Thank you, Your Honor. If it please
2 the court?

3 DIRECT EXAMINATION BY MR. GRIFFITH:

4 Q. Attorney Zmerick [sic], I hope I'm pronouncing that
5 correctly.

6 A. It's Zmroczek.

7 Q. Zmroczek. Mr. Anderson told us that he was presented
8 with a, a plea deal of ten to twenty. Is that your
9 recollection?

10 A. It is not.

11 APPLICANT: Done. I'm going to take my eight years to
12 2032. I've had it. She's lying, bruh. My first plea was
13 ten to twenty. November 2018 I went -- I remember like it
14 was yesterday. I with Tyrone Derrick. She suggested the
15 immunity trial. I thought about it. I sat in the chair
16 long and hard about ten minutes talking about it. She said
17 we should try it. The victim is nowhere to be found. I
18 got to hire a private investigator; the solicitor got to
19 hire a private investigator. I suggested the immunity
20 trial. She broke it down to what grounds are we needed to
21 win in the trial. I thought about it.

22 I said you know what? I feel good about my lawyer. I
23 heard about human beings chasing lawyers in trial courts
24 forever. So, I feel good about her representing me with a
25 trial. So, she went upstairs in a little bit and told --

A. ZMROCZEK - CROSS-EXAMINATION BY MR. BARLOW

20

1 and told him what was going on.

2 THE COURT: All right, Mr. Anderson, you've had the
3 opportunity to testify.

4 APPLICANT: But she said -- she said ---

5 THE COURT: Hold up, Mr. Anderson.

6 APPLICANT: She said that plea was never offered. I'm
7 going my eighteen. I'm straight. I got eight years left.
8 I'm not here to leak China. Ain't too many people can do
9 that ---

10 THE COURT: All right. Well, hold on a second, Mr.
11 Anderson.

12 (WHEREUPON, APPLICANT EXITS THE WEBEX HEARING.)

13 THE COURT: Mr. Anderson, you want to withdraw your
14 application then? All right.

15 MR. GRIFFITH: Your Honor, I'm sorry, but generally
16 it's probably a good idea to, to mute that person after
17 they've given their testimony.

18 Q. But in the meantime, Attorney Zmerich, so you don't
19 recall seeing the plea sheet say ten to twenty?

20 THE COURT: Well, let's stop for a second, Mr.
21 Griffith, just so that the record is clear that your client
22 was interrupting during the testimony of counsel and stood
23 up and indicated that he is going to do his, his eight more
24 years that he's got left, and said that he was done and
25 left the room. So, he's basically voluntarily left this

1 hearing, which is certainly fine by me. I don't have any
2 opposition to that, but I just wanted the record to be
3 clear that those were his actions during this hearing.

4 And now you may continue with the testimony of Ms.
5 Zmroczek.

6 MR. GRIFFITH: If it please the court, Your Honor just
7 to inform the court, I talked on the phone to Mr. Anderson
8 a total of six times and in all those times at the end of
9 -- well, during -- at some point in a conversation, he
10 would hang up on me, but I finally did get to talk to him
11 that sixth time, and so that's just his modus operandi,
12 Your Honor. He becomes frustrated and just shuts down,
13 but ---

14 THE COURT: I'm not blaming you, counsel. I just
15 wanted the record to be clear as to what his actions were,
16 and those were certainly his actions. So, you may proceed
17 with your examination.

18 MR. GRIFFITH: Thank you, Your Honor. I actually have
19 no further questions.

20 THE COURT: Cross-examination.

21 MR. BARLOW: Thank you, Your Honor. May it please the
22 court? Very briefly.

23 CROSS-EXAMINATION BY MR. BARLOW:

24 Q. Ms. Zmroczek, how long did you represent Mr. Anderson?

25 A. I was appointed back in 2018, and so I represented him

A. ZMROCZEK - CROSS-EXAMINATION BY MR. BARLOW

22

1 from that time to his plea, at which time -- or during
2 which time I hired not only a private investigator, a
3 forensic investigator. I went down and saw him numerous
4 times, as did the investigator, and on May 19th -- May 15th
5 of 2019, we did a stand-your-ground hearing.

6 Q. And do you recall approximately how many times you met
7 with your client?

8 A. Telephone and face and investigators, it was, I mean,
9 it was well over twenty times.

10 Q. Okay, and did you scratch out the sentencing sheet and
11 write in fifteen to twenty?

12 A. So, I, I haven't seen that, but I, I would have to
13 see the handwriting just because I don't have a copy, but
14 it's ---

15 Q. It's an allegation. It's actually not on the
16 sentencing sheet.

17 A. I never saw it on the sentencing sheet. This is my
18 recollection of the -- of the negotiations. I put those in
19 quotes because there weren't really negotiations. It was
20 always twenty, dead set twenty. It slipped or Eaton said
21 twenty, twenty, twenty and then he tried a different
22 tactic. He said I'll just serve an LWOP notice, and so we
23 did the stand-your-ground hearing. And, I mean, we were
24 going back and forth and back and forth, but it was always
25 twenty.

1 And, and I believe that there were some mitigating
2 factors. He does have -- I think he's got socioeconomic
3 background and some family issues that I think led us to
4 where we are. But at that point we lost the stand-your-
5 ground hearing, you know, I just let him know what the --
6 what the options were and, I mean, I'm very clear that
7 these were all of his choices.

8 Q. And let me ask you. Regarding the victim, do you
9 recall the victim actually being involved in this?

10 A. Well, so she did appear for the sentencing and she did
11 testify.

12 Q. Do you recall where she lived?

13 A. I believe in Georgia.

14 Q. Would Indiana surprise you?

15 A. It was out of state and it was not local, but yeah.

16 Q. So, so, they had not lost her. She was not missing.

17 A. Correct.

18 Q. Okay, and did he ever ask or request that you be
19 relieved as his counsel?

20 A. I think maybe once or twice he had mentioned it and,
21 you know, I said, certainly, you know, if you would like to
22 have me relieved, but he would never follow through with
23 that. And, in fact, yeah, I mean, I think the stand-your-
24 hearing transcript was pretty obvious I put a ton of effort
25 into this.

A. ZMROCZEK - CROSS-EXAMINATION BY MR. BARLOW

24

1 Q. Okay, and last question is do you stand by your
2 representation?

3 A. Absolutely.

4 MR. BARLOW: Nothing further, Your Honor.

5 THE COURT: All right. Thank you.

6 Counsel, anything further?

7 MR. GRIFFITH: No redirect, Your Honor.

8 THE COURT: Any other witnesses?

9 MR. GRIFFITH: No witnesses.

10 MR. BARLOW: No witnesses.

11 THE COURT: Thank you, gentlemen. I'll take a look at
12 the transcript and I'll ask the parties to write a proposed
13 order shortly.

14 MR. BARLOW: Thank you, Your Honor.

15 MR. GRIFFITH: Thank you, Your Honor.

16 THE COURT: Have a good day.

17 --- **END OF TRANSCRIPT OF RECORD** ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, **VIA WEBEX**, ON THE 9TH DAY OF JANUARY, 2024.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM
Certified Verbatim Reporter - Master
Certificate of Merit

COLUMBIA, SOUTH CAROLINA

MAY 5TH, 2024

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

PROCEDURAL HISTORY

The records before this Court establish Applicant is confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted at the September 2017 term of the Richland County Grand Jury for Armed Robbery (2017-GS-40-5355), Attempted Murder (2017-GS-40-5356), Possession of a Weapon During the Commission of a Violent Crime (2017-GS-40-5357), and Criminal Conspiracy (2017-GS-40-5358). Subsequently, Applicant was indicted at the September 2018 term of the Richland County Grand Jury for Unlawful Possession of a Weapon by Person Convicted of a Violent Felony (2018-GS-40-4073). Applicant was represented by Aimee J. Zmroczek, Esquire. Assistant Solicitor R. Vance Eaton of the Fifth Circuit Solicitor's Office prosecuted the case.

On May 15, 2019, Applicant appeared before the Honorable G. Thomas Cooper, Jr., for a stand-your-ground (SYG) hearing. Judge Cooper denied Applicant's request to judicially dismiss the charge. On January 16, 2020, Applicant pled guilty, pursuant to a negotiated plea agreement with the State, before the Honorable DeAndrea G. Benjamin.¹ Judge Benjamin sentenced Applicant to concurrent terms of eighteen (18) years for Armed Robbery, eighteen (18) years for ABHAN, five (5) years for Possession of a Weapon During the Commission of a Violent Crime, five (5) years for Criminal Conspiracy, and five (5) years for Unlawful Possession of a Weapon by a Person Convicted of a Crime of Violence. Applicant did not appeal.

¹ In exchange for Applicant's guilty plea, the State agreed to allow Applicant to plead to the lesser included offense of Assault and Battery of a High and Aggravated Nature (ABHAN) rather than Attempted Murder. The State also agreed to drop an unrelated Criminal Sexual Conduct with a Minor—3rd Degree charge (2017A4010600712).

FACTS GIVING RISE TO THE CONVICTION

The incident giving rise to the charges occurred on June 26, 2017. The facts in support of the plea were articulated by the State at Applicant's plea hearing, as follows:

Mr. Anderson and his two Co-Defendant brothers, Aaron and Khaliq Brown, and an unidentified person, go to a hotel, the Baymont Inn off I-77, kind of over near Fort Jackson. They responded to an online posting on the now defunct website, Backpage. And that posting was for sex. And they contacted this girl who posted for sex on Backpage to come as though they were going to come to the hotel room to have sex with her. Devonte Anderson goes in the room. And once he is in there, he pulls out a gun to rob the victim, this girl, Chisholm Loca, the victim. She then pulls out what turns out to be a pellet gun in defense. The two of them start to fight. And they scrap in the room. As this is happening, Aaron and Khaliq, his Co-Defendants, we see on surveillance footage coming down the hallway to the room putting gloves on. So their role was going to be while he had her at gunpoint, they were going to go through her things and get her money. That same camera that shows the Brown brothers coming down the hallway shows Devonte Anderson and the victim spilling out of the room. And in this scrap, in this fight, he manages to wrench her phone out of her hand. And he runs off, and the Brown brothers run off. And they tell the clerk, somebody got shot back there. The victim staggers out into the lobby and falls down. She was shot in the gut. She ended up having her spleen removed, multiple surgeries to her abdomen. And she is in the hospital for a month. The Brown brothers and Devonte Anderson are initially identified because of footage in the hotel, the Brown brothers. Someone recognizes them, I think an SRO. They catch up -- well, Devonte Anderson shoots himself in the hand too. So they catch up with the Brown brothers and Devonte Anderson. He had been shot in the hand. He ends up talking to Investigator Wise. He says that he came there for sex. He sort of skirts around that there was -- you know, he doesn't disagree that he was there to rob her, but he never really admits to it. One of the Brown brothers, Aaron, though, tells Investigator Wise, eventually admits that they went there with the plan to rob this victim.

Plea Tr. 8-10.

CURRENT ACTION BEFORE THIS COURT

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

1. **"Ineffective counseling"**
 - a. I have copies of text messages from my attorney to my sister proving my attorney lack of due diligence and concern for my best interests. Inconsistencies in my motion which should have been brought to light and taken into consideration during the actual plea bargaining process.
 - b. Conflict of interest

Applicant requests relief in the form of "an adjustment of my time less than my current sentence. I will submit to a lesser sentence not to exceed over 15 years, 8 years would be gradually accepted for my relief."

PCR Counsel amended his allegations by email to include the following:

Mr. Anderson saw a plea agreement for 10-20 years but his lawyer – the day of the plea had scratched out the 10-20 and put 15-20. He feels that was ineffective in that he expected the minimum of 10. He got 18. He thinks the Judge would have given him less with the lower limit.

At the PCR evidentiary hearing, Applicant proceeded on the following allegations:

1. Ineffective Assistance of Counsel
 - a. Applicant signed a plea agreement for 10-20 years, and Plea Counsel modified Applicant's plea agreement from 10-20 years to 15-20 years before Applicant's plea without advising of the change.
 - b. Plea Counsel refused to remove herself from Applicant's case.
 - c. Plea Counsel failed to investigate facts of Applicant's case.
 - d. Plea Counsel met with Applicant a handful of times.
 - e. Plea Counsel failed to provide discovery.
 - f. Plea Counsel never showed Applicant the video footage of his case, and neither did the private investigator.
 - g. Plea Counsel ignored the fact the victim could not initially point out Applicant in the photo line-up.

- h. Plea Counsel did not notice the victim's name was spelled Chineou Nwokah on his attempted murder indictment but spelled Chisom Nwokah on his armed robbery indictment.
- i. Plea Counsel ignored that the Victim could not point Applicant out in a photo lineup.
- j. Plea Counsel failed to raise a defense.

Before this Court are the Richland County Clerk of Court records regarding Applicant's convictions, Applicant's SCDC records, the plea transcript, the stand-your-ground transcript, and the records of this PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

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

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C.

² S.C. Code Ann. §§ 17-27-10 to -160.

Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117—18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's

performance under the first prong of Strickland remains unchanged, the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of Plea Counsel through the post-conviction relief action presently before this Court. In analyzing these

claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

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

INITIAL FINDINGS

This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

This Court makes the following findings from the record: 1. Plea Counsel informed Applicant of the charges against him, the possible punishment, and Applicant's constitutional rights prior to his plea (Plea Tr. 7); 2. Plea Counsel agreed with Applicant's decision to plea (Plea Tr. 7); 3. Applicant was not under the influence of medication, drugs, or alcohol at the time of his plea (Plea Tr. 8); 4. Applicant agreed to the State's recitation of the facts giving rise to his plea (Plea Tr. 11); 5. Applicant understood the possible sentences he could receive and that the court could run the sentences consecutively (Plea Tr. 11–12); 6. Applicant understood his constitutional rights and waived his rights (Plea Tr. 13); 7. Applicant was satisfied with Plea Counsel's representation (Plea Tr. 13–14); 8. Plea Counsel met with Applicant a sufficient number of times prior to his plea (Plea Tr. 14); 9. Applicant was not forced, threatened, or coerced into pleading guilty (Plea Tr. 14–15); 10. Applicant was not offered anything in exchange for his plea other than the State's offer (Plea Tr. 14–15); 11. Applicant pled freely and voluntarily (Plea Tr. 14–15); 12. Applicant understood the plea court's questions and answered the plea court's questions truthfully (Plea Tr. 15); 13. Applicant had no questions for the plea court concerning his plea proceedings (Plea Tr. 15); 14. The plea court found there was a substantial factual basis for Applicant's plea and found that Applicant's plea was given freely, voluntarily, knowingly, and intelligently (Plea Tr. 15).

APPLICANT'S ACTIONS AT THE PCR EVIDENTIARY HEARING

Out of an abundance of caution, this Court addresses Applicant's actions at the PCR evidentiary hearing. After Applicant testified on direct and cross-examinations, the following occurred as Plea Counsel was on direct examination:

- Q. Zmroczek. Mr. Anderson told us that he was presented with a, a plea deal of ten to twenty. Is that your recollection?
 A. It is not.

APPLICANT: Done. I'm going to take my eight years to 2032. I've had it. She's lying, bruh. My first plea was ten to twenty. November 2018 I went -- I remember like it was yesterday. I with Tyrone Derrick. She suggested the immunity trial. I thought about it. I sat in the chair long and hard about ten minutes talking about it. She said we should try it. The victim is nowhere to be found. I got to hire a private investigator; the solicitor got to hire a private investigator. I suggested the immunity trial. She broke it down to what grounds are we needed to win in the trial. I thought about it. I said you know what? I feel good about my lawyer. I heard about human beings chasing lawyers in trial courts forever. So, I feel good about her representing me with a trial. So, she went upstairs in a little bit and told -- and told him what was going on.

THE COURT: All right, Mr. Anderson, you've had the opportunity to testify.

APPLICANT: But she said -- she said ---

THE COURT: Hold up, Mr. Anderson.

APPLICANT: She said that plea was never offered. I'm going my eighteen. I'm straight. I got eight years left. I'm not here to leak China. Ain't too many people can do that ---

THE COURT: All right. Well, hold on a second, Mr. Anderson.

(WHEREUPON, APPLICANT EXITS THE WEBEX HEARING.)

PCR Tr. 19–20. Applicant, of his own volition, abruptly interrupted the court proceedings and left the hearing.

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1a: Plea Counsel Modified Applicant's Plea Agreement Without Consulting Applicant

Applicant alleged Plea Counsel modified his plea agreement from ten to twenty years to fifteen to twenty years without consulting him before he pled guilty. This Court finds this allegation is without merit.

The voluntariness of a guilty plea "is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). 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 v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); 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).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel assured him that it was a ten to twenty plea deal. PCR Tr. 8. Applicant testified that he never turned down his ten to twenty-year plea deal. PCR Tr. 9. Applicant testified that when they served him with LWOP, he stated he wanted the ten to twenty. Id. Applicant testified that on the date of his plea, PCR Counsel scratched out the ten to twenty and wrote fifteen to twenty. PCR Tr. 9–11. Applicant testified that he believed if PCR Counsel had not changed the numbers, the plea court would have given him less time. PCR Tr. 11.

On cross-examination, Applicant testified that he was looking for loopholes and "trying to find a way out of things." PCR Tr. 15. Applicant testified that he was satisfied with Plea Counsel's representation and recalled telling the plea court the same. PCR Tr. 16. Applicant testified that he did not tell the plea court he wanted Plea Counsel removed because he did not want to "de-credit" her. PCR Tr. 17. Applicant testified that he just wanted to get the plea done. PCR Tr. 18.

On direct examination, Plea Counsel testified that the ten to twenty plea deal was not what she recalled.³

The following colloquy occurred on cross-examination:

- Q. Okay, and did you scratch out the sentencing sheet and write in fifteen to twenty?
- A. So, I, I haven't seen that, but I, I would have to see the handwriting just because I don't have a copy, but it's ---
- Q. It's an allegation. It's actually not on the sentencing sheet.
- A. I never saw it on the sentencing sheet. This is my recollection of the -- of the negotiations. I put those in quotes because there weren't really negotiations. It was always twenty, dead set twenty. It slipped or Eaton said twenty, twenty, twenty and then he tried a different tactic. He said I'll just serve an LWOP notice, and so we did the stand-your-ground hearing. And, I mean, we were going back and forth and back and forth, but it was always twenty. And, and I believe that there were some mitigating factors. He does have -- I think he's got socioeconomic background and some family issues that I think led us to where we are. But at that point we lost the stand-your-ground hearing, you know, I just let him know what the -- what the options were and, I mean, I'm very clear that these were all of his choices.

PCR Tr. 22–23.

Findings

³ Notably, at this point in the evidentiary hearing, Applicant interrupted the Court and voluntarily left the Webex hearing. PCR Tr. 19–20.

This Court finds the combination of the record and Plea Counsel's **credible** and **persuasive** testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Plea Counsel **credibly** testified that she did not mark anything out on the sentencing sheet and the offer was always twenty. Additionally, the record refutes Applicant's claim and provides he was apprised of the time the plea court could give him and Applicant informed the plea court that no one had promised him anything.

Moreover, to whatever extent Applicant thought he was getting less time than he did, he was presented an opportunity to inform the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test— that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill— that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

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

Allegation 1b: Plea Counsel refused to remove herself from Applicant's case.

Applicant alleges that Plea Counsel was constitutionally ineffective for failing to remove herself from Applicant's case. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel told him she would put a motion in to relieve herself as his attorney. PCR Tr. 12. Applicant testified Plea Counsel never moved to relieve herself as his attorney. Id.

On cross-examination, Applicant testified that he did not tell the plea court he wanted Plea Counsel to be relieved because he was naïve. PCR Tr. 17. Applicant testified that he just wanted to get it over. Id. Applicant testified that he did not want to "de-credit" Plea Counsel because he has a heart and he just felt like Plea Counsel did not "support [him] enough." Id.

On direct examination, Plea Counsel testified that she recalled Applicant asking her to relieve herself once or twice. PCR Tr. 23. Plea Counsel testified that while Applicant mentioned it once or twice, he never followed through with it. Id.

Findings

This Court finds the combination of the record and Plea Counsel's **credible** and **persuasive** testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, supra. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. Plea Counsel **credibly** testified that Applicant mentioned relieving her as counsel once or twice, but he never followed through. Additionally, this Court finds Applicant's testimony **not credible**. Applicant testified that he wanted Plea Counsel to relieve herself, however, he informed the plea court that he was satisfied

with her representation and he testified to this Court that he was satisfied with Plea Counsel and exclaimed Plea Counsel is a good attorney. PCR Tr. 11:23–24, 16:1 – 4. To the extent Applicant relied on text messages between his sister and Plea Counsel, those messages are not before this Court.

Moreover, to whatever extent Applicant was dissatisfied with Plea Counsel's representation and performance, he was presented an opportunity to inform the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

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

Allegation 1c: Plea Counsel failed to investigate the facts of Applicant's case.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate the facts of Applicant's case. This Court finds this allegation to be without merit.

Strickland makes clear that defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut

any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331– 32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted).

However, this duty is limited to a reasonable investigation. Id. at 331, 642 S.E.2d at 597. Further, a PCR applicant must ordinarily present some probative evidence to prevail on a claim of ineffective assistance based on failure to investigate. See Jackson v. State, 329 S.C. 345, 353– 54, 495 S.E.2d 768, 772 (1998) (reversing the PCR court's grant of relief where the applicant failed to "present any evidence of what counsel could have discovered or what other defenses he would have requested had counsel more fully prepared for the trial").

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel told him she sent an investigator to see him, but he never saw the investigator.⁴ PCR Tr. 13.

On cross-examination, Plea Counsel testified that she had hired a private investigator and a forensic investigator. PCR Tr. 22. Plea Counsel testified that the SYG hearing transcript reflects that she "put a ton of effort" into Applicant's case.

Findings

This Court finds the combination of the record and Plea Counsel's **credible** and **persuasive** testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant

⁴ This testimony is in direct contradiction to Applicant's PCR application attachment page 1. Therein Applicant wrote that the private investigator met with him in Booth 4 at the Alvin S. Glenn Detention Center for about one hour. See PCR Application Attachment Page 1.

decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Applicant's testimony **not credible**. Plea Counsel **credibly** testified she hired a private investigator and forensic investigator. Plea Counsel **credibly** testified that the SYG hearing transcript reflects that she was well prepared. This Court agrees.

Additionally, as noted *supra*, the Applicant's testimony to this Court today regarding the private investigator never visiting him contradicts what he wrote in his PCR application.

This Court also finds that the Applicant failed to present any evidence of what Plea Counsel would have found had she investigated further. See Jackson, *supra*.

Moreover, to whatever extent Applicant was dissatisfied with Plea Counsel's representation and performance, he was presented an opportunity to inform the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

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

Allegation 1d: Plea Counsel failed to meet with Applicant a sufficient number of times.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times. This Court finds this allegation to be without merit.

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 ensure 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 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) (finding "Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, "brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." Id.; see Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack

of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel only visited him three times prior to his guilty plea. PCR Tr. 13.

Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Plea Counsel **credibly** testified that she met with Applicant over twenty times. This Court finds Applicant's testimony that Plea Counsel only met with him three times **not credible**. Furthermore, this Court finds Applicant failed to present any evidence of how additional preparation or communication would have resulted in a different outcome. See Jackson and Skeen, *supra*.

Moreover, to whatever extent Applicant was dissatisfied with Plea Counsel's representation and performance, he was presented an opportunity to inform the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render

reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

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

Allegation 1e: Plea Counsel failed to provide discovery on request.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to provide his discovery on request. This Court finds this allegation to be without merit.

An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. 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, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Plea Counsel did not provide his discovery

in jail until eight months before his plea hearing. PCR Tr. 12.

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Plea Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Applicant failed to show what evidence could have been discovered had Plea Counsel provided his discovery to him at an earlier time and has failed to overcome his burden in showing but for Plea Counsel's alleged error that he would have gone to trial and not pled guilty.

Moreover, to whatever extent Applicant was dissatisfied with Plea Counsel's representation and performance, he was presented an opportunity to inform the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland as laid out in Hill—that but for Plea Counsel's deficient performance, Applicant would have gone to trial and not pled guilty.

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

Allegation 1f: Plea Counsel never showed Applicant the video footage of his case, and neither did the private investigator.

In his original application, Applicant alleged Plea Counsel never showed Applicant the video footage of his case, and neither did the private investigator. Applicant failed to present any evidence, testimony, or legal authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, this Court deems the allegation abandoned.

Allegation 1g: Plea Counsel ignored the fact the victim could not initially point out Applicant in the photo line-up.

In his original application, Applicant alleged Plea Counsel ignored the fact the victim could not initially point out Applicant in a photo line-up. Applicant failed to present any evidence, testimony, or legal authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, this Court deems the allegation abandoned.

Allegation 1h: Plea Counsel did not notice the victim's name was spelled Chineou Nwokah on his attempted murder indictment but spelled Chisom Nwokah on his armed robbery indictment.

In his original application, Applicant alleged Plea Counsel did not notice the victim's name was spelled Chineou Nwokah on his attempted murder indictment but spelled Chisom Nwokah on his armed robbery indictment. Applicant failed to present any evidence, testimony, or legal

authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, this Court deems the allegation abandoned.

Allegation 1i: Plea Counsel ignored that the Victim could not point out Applicant in the photo lineup.

In his original application, Applicant alleged Plea Counsel ignored that the Victim could not point out Applicant in the photo lineup. Applicant failed to present any evidence, testimony, or legal authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, this Court deems the allegation abandoned.

Allegation 1j: Plea Counsel failed to raise a defense.

In his original application, Applicant alleged Plea Counsel failed to raise a defense. Even assuming *in arguendo* that Applicant raised this claim at the PCR evidentiary hearing, the SYG hearing transcript disputes this allegation wholly. However, Applicant failed to present any evidence, testimony, or legal authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, this Court deems the allegation abandoned.

CONCLUSION

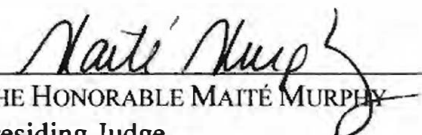
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 5 day of Sept, 2024.


 THE HONORABLE MAITÉ MURPHY
 Presiding Judge
 Fifth Judicial Circuit

Charleston, South Carolina