

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Jul 23 2025**

S.C. SUPREME COURT

—————  
Certiorari to Marion County

Honorable G.D. Morgan, Jr., Circuit Court Judge

—————  
JAYME D. GAMBLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000302

—————  
APPENDIX  
—————

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STATE OF SOUTH CAROLINA	)	
COUNTY OF MARION	)	COURT OF GENERAL SESSIONS
	)	2018-GS-33-120
	)	2018-GS-33-121
	)	
	)	
State of South Carolina	)	TRANSCRIPT OF RECORD
vs.	)	
Jayme D. Gamble	)	
Kendell A. Gamble	)	
DEFENDANT	)	August 1, 2018
		Marion, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR.

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

PATTI PARKER, ASSISTANT SOLICITOR  
Attorney for the State

LAURA HILLER, ESQ.  
JONATHAN HILLER, ESQ.  
Attorneys for the Defendants

KESHIA REED  
Official Court Reporter

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(WHEREUPON, no witnesses were called.)

1 THE CLERK: Left hand on the Bible raise your  
2 right hand. Do you solemnly swear or affirm to tell the  
3 truth, the whole truth, and nothing but the truth so help  
4 you God?

5 KENDELL GAMBLE: Yes, ma'am.

6 THE CLERK: Thank you. Do you solemnly swear or  
7 affirm to tell the truth, the whole truth, and nothing but  
8 the truth so help you God?

9 JAYME GAMBLE: Yes.

10 MS. PARKER: Your Honor, before the Court is  
11 Kendell Alan Gamble 2018-GS-33-00121 and also Jayme  
12 Deshawn Gamble 2018-GS-33-120 both of these individuals  
13 are here on these indictments. They have been true billed  
14 by the grand jury. Kendell Gamble is represented by Mr.  
15 Jonathan Hiller. And on this indictment it is a 24 count  
16 indictment. He's pleading to several counts and I'll call  
17 them out. He's pleading to Count 1 burglary first, Count  
18 2 attempted armed robbery, Count 15 kidnapping, Count 16  
19 attempted murder, Count 17 attempted murder, Count 20  
20 attempted murder and Count 24 possession of a weapon  
21 during the commission of a violent crime. He's pleading  
22 straight up without any negotiations or recommendations  
23 from the State.

24 Jayme Gamble is represented by Mrs. Laura  
25 Hiller. And he's pleading to Count 1 burglary in the

1 first degree. Count 2 on that indictment attempted armed  
2 robbery, Count 15 kidnapping, Count 16 attempted murder,  
3 Count 17 attempted murder and Count 20 attempted murder.  
4 He's also pleading to possession of a weapon during the  
5 commission of a violent crime and failure to stop for a  
6 blue light. He is also pleading straight up without any  
7 recommendations or negotiations from the State. Your  
8 Honor, we have numerous victims that are present here that  
9 at the appropriate time that they would like to speak. I  
10 also have a presentation on the facts and have a short  
11 video at the appropriate time.

12 THE COURT: All right.

13 MRS. LAURA HILLER: Your Honor, I did just want  
14 to clarify one thing. The only recommendation or  
15 negotiation was that you would recommend concurrent.

16 MS. PARKER: Concurrent that is correct, Your  
17 Honor, that any sentence impose by the Court would run  
18 concurrent.

19 THE COURT: All right. Mr. Jayme Gamble, you  
20 are pleading guilty to burglary first degree which carries  
21 a minimum of 15 years and a maximum of life; is that  
22 correct?

23 JAYME GAMBLE: Yes, sir.

24 THE COURT: All right. You need to speak up.  
25 And you are pleading guilty to armed robbery which carries

1 a maximum of 20 years; is that correct?

2 JAYME GAMBLE: Yes, sir.

3 THE COURT: And you're pleading guilty to  
4 kidnapping which carries a maximum of 30 years?

5 JAYME GAMBLE: Yes, sir.

6 THE COURT: Pleading guilty to attempted murder  
7 which carries a maximum of 30?

8 JAYME GAMBLE: Yes, sir.

9 THE COURT: Another count of attempted murder  
10 which carries a maximum of 30?

11 JAYME GAMBLE: Yes, sir.

12 THE COURT: Another count of attempted murder  
13 which carries a maximum of 30?

14 JAYME GAMBLE: Yes, sir.

15 THE COURT: And possession of a weapon during  
16 the commission of a violent crime which carries up to five  
17 years; is that correct?

18 JAYME GAMBLE: Yes, sir.

19 THE COURT: And you are pleading guilty to  
20 failure to stop for a blue light which carries a minimum  
21 of 90 days and a maximum of three years; is that correct?

22 JAYME GAMBLE: Yes, sir.

23 THE COURT: All right. And, Mr. Kendell  
24 Gamble, you are pleading guilty to burglary first degree  
25 which carries a minimum of 15 and a maximum of life; is

1 that correct?

2 KENDELL GAMBLE: Yes, sir.

3 THE COURT: And you are pleading guilty to  
4 attempted armed robbery which carries up to 20?

5 KENDELL GAMBLE: Yes, sir.

6 THE COURT: You are pleading guilty to  
7 kidnapping which carries up to 30 years?

8 KENDELL GAMBLE: Yes, sir.

9 THE COURT: And you are pleading guilty to  
10 attempted murder. You're pleading guilty to three counts  
11 of that. Each count carrying up to 30 years in jail; is  
12 that correct?

13 KENDELL GAMBLE: Yes, sir.

14 THE COURT: And you are pleading guilty to  
15 possession of a weapon during the commission of a violent  
16 crime which carries up to five years; is that correct.

17 KENDELL GAMBLE: Yes, sir.

18 THE COURT: All right. Now, Mr. Jayme Gamble,  
19 you understand that you do not have to plead guilty?

20 KENDELL GAMBLE: Yes, sir.

21 THE COURT: Go over all of this with both of you  
22 and I want Mr. Jayme Gamble to answer first and I want  
23 Kendell Gamble to answer second, okay?

24 KENDELL GAMBLE: Yes, sir.

25 THE COURT: All right. I want you both to

1 understand you do not have to plead guilty. If you would  
2 rather have a jury trial instead, all you have to do is  
3 ask and I'll make sure you give get one. You understand  
4 that?

5 JAYME GAMBLE: Yes, sir.

6 KENDELL GAMBLE: Yes, sir.

7 THE COURT: You understand that if you have a  
8 jury trial the burden of proof is on the State of South  
9 Carolina. They would have to prove you guilty beyond a  
10 reasonable doubt?

11 JAYME GAMBLE: Yes, sir.

12 KENDELL GAMBLE: Yes, sir.

13 THE COURT: Also if you had a jury trial, you  
14 have a jury made up of 12 people and it would have to take  
15 all 12 members of that jury to agree unanimously to  
16 convict you before the Court could sentence?

17 JAYME GAMBLE: Yes, sir.

18 KENDELL GAMBLE: Yes, sir.

19 THE COURT: Also at your trial each one of your  
20 lawyers would have the right and the opportunity to  
21 cross-examine and confront each and every one of the  
22 State's witnesses?

23 JAYME GAMBLE: Yes, sir.

24 KENDELL GAMBLE: Yes, sir.

25 THE COURT: Also at your trial you could come

1 over here, you could be sworn in. You could take the  
2 witness stand and you could testify if you like. However,  
3 it's important to understand that you do not have to  
4 testify because you have the constitutional right to  
5 remain silent. And if you choose to exercise that right,  
6 I would tell the jury they cannot use that against you in  
7 any way. I would tell the jury the fact that you did not  
8 testify is to have absolutely no prejudice against you. I  
9 would even go so far as to tell the jury they cannot even  
10 talk about that fact in the jury room. You understand  
11 that?

12 JAYME GAMBLE: Yes, sir.

13 KENDELL GAMBLE: Yes, sir.

14 THE COURT: You understand that if you had a  
15 trial or with this plea if you're not happy with something  
16 that takes place, you can appeal it, but you got to do so  
17 within ten days. Do you understand that?

18 JAYME GAMBLE: Yes, sir.

19 KENDELL GAMBLE: Yes, sir.

20 THE COURT: All right. Do you want to waive  
21 these rights to a jury trial and go ahead and plead guilty  
22 today?

23 JAYME GAMBLE: Yes, sir.

24 KENDELL GAMBLE: Yes, sir.

25 THE COURT: You satisfied with your lawyer?

1 JAYME GAMBLE: Yes, sir.

2 KENDELL GAMBLE: Yes, sir.

3 THE COURT: Have you had enough time with your  
4 lawyer?

5 JAYME GAMBLE: Yes, sir.

6 KENDELL GAMBLE: Yes, sir.

7 THE COURT: Has your lawyer answered all of your  
8 questions?

9 JAYME GAMBLE: Yes, sir.

10 KENDELL GAMBLE: Yes, sir.

11 THE COURT: Has anybody promised you anything to  
12 get you to plead guilty?

13 JAYME GAMBLE: No, sir.

14 KENDELL GAMBLE: No, sir.

15 THE COURT: Anybody threatening you in any way  
16 to make you plead guilty?

17 JAYME GAMBLE: No, sir.

18 KENDELL GAMBLE: No, sir.

19 THE COURT: Are you under the influence of any  
20 drugs or alcohol at this time?

21 JAYME GAMBLE: No, sir.

22 KENDELL GAMBLE: No, sir.

23 THE COURT: Are you guilty?

24 JAYME GAMBLE: Yes, sir.

25 KENDELL GAMBLE: Yes, sir.

1 THE COURT: Have you understood all of my  
2 questions?

3 JAYME GAMBLE: Yes, sir.

4 KENDELL GAMBLE: Yes, sir.

5 THE COURT: Have you answered me truthfully?

6 JAYME GAMBLE: Yes, sir.

7 KENDELL GAMBLE: Yes, sir.

8 THE COURT: All right, thank you.

9 Solicitor.

10 MS. PARKER: Thank you, Your Honor. This  
11 incident occurred on a Friday morning July 21st 2017 at  
12 approximately -- it was a little before 7:30 in the  
13 morning. Ms. Hattie Pernell who resides on -- at [REDACTED]  
14 [REDACTED] Road in the Mullins area of Marion County. Ms.  
15 Hattie Pernell was up that morning getting ready for work  
16 about to iron clothes and she heard what sounded like a  
17 loud knock on the door. She looked out the window and did  
18 not recognize the truck in the driveway, looked out the  
19 peephole and did not recognize these individuals that were  
20 knocking at her door. She went and woke up a Ms. Lawanda  
21 Williams that was asleep in the residence, that is her  
22 grandchild's mother that was there. There were also  
23 children in the home. And got Lawanda up and Lawanda also  
24 said I don't recognize this truck I don't know who they.  
25 Something didn't seem right to Ms. Hattie and she picked

1 up her cell phone and dialed 9-1-1 and about that time the  
2 door was busted up. These individuals busted in Ms.  
3 Hattie's home. They had guns. They had weapons. They  
4 started hollering for them to get down on the floor,  
5 pulled the guns on these women and children that were in  
6 the home.

7 She had dialed 9-1-1 and press send, but when he  
8 hollered put down your phone, of course, these individuals  
9 didn't realize that the call to 9-1-1 already gone  
10 through. And so she placed the phone down and so a  
11 dispatcher here in Marion County thought that something  
12 wasn't right, could hear the commotion in the background,  
13 could hear hollering and screaming where's the money, get  
14 down on the floor, where's the money and women screaming  
15 in the background. And so this dispatcher did a very good  
16 job that day with this call and thought that she needed to  
17 send deputies out to this residence and so deputies did  
18 respond to the residence.

19 Before I get to what happened after deputies  
20 responded, I'll talk about what they did in the house.  
21 They demanded money from these women and children. There  
22 were four children total in the residence a ten year old  
23 by the name of Jasmine, a 16 year old Merdick (sic), 14  
24 year old Dennis who was Ms. Lawanda's son and five year  
25 old Jacari (sic). Three of the children were Ms. Hattie's

1 grandchildren. They were all woken by this incident and  
2 two of the women were slapped. They had guns put to their  
3 head. And even when they kept demanding money, Ms. Hattie  
4 and the ladies in the house didn't know what they were  
5 talking about. These individuals were corresponding with  
6 somebody on the cell phone on the other end of the phone.  
7 And one of the ladies heard from the other end of the  
8 phone just kill them all and so they were terrified for  
9 their life.

10 At one point they grabbed Jacari, who is five  
11 years old, and put a knife to his throat trying to up the  
12 intimidation, up the threats because they thought there  
13 was some money there that they could get and threaten this  
14 child, threaten to cut his fingers off if these women  
15 didn't produce the money. So when law enforcement  
16 responded to the residence, they did get there rather  
17 quickly. Deputy Causey was the first. Deputy Causey  
18 along with Deputy Herring were the first two to arrive.  
19 And Deputy Causey kind of parked his car kind of by the  
20 driveway. Deputy Herring a little further back. And they  
21 were waiting on backup to get there, but Deputy Tracy  
22 Causey wanted to go ahead and clear the backyard, kind of  
23 clear the back portion of the residence. So he had his  
24 county issued shotgun that he retrieved from his patrol  
25 car and went around the back of the residence. Deputy

1 Causey did not realize that these two individuals just  
2 prior to him walking around the backside of the house,  
3 they had ran out of the side door of the house and  
4 actually were hiding behind what looks like a storage  
5 barn, like a storage building. And you'll see shortly  
6 hear in the video when they decided to make a run for it,  
7 they did fire three shots at Deputy Causey. One of the  
8 shots actually got so close to him that it struck his  
9 shotgun and actually knocked the shotgun out of his hand.  
10 And he then later grabbed it and tried to, you know, to  
11 use it to fire some shots, but it was disabled because,  
12 you know, that -- one of the shots had actually hit his  
13 shotgun. These two individuals run, jump in the Dodge  
14 Durango that they were driving. It was a rental car that  
15 they had. They had carefully planned this out. The  
16 rental car had a North Carolina license plate. They had  
17 put a South Carolina license plate on top of the North  
18 Carolina plate.

19 They proceeded to back out of the driveway and  
20 they're going to run from the police and they're not going  
21 to stop. So you have Deputy Herring along with Deputy  
22 Cribb and Trooper Jimmy King also hears what's going on on  
23 the radio. You have several law enforcement officers  
24 responding and this chase ensues throughout the county at  
25 some instances well in excess of 100 miles an hour. And

1 eventually you'll see here shortly on the video ends with  
2 a crash right here outside of the City of Marion. There  
3 was a civilian vehicle that was struck and then when  
4 deputy excuse me -- when Trooper King follows after them  
5 when they lose control of the vehicle and go into like a  
6 grassy area off like the main highway, he's able to  
7 disable their vehicle by hitting it in the side and then  
8 he jumps out and runs. Jayme Gamble was the driver of  
9 that vehicle. He ran from the vehicle and Trooper King  
10 was able to catch him and apprehend him and he was  
11 arrested there on site. The passenger, I believe,  
12 surrendered and put his hands up and never tried to run  
13 from the car.

14           So, Your Honor, I guess, to try to sum this up  
15 from the time they run from the house through some of the  
16 home surveillance video we have and then through various  
17 dash cam videos we have, we have sight on them. We have  
18 our eyes on them throughout these videos up until the  
19 point they're both apprehended. And so no question at all  
20 in the State's case that it was them. While they were  
21 driving and during part of the chase and the video's going  
22 to touch on this, but I want to point out because it's not  
23 -- doesn't jump out at you when you're watching the video.  
24 One of the accounts of attempted murder -- of course,  
25 they're pleading to one count to attempted murder for

1 Deputy Causey for firing those three shots at him. You'll  
2 hear that on the video.

3           Constable Glen Turner had heard what was going  
4 on on the radio and he was responding. And you'll see  
5 when they're on one of our roads here in Marion County  
6 they -- during the chase, they take a right at the first  
7 stop sign and go down that road and deputy constable  
8 excuse me -- Constable Glen Turner was just coming from  
9 the opposite direction and they fire a shot into his  
10 windshield, two shots. Fired two shots at him. One shot  
11 -- I had a picture. One shot goes in the front of the  
12 windshield right there at his rear view mirror, so would  
13 have been inches from his head and he pose no threat to  
14 them. He was just literally just responding to the call  
15 and was coming in the opposite direction. He was not in  
16 pursuit of them. And also I have a picture of the shotgun  
17 that shows, you know, where it was hit. It was actually  
18 very close to Deputy Causey's body when that bullet struck  
19 the shotgun.

20           They also right before this chase ends that you  
21 see there at the intersection coming into the City of  
22 Marion and Trooper King makes reference to this in the  
23 video there were shots fired from the passenger side of  
24 the vehicle at him right before the chase ended. They  
25 were firing shots out the car at him. Certainly they were

1 indicted for, I think, two additional counts of attempted  
2 murder, but in consideration of this plea, the State did  
3 try to pair it down. It was two rather large indictments  
4 paired down. And they're pleading to about eight or nine  
5 counts each. I'm trying to think if I'm leaving anything  
6 out other than I want to play the video. And at the  
7 appropriate time, I know Deputy Causey wants to speak and  
8 Ms. Parnell may want to speak also and also the sheriff.  
9 Obviously, you know, we indicted the burglary first degree  
10 because they entered the house with the weapons and  
11 immediately pulled them on the ladies that were in the  
12 home.

13 THE COURT: All right. Go ahead and play it.

14 MS. PARKER: Your Honor, I prepared three pieces  
15 of video. This first video is the homeowner's  
16 surveillance footage and has no sound. And then  
17 immediately after this you'll see a clip from Deputy  
18 Herring's dash cam and kind of what happened when he  
19 arrived at the house. You can kind of -- by seeing this  
20 video and then listening to and seeing the second one, you  
21 can kind of see when the shots were fired at Deputy  
22 Causey. And then the final video -- I'm not going to show  
23 the whole chase, but we edited to just show the last few  
24 moments of the chase. It was a very high speed chase and  
25 you can see how there were several civilian cars that were

1 put in danger and one that actually hit.

2 (WHEREUPON, videos played for the Court.)

3 MS. PARKER: Your Honor, that last video was  
4 Trooper Jimmy King. And right after he crashed his  
5 vehicle into the defendant's vehicle, he did a foot chase  
6 and eventually apprehended Jayme Gamble, but you saw on  
7 the video when his car hit the curve, you kind of see it  
8 kind of knocked his camera loose. He did suffer a  
9 concussion to the head where his head hit the top of his  
10 patrol car. And not long after this, you know, suffering  
11 from headaches eventually he's now on medical retirement  
12 and he's not here today. He was willing to come, you  
13 know, had this gone to trial and would have been available  
14 as a witness for us.

15 THE COURT: All right. Anybody else?

16 CORPORAL TRACY CAUSEY: Your Honor, I'm just  
17 asking that you set an example not just for the people in  
18 Marion for this nation. It's possible cop killers  
19 teaching people, teaching and just set a lesson and set  
20 the standard high as you can. And sentence as high as you  
21 can if possible.

22 THE COURT: Give me your name for the record if  
23 you don't mind?

24 CORPORAL TRACY CAUSEY: Tracy Causey. Corporal  
25 Tracy Causey with the Marion County Sheriff's Office.

1 THE COURT: Thank you.

2 All right, anybody else?

3 MS. PARKER: This is Lawanda Williams.

4 LAWANDA WILLIAMS: Your Honor, I just ask that  
5 justice be served today. This is hard for me and my  
6 family. And I just think people really realize how hard  
7 it is for us. If you haven't been through this, you can't  
8 really speak on it. You can't really say, oh, it's just  
9 an every day a crime. No. After this, I stood outside  
10 and I saw the yellow tape around the house, God, this  
11 could have been a murder scene. I know it was nothing but  
12 the grace of God that we got out of that house alive, and  
13 the police department and the dispatcher. And I just ask  
14 for justice to be served today because this is something  
15 we still live with every day. We all go to counseling.  
16 My son he jumps in his sleep. He ask me, mom, do you  
17 still think about it. I think about it every day. And I  
18 just ask for justice to be served, that's all.

19 THE COURT: Thank you.

20 Sheriff.

21 SHERIFF BRIAN WALLACE: Your Honor, I stand  
22 before you today as the sheriff of Marion County elected  
23 by the citizens of this county to serve and protect. Your  
24 Honor, I can tell you that on that day one of the  
25 sheriff's worse fears was to lose an officer in the line

1 of duty. On that day, at least three officers could have  
2 lost their lives. I believe in my heart if we had not got  
3 there that every member in that house would have been  
4 killed. And you can look at the video to see that our  
5 officers could have easily been killed.

6 Your Honor, I ask you today to send a message  
7 that can be heard across this community that this type  
8 acts by two individuals dressed in three-piece suits,  
9 drives from Georgetown to Marion County and commits these  
10 acts of violent will not be tolerated in our community.  
11 Your Honor, every day when an officer puts a badge on, we  
12 know that we may not come home that night, but those four  
13 kids, those four children in their house have a right to  
14 be safe and secure, no matter what the circumstances they  
15 were there for, whether it's money, dirty money, whatever  
16 the case may be, those four children have a right to be  
17 safe in their home.

18 Your Honor, I think it's my duty to ask you to  
19 serve justice that can be served. A picture is worth a  
20 thousand words. It's not many cases in my 19 years as a  
21 law enforcement officer that is on video from beginning to  
22 end. I ask you as you seen on the tape it shows -- it's  
23 not somebody's word, it's not witness' statement, it's  
24 there. As I stated, a picture is worth a thousand words.  
25 Thank you.

1 THE COURT: Thank you.

2 Anything else?

3 MS. PARKER: No, Your Honor. The State would  
4 just ask that you, you know, would hand down a sentence  
5 that just reflects the severity and the gravity of the  
6 situation. We certainly thank the Marion County Sheriff's  
7 Office and all local law enforcement for their  
8 cooperation. Their agency did a good job with getting us  
9 everything we needed to prosecute this matter.

10 THE COURT: The recommendation is concurrent?

11 MS. PARKER: Yes, sir, that's my recommendation  
12 is the sentences be served concurrently.

13 THE COURT: Law enforcement okay with that?

14 SHERIFF BRIAN WALLACE: Yes, sir.

15 THE COURT: All right, Mrs. Hiller.

16 MRS. LAURA HILLER: Your Honor, you seen and  
17 heard some horrible facts. Your Honor, I know it's not  
18 every plea that the State choses to put video evidence up.  
19 Especially since from day one our clients have been saying  
20 this happened. It was awful. We shouldn't have done it.  
21 They never asked the State to put these people, the  
22 deputies or the families through a trial, Your Honor, not  
23 from day one they've come to us.

24 Jayme is an incredible client. He really his  
25 is. He's here. His mother is here. His aunt is here.

1 They support him and are incredible women as well. Jayme  
2 has never ask me to get him off. He's never ask me for  
3 anything, but the best plea that we can possibly get. And  
4 we're standing here today pleading straight up, which is  
5 not a great place to be as you know, Your Honor. And he's  
6 doing that because he knows that this is the best it's  
7 going to get, Your Honor, based on what happened. He  
8 knows that.

9 But let me tell you a little bit about Jayme.  
10 He's 33 years old, has minimum record, Your Honor. He --  
11 but it's possession with intent to distribute. He has  
12 five children. They range from five to 12. He  
13 understands and he told me this back here today, but I was  
14 thinking about this earlier as well that if you were to  
15 give him the mandatory minimum today, the very least that  
16 he could get, his baby is going to be 20 years old when he  
17 gets out of jail or prison and he knows that. He's only  
18 33 and that's almost half of his life again, Your Honor,  
19 and he knows that. He knows that's what he is facing  
20 today. He has expressed extreme remorse for what has  
21 happened.

22 I will tell you two weeks before this incident  
23 his father or it's actually his step father that raised  
24 him, his father had died of cancer. They buried him end  
25 of June. This happened just in the middle of July, Your

1 Honor. They were going through a great deal. They were  
2 under a lot of stress. It excuses nothing. They are not  
3 asking me to tell you that it does, but that's what was  
4 going on. They wanted to care for their mother. And they  
5 went to their mother before it happened and said we're  
6 going to take care of mama, that's what they told her.

7 Your Honor, I think there's a lot more about the  
8 facts that Mr. Hiller might go into. I'm not going to  
9 address them any further. His mother is going to speak  
10 once we're done on his behalf and maybe his aunt as well  
11 I'm not sure. But we ask you to see that this is one day  
12 in 33 years. And even the minimum sentence, Your Honor,  
13 is significant. It's a huge amount of time.

14 I know the officers were asking you to set an  
15 example about potential cop killers. I would just remind  
16 the Court that no one got shot that day. No one died that  
17 day. There's been many cases in this courtroom and  
18 courtrooms around South Carolina where people died and got  
19 20 years, Your Honor, got 25 years. These are not. This  
20 is a case where lots of bad things could have happened,  
21 but we are very grateful they did not. My clients are  
22 very grateful that nothing worse happen that day than  
23 happened. And we ask you to remember that through it all  
24 everyone is still here today and are fortunate of that.

25 THE COURT: Thank you.

1 Mr. Hiller.

2 MR. JONATHAN HILLER: Your Honor, Jonathan  
3 Hiller on behalf of Kendell Gamble stands before you today  
4 with no prior record. He's 30 years old. Your Honor,  
5 that says something. He hasn't committed -- in those 30  
6 years had nothing on his record. Twenty year olds get  
7 records. I'm saying 30 years is enough time for someone  
8 to get a significant record. He stands before you today  
9 with nothing on his record. He knows that's changing  
10 today, Your Honor. After today, when he sees the light of  
11 day if he's still lucky, he's eligible for anything that  
12 rises to this level. I discuss that with them. He knows  
13 that not only is he getting two most serious charges on  
14 his record as a result of those -- the hour or so that day  
15 on July 21st, Your Honor.

16 The sentence sheet reflects their Georgetown  
17 address and the State in their presentation mentioned that  
18 they're from Georgetown. A burning question in everyone's  
19 mind after this was what are these two Georgetown boys  
20 doing in the middle of Marion at a mobile home, how, why.  
21 There a few pieces of evidence in their car, some  
22 addresses, which was that address on Vinson and there were  
23 a couple of names. Why they were in the area was answered  
24 by my client, Your Honor. At the request of the State  
25 after reviewing the evidence, we sat down. We debriefed.

1 He told them why he was there. He didn't hide what he  
2 did. He didn't minimize his actions. He confessed, Your  
3 Honor. This never was a case for trial. I wrote a letter  
4 back to the Solicitor's office back on the 13th of March  
5 telling him it wasn't a trial and asking for a chance to  
6 mitigate before today. But one of the things we did is  
7 both confess and explain what was going on.

8 Your Honor, what was going on is -- and I get no  
9 disrespect to anyone in that mobile home that was at least  
10 according to someone in SCDC from Marion a place where  
11 significant drugs and money could be found. I think  
12 that's kind of why there's four security cameras around  
13 the little mobile home, Your Honor. But they went there  
14 looking for drugs and money trying to score a big lick  
15 that someone in the department of corrections using a cell  
16 phone told them about, trying to get a cut, pressured them  
17 to do this thing.

18 They didn't go in there to rob women and  
19 children, Judge, that's who was in that house, but they  
20 did not go there to terrorize women and children. What  
21 happened, happened. It is on audio. One of the only  
22 things I can clearly hear I will say there's screaming,  
23 but one of the things you can clearly hear my client say  
24 is calm down and it will be all right. I'm not here today  
25 to -- all I can say, Your Honor, is had they gone to trial

1 we would have tried to show that not everything alleged to  
2 have happened in that home did happen in that home. You  
3 can clearly hear people say calm down. It will be all  
4 right. No one was hurt in that house, Judge. Not  
5 physically any way.

6 Your Honor, I know every case is different and I  
7 try to think about cases that have made news for their  
8 scale and their news worthiness. And again I recognize  
9 that they are differences, but I've thought about it. My  
10 client knows that significant times have all been this  
11 case. And I would ask the Court to consider something in  
12 the range of 20 years. I only mention this because of the  
13 aspect of law enforcement, but when an unarmed black man  
14 was shot in the back in Charleston. Michael Slager  
15 received 20 years.

16 The Walter Scott family is without a father,  
17 without an uncle, without a grandfather, Judge. A life  
18 was lost. Here we do not have any lost of life. And  
19 that's not necessarily something that my client can take  
20 credit for, but, Judge, it's true we're here today taking  
21 ownership of what happened, pleading guilty to the facts  
22 as brought by the State at least to these serious charges  
23 brought by the State saving the State from the cost and  
24 expense of a multiple day trial.

25 They know that they're guilty. It's always been

1 a plea, Judge. I just don't want the -- that to be lost  
2 on the Court in the face of the evidence that they admit  
3 to what happened. Of course, you have to plead guilty.  
4 They pled guilty before the State showed it. They are  
5 guilty and they're here to take ownership of that. Your  
6 Honor, they never did get a bond. As, you know, you've  
7 heard this case twice now in the context of bond. So  
8 we're on the 376 days of jail time from July 21st until  
9 today I calculated that is 376 days.

10 Your Honor, briefly to just -- just to let you  
11 know like something about how this could happen because it  
12 doesn't seem like how could this happen. They just came  
13 out. I do think you can see in that video that they  
14 didn't know trooper or Mr. Causey was in that backyard,  
15 Your Honor, that was a surprise thing. It happened. I'm  
16 not saying -- they did not. If they knew you were there  
17 and they wanted go out there and do something, they could  
18 have. His back to them, Judge. They ran for it. They  
19 saw him. And then things just went so terribly side ways.  
20 I just don't think that their -- had any intent to do what  
21 she said that they did, Judge. It's hard for me to  
22 explain that, I guess. If they wanted to do something,  
23 they would have. And I just want you to keep that in  
24 mind, Your Honor. My client's cooperation. His lack of a  
25 record and just ask that you hand down a sentence you see

1 as appropriate. I do believe my client would like to  
2 speak if the Court would have a minute to hear from him.

3 THE COURT: Sure.

4 MS. PARKER: Judge, I have one more thing to say  
5 if that's okay.

6 THE COURT: Okay.

7 MS. PARKER: I failed to mention in the State's  
8 presentation of the facts that when the cops pulled up,  
9 they did send Ms. Hattie Parnell outside and had  
10 threatened her and told her she better send the cops away.  
11 So we did have on video she met with Deputy Causey and  
12 said nothing's wrong. Oh, nobody's inside just my  
13 children. And so they did know that the cops were there  
14 and then sent her out to get rid of them.

15 THE COURT: All right.

16 KENDELL GAMBLE: Your Honor, on behalf of me and  
17 my brother, I just want to apologize to each and every  
18 person that's involved in this situation, even though I  
19 know it's probably held less than a grain of salt. I just  
20 want to go on record that saying we are remorseful and we  
21 do apologize.

22 THE COURT: All right. Yes, sir.

23 JAYME GAMBLE: Same thing. Same thing, sir.

24 THE COURT: Any family?

25 MRS. LAURA HILLER: Yes, this is Ms. Debra

1 Grant. This is their mother.

2 MS. DEBRA GRANT: Your Honor, my name is Debra  
3 Grant. I'm the mother of these two men first born and  
4 second born. And you see them standing before you and  
5 that's how they grew up together. And even after this  
6 took place, which I have no excuse for them, so sorry I  
7 apologize to everybody that was involved. But in talking  
8 to them, they concern was the charges. Jayme say, Ma, if  
9 I can take the whole charge and send Kendell home I would  
10 do that. Kendell said, Ma, I had my share in it. I stand  
11 with James, so they love each other. They always -- I  
12 just ask for mercy of the Court because at the end of the  
13 day they are somebody's child too. They are my kids. I  
14 just ask for mercy of the Court.

15 MRS. LAURA HILLER: This is Ms. Keshia Gamble.

16 MS. KESHIA GAMBLE: My name is Keshia Gamble  
17 their aunt. I want everybody to know they're good boys  
18 and I know them their whole life. And I just want to  
19 apologize to the victims and everybody involved in this.  
20 And just asking for mercy from the Court for a lesser  
21 sentence. Thank you.

22 THE COURT: All right.

23 MRS. LAURA HILLER: Your Honor, if we could  
24 reiterate what his family has said, I have never seen a  
25 case with people facing so much time that never once did

1 they try to put anybody else under the bus. It was never,  
2 well, he did this, this and this, no. These boys have  
3 supported each other: They stand by each other and as an  
4 act of men not of boys, Your Honor.

5 THE COURT: All right. Anything else?

6 MR. JONATHAN HILLER: No, Your Honor.

7 THE COURT: I accept the plea. And find that  
8 they did so freely, intelligently and with the advice of  
9 two lawyers.

10 (WHEREUPON, a pause in the proceedings.)

11 THE COURT: All right. All of these sentences  
12 will be concurrent. I will give them 376 days credit. In  
13 reference to both of them in reference to the burglary  
14 first degree, the sentence of the Court will be 50 years.  
15 In reference to the armed robbery, it will be 20 years.  
16 In reference to the kidnapping 30 and the other kidnapping  
17 30, the other kidnapping 30 and in reference to the  
18 attempted murder 30, in reference to the possession of a  
19 weapon five, in reference to failure to stop for a blue  
20 light three. All run concurrent.

21 END OF REQUESTED TRANSCRIPT

22

23

24

25



2019-CP-33-634

FILED FORM 5

STATE OF SOUTH CAROLINA SEP 18 AM 9:58

COUNTY OF MARION

JAYME DELSHON GAMBLE # 356776  
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lieber Correctional Institution, 136 Wilborn Avenue,  
P.O. Box 205, Ridgeville, SC 29472.
2. Name and location of Court which imposed sentence Court of General Sessions for  
Marion County, 100 West Court Street, P.O. Box 295, Marion, SC 29571
3. Name(s) of co-defendant(s) (if any) Kendell Gamble
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) # 2018-GS-33-00121
  - (b) NA
  - (c) NA
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) FTSFBL 3 YRS -- Sentences imposed on August 1, 2018
- (b) Kidnapping 30 years
- (c) Attempted armed robbery 20 years
- (d) Attempted murder 30 years ( 3 counts)
- € Burglary 1<sup>st</sup> degree 50 years
- (f) Firearm provision 5 years

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty X
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes

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

- (a) the name of each Court to which you appealed:
  - i. Court of Appeals for the State of South Carolina
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
  - i. Voluntarily dismissed appeal
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (c) the date of each such result:
  - i. October 12, 2019
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. NA
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

- (a) NA

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Applicant was provided with ineffective assistance of counsel in violation of his Sixth Amendment rights before and during his guilty plea:
- (b) for representing Petitioner under a conflict of interest
- (c) for failing to move to dismiss the armed robbery count
- (d) for failing to move to dismiss the attempted murder counts involving Constable Glen Turner, and Deputies Jonathan Herring and Daniel Cribb
- (e) for failing to investigate the facts of the case
- (f) for failing to explain the consequences of a negotiated plea agreement versus an open plea
- (g) for failing to ensure that the Court explained the nature of each offense and elements that had to be proven for each offense
- (h) for failing to move to reduce the Burglary 1st degree count to Burglary 2nd degree
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Memorandum of Supporting Facts for all claims of ineffective assistance of counsel
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or

application:

(a) the specific nature thereof:

- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

No

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

(a) which grounds have been presented:

- i. NA
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings in which each ground was raised:
- i. NA
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Ineffective assistance of counsel claims are usually raised in a post-conviction motion.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
  - (b) your trial, if any? NA
  - (c) your sentencing? Yes
  - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
  - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA
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. During guilty -- Lauren Hiller
    - ii. Sentencing -- Lauren Hiller
    - iii. Appeal -- NA
  - (b) the proceedings at which each such attorney represented you:
    - i. During guilty plea -- Lauren Hiller
    - ii. During sentencing -- Lauren Hiller
    - iii. On appeal -- NA

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

Vacate the convictions/sentences for all counts, so that Petitioner can proceed to trial on the charges, or so that he can enter a knowing and intelligent guilty plea.

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

No

STATE OF SOUTH CAROLINA )  
 )  
County of MARION )

VERIFICATION

I, Jayme Delshon Gamble, 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.

Jayme Delshon Gamble

SWORN to and subscribed before me this 16th  
day of September, 2019

Ruby m. [Signature] (L.S.)  
Notary Public

My Commission Expires: 10/21/26

FILED  
2019 SEP 18 AM 9:59

FILED

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

AM 9:59

I, Jayme Delshon Gamble, 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.

Jayme Delshon Gamble
Applicant

SWORN or affirmed to and subscribed before me this 16th day of September, 2019

Reidy Mark
Notary Public

My Commission Expires: 10/21/26

FILED

IN THE COURT OF COMMON PLEAS  
MARION COUNTY

SEP 18 AM 9:59

Civil Action No. \_\_\_\_\_  
Indictment No. 2018-GS-33-00121

RECEIVED  
MARION COUNTY  
CLERK  
SEP 18 2018

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The State of South Carolina

v.

Jayme Delshon Gamble,  
Applicant.

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MEMORANDUM OF SUPPORTING FACTS

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COMES NOW, the Applicant, Jayme Delshon Gamble, acting on his own behalf with the assistance of another person who is untrained in the law, and REQUESTS this Honorable Court to grant him the relief sought in the instant action. Petitioner is presenting seven claims of ineffective assistance of counsel. Petitioner was represented by Laura Hiller before and during the guilty plea and sentencing, and she provided ineffective assistance of counsel for the following reasons: 1) for representing Petitioner under a conflict of interest; 2) for failing to move to dismiss the armed robbery count; 3) for failing to move to dismiss the attempted murder counts involving Constable Glen Turner, and Deputies Jonathan Herring and Daniel Cribb; 4) for failing to investigate the facts of the case; 5) for failing to explain the consequences of a negotiated plea agreement versus an open plea; 6) for failing to ensure that the Court explained the nature

of each offense and elements that had to be proven for each offense; 7) for failing to move to reduce the Burglary 1<sup>st</sup> degree count to Burglary 2<sup>nd</sup> degree.

The relief should be granted for the following reasons:

#### **STATEMENT OF THE CASE**

After learning that a residence in Mullins, South Carolina was holding drug money for a person in federal custody, Petitioner and his brother, Kendell Gamble, staged a home invasion at 6216 Vincent Ct., Mullins, SC on July 21, 2017 at about 7:26 am. Upon arriving at the residence and parking the rented Durango SUV in the driveway, Petitioner and his brother knocked at the front door of the residence and waited for someone to answer, and then they knocked again. When no one answered after the second set of knocks, one of them forced the door open and made everyone visible get on the floor. The first demand once entering the residence, was “[w]here is the money?” which was repeated several times.

During the commotion in the front room, someone in the residence in another room called 911 and dispatch was able to hear most of what was occurring throughout the residence. Pfc. Jonathan Herring and Cpl. Tracy Causey were the first officers to arrive at the residence after a call went out from dispatch. Once they arrived, Ms. Hattie Ford Pernell went outside to assure the officers that all was well, but the officers told her that they would still have to come in and check for themselves. Mr. Pernell went back inside the residence, Petitioner and his brother ran out a side door and hid outside, and Cpl. Causey went to the rear of the residence with a shotgun.

Shortly after Cpl. Causey had gotten in position near the rear of the residence, Petitioner and his brother made a break for the Durango, and Petitioner’s brother fired a

few shots in the air to provide cover for them to get to the Durango and possibly escape. Petitioner and his brother were able to make it onto the highway without any shots being fired at them. Petitioner's brother Kendell rode in the passenger seat and Petitioner drove. Soon they were being pursued by at least two cars with flashing blue lights and the cars were closing the distance between them quickly. While Petitioner drove, Kendell fired several shots into the pavement in hope that it would make the pursuing cars fall back and the shots served their purpose. One or more of the pursuing cars returned gunfire. After the fleeing vehicle wrecked, Petitioner ran and was caught, and Kendell remained in the wrecked vehicle and was arrested without further incident.

On or about February 12, 2018, an Indictment was filed naming Petitioner in twenty-four counts, namely, Burglary 1<sup>st</sup> degree, Attempted Armed Robbery (7 counts); Kidnapping (7 counts); Attempted Murder (5 counts); Discharging a Firearm into a Vehicle; Conspiracy; Possession of a Stolen Handgun, Possession of a Weapon during Commission of Violent Crime, and Failure to Stop for a Blue Light.

On August 1, 2018, Petitioner appeared before the Honorable William H. Seals, Jr., Circuit Court Judge, and pled guilty to Burglary 1<sup>st</sup> degree, Attempted Armed Robbery, Kidnapping; Possession of a Weapon during Commission of a Violent Crime, three counts of Attempted Murder, and Failure to Stop for a Blue Light. The Court imposed a 50-year term of imprisonment for the Burglary 1<sup>st</sup> degree; a 30-year term of imprisonment for the Kidnapping offense; 20-year sentence for the Attempted Armed Robbery offense; a five-year term of imprisonment for Possession of a Weapon during Commission of a Violent Crime; 30-year terms of imprisonment for each of the three Attempted Murder offenses, and 3 years for Failure to Stop for a Blue Light, with all

sentences imposed to be served concurrently and Petitioner was to be given the 376 days of jail credit applied to his sentences.

Appellate counsel for Petitioner filed a no-merit brief on appeal, and Petitioner was allowed to voluntarily dismissed his appeal on October 12, 2018.

#### APPLICABLE CASE LAW

The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right “to have the assistance of counsel for his defense”, and the United States Supreme Court has recognized that, “the right to counsel is the right to the effective assistance of counsel”. McMann v Richardson, 397 U.S. 759, 771 n. 14 (1970); Marzullo v Maryland, 561 F.2d 540 (4<sup>th</sup> Cir. 1977), cert. denied, 435 U.S. 1011 (1978).

In Strickland v Washington, 466 U.S. 668 (1984), the Supreme Court outlined two components that a convicted defendant must show to prevail on a claim of ineffective assistance of counsel. “First, the defendant must show that counsel’s performance was deficient.... Second, the defendant must show that the deficient performance prejudiced the defense.” Id. at 687; and, Butler v State, 286 S.C. 441, 442, 334 S/E.2d 813, 814 (1985).

There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2025, 80 L. Ed. 2d 674 (1984); In order to prove that counsel was ineffective, the applicant must show counsel's performance was deficient and the deficient performance prejudiced the defense. Strickland v. Washington, supra; Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990).

To show prejudice, the applicant must show, but for counsel's errors, there is a reasonable

probability the result of the trial would have been different. Johnson v. State, \_\_ S.C. \_\_, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial. Strickland, supra. This Court will sustain the PCR judge's factual findings and conclusions regarding ineffective assistance of counsel if there is any probative evidence to support those findings. Skeen v. State, \_\_ S.C. \_\_, 481 S.E.2d 129 (1997). However, if there is no probative evidence to support the PCR judge's findings, the findings will not be upheld. Satterwhite v. State, \_\_ S.C. \_\_, 481 S.E.2d 709 (1997); Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996).

In showing that counsel's performance was deficient requires a showing that counsel made error so serious that counsel was not functioning as the "counsel" guarantee the defendant by the Sixth Amendment. In showing that the counsel's deficient performance prejudiced the defense requires a showing that counsel's error was so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Strickland, 466 U.S. at 693.

### **GROUND PRESENTED**

**Ground One:** Petitioner was provided with ineffective assistance of counsel in violation of his Sixth Amendment rights before and during his guilty plea.

**Supporting Facts:** Petitioner was provided with ineffective assistance of counsel in violation of his Sixth Amendment rights before and during his guilty plea to the offenses of attempted murder (3 counts), attempted armed robbery, kidnapping, burglary-1<sup>st</sup> degree, and possession of a weapon during violent crime. Counsel for Petitioner, Lauren Hiller, provided ineffective assistance of counsel for the following reasons: 1) for representing Petitioner under a conflict of interest; 2) for failing to move to dismiss the

armed robbery count; 3) for failing to move to dismiss the attempted murder counts involving Constable Glen Turner, and Deputies Jonathan Herring and Daniel Cribb; 4) for failing to investigate the facts of the case; 5) for failing to explain the consequences of a negotiated plea agreement versus an open plea; 6) for failing to ensure that the Court explained the nature of each offense and elements that had to be proven for each offense; 7) for failing to move to reduce the Burglary 1<sup>st</sup> degree count to Burglary 2<sup>nd</sup> degree.

## ARGUMENTS

### I.

#### 1. Counsel for Petitioner provided ineffective assistance of counsel for representing Petitioner under a conflict of interest.

To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance. Cuyler v Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980); Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001); Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are averse to the defendant's. Id. In Thomas, this Court held that a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice to obtain relief.

Petitioner was represented by Lauren Hiller; his brother, Kendell Gamble was represented by Lauren Hiller's husband, Jonathan Hiller. Even though, Jonathan and Lauren worked in different law offices, they were husband and wife at the end of the day. From the record, it cannot be determined whether there was a possible conflict of interest with the husband and wife team handling the case of brothers and co-defendants. With

the advice of their counsel, Petitioner and his brother pled guilty with open pleas. If Petitioner was going to trial, his brother was going to trial. If Petitioner was pleading guilty to several offenses, then his brother had to plead guilty to those same offenses.

Lauren Hiller stated during the guilty plea/sentencing hearing, that she was going to allow her husband to go into certain facts about the case for her client; even though, she should have been speaking for her client, Petitioner. **Transcript of Records at page 22 (Aug. 1, 2018).** Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests.

Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client.

In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest.

Jonathan Hiller was hired by the family to represent Kendell, and Jonathan Hiller recommended bringing his wife, Lauren Hiller, on to represent Petitioner, which the family hired. Jonathan and Laura worked as a team with one suggesting the course of action for both brothers, getting both brothers to take an open plea after neither counsel did any investigation, and neither Jonathan or Lauren explained the nature of the offenses or their elements. Lauren Hiller provided ineffective assistance of counsel for representing Petitioner under a conflict of interest.

## II.

### 2. Counsel for Petitioner provided ineffective assistance of counsel for failing to move to dismiss the attempted armed robbery count.

During the guilty plea and sentencing of Petitioner, the Court asked Petitioner whether he was pleading guilty to *armed robbery* which carried a maximum sentence of 20 years. **Transcript of Records at page 4-5.** During the same hearing, the State stated that Petitioner was pleading guilty to Count 2 which charged *attempted armed robbery*. **Id. at pages 3.** The armed robbery/attempted armed robbery count, count 2, should be dismissed; because, Petitioner pled guilty to armed robbery, the offense the Court asked him about pleading guilty to and not to attempted armed robbery.

The Indictment and the Sentence Sheet lists the offense as robbery/attempted armed, or allegedly armed, robbery. Lauren Hiller provided ineffective assistance of counsel for not moving to dismiss the Indictment that charged armed robbery/attempted

armed robbery, because, Petitioner did not commit the offense of armed robbery, the offense he pled guilty to committing.

The offenses of Robbery or Attempted Armed Robbery are charged under South Carolina Code of Laws 16-11-330, which provide:

- (A) A person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence.
- (B) A person who commits attempted robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony and, upon conviction, must be imprisoned not more than twenty years.

S.C. Code of Laws 16-11-330.

Lauren Hiller provided ineffective assistance of counsel for not moving to dismiss Count 2 of the Indictment; since, it is not known whether Petitioner pled guilty to the offense charged in the Indictment, or, the offense the Court questioned him? Added to this omission, the Court's failure to explain the nature of the offense and the elements that would have to be proven, it cannot be determined what offense, armed robbery or attempted armed robbery, Petitioner pled guilty to committing.

### III.

3. **Counsel for Petitioner provided ineffective assistance of counsel for failing to move to dismiss the attempted murder counts involving Constable Glen Turner, and Deputies Jonathan Herring and Daniel Cribb.**

Petitioner was charged with three counts of attempted murder involving Constable Glen Turner, Deputy Tracy Causey, and Trooper Jimmy King. **See Counts 16, 17, and 20 of the Indictment.** Counsel for Petitioner, Lauren Hiller, provided ineffective assistance of counsel for her failure to move to dismiss the attempted murder counts, counts 16, 17, and 20. Lauren Hiller should have moved to dismiss the attempted murder counts; because the evidence was insufficient to show that Petitioner committed all the elements necessary for convictions for attempted murder. Instead, counts 16, 17, and 20 should have charged assault and battery with intent to kill (ABIK) under Section 16-3-620.

Section 16-3-29 of the S. C. Code of Laws describes *attempted murder* as:

A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted.

S. C. Code of Laws 16-3-29 (2016). According to South Carolina law attempted murder occurs when: “A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” The three key elements of this definition are intent to kill, attempt to kill, and express/implied malice aforethought.

1. Intent to kill -- means you want to kill another person.
2. Attempt to kill -- means you actually tried to kill that person. This goes beyond assaulting someone. You were not just trying to beat up the person. You meant for this person to die as a result of your actions.
3. With malice aforethought, either expressed or implied – malice means you had ill will toward the other person – so much that you wanted to kill him or her. This desire to kill was present before the act. Essentially, the act was premeditated. When aforethought is “expressed,” the accuser says or writes down the ill intent. When malice aforethought is “implied,” the accused’s

actions show the intent. Malice aforethought does not apply to “a crime of passion” or “temporary insanity.”

S.C. Code of Laws 16-3-29 (2016) commentary. In an attempted murder, a person must take a direct step towards the killing and must have the specific intent to kill that person.

In the instant matter, Petitioner’s actions had no premeditation. Events occurred, and Petitioner reacted as best he could. Unfortunate results occurred, but Petitioner did not intend them to occur. You cannot accidentally commit attempted murder. To be convicted of attempted murder, a prosecutor must show that the accused specifically intended to commit the crime. The prosecutor must not only show that the accused intended to kill, but that the intent was to kill the specific victim.

The instant offenses of attempted murder should have been charged as ABIK or Assault with intent to kill (AIK). Assault has been defined as an “attempted battery” or an unlawful attempt or offer to commit a violent injury upon another person, coupled with the present ability to complete the attempt or offer by a battery. State v. Mims, 286 S.C. 553, 335 S.E.2d 237 (1985). Under this definition of assault pointing a toy gun at someone or withholding insulin from a diabetic would not be an AIK. However, the South Carolina Supreme Court has on at least two occasions defined an assault as placing another in apprehension of harm. In State v. Sims, 34 S.C.L. (3 Strob.) 137 (1848), the Court held if a defendant rode his horse so near the victim so as to cause the victim to believe he intended to ride upon or strike him, he would be guilty of an assault. More recently, in In re McGee, 278 S.C. 506, 299 S.E.2d 334, 334-335 (1983), the state Supreme Court held “[w]hile words alone do not constitute an assault, State v. Lymburn, 3 S.C.L. (1 Brev.) 397 (1804), if by words and conduct a person intentionally creates a reasonable apprehension of bodily harm, it is an assault. State v. Sims, 34 S.C.L. (3

Strob.) 137 (1848); see generally LaFave and Scott, Criminal Law Section 82 (1972). Thus, if a person ‘shook his hickory over his head, indicating an intention to strike, and within striking distance,’ and ‘if his action and conduct were such as to create the belief in the mind of the [victim] that he intended to strike him, he would be guilty of an assault.’ Sims, at 138; see also State v. Davis, 19 S.C.L. (1 Hill) 46 (1833).”

#### IV.

#### 4. Counsel for Petitioner provided ineffective assistance of counsel for failing to investigate the facts of the case.

Lauren Hiller provided ineffective assistance of counsel for her failure to investigate the caliber of the firearms used by Highway Trooper Jimmy King; for her failure to investigate the bullet that hit the shotgun of Deputy Tracy Causey; for her failure to determine how many shots were fired from Trooper King’s weapon at the fleeing car of the suspects; and, for her failure to determine how many shots were fired by other law enforcement officials at the fleeing car of the suspects.

“[A]n attorney must investigate a case, when [s]he has cause to do so, in order to provide minimally competent professional representation.” United States v Kauffman, 109 F.3d 186, 190 (3<sup>rd</sup> Cir. 1997). When assessing an ineffective assistance of counsel claim for a failure to investigate, a court must assess the decision not to investigate “reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Strickland, 566 U.S. at 691; see also Duncan v Morton, 256 F.3d 189, 201 (3<sup>rd</sup> Cir. 2001). “Strategic choices made after less than complete investigation is reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” Strickland, 466 U.S. at 691-92; and, Horton v Zant, 941 F.2d 1449, 1462 (11<sup>th</sup> Cir. 1991) (“Our case law rejects the notion that a ‘strategic’

decision can be reasonable when the attorney has failed to investigate his options and make a reasonable choice between them.”). Thomas v Lockhart, 738 F.2d 304, 308 (8th Cir.1984) (holding that counsel rendered ineffective assistance by relying exclusively on the prosecution's investigative file even though his client provided him with information casting doubt on the prosecution's evidence).

Lauren Hiller provided ineffective assistance of counsel for not investigating the caliber of the firearm used by Highway Trooper Jimmy King. Trooper King fired several shots at the fleeing vehicle and the bullet from his firearm most likely hit the windshield of the car of Constable Glen Turner who was approaching the chase from the opposite direction. Only the passenger in the suspects' car fired shots, and all of his shots were directed at the vehicles in pursuit and those shots were fired downward and not directly at the chasing vehicles. Trooper King returned fire and most likely fired the shot that went thru the window shield of Constable Turner's vehicle. It would have been almost impossible for Kendell, who was the only one in the fleeing vehicle firing, and he was on the passenger side of the fleeing vehicle, to have shot through the windshield of Constable Glen Turner's approaching vehicle unless the bullet entered at an angle.

As Petitioner and his brother raced away from the residence in which they had attempted a home invasion, they were pursued by more than one vehicle with flashing lights. Kendell fired shots toward the road, so that the trailing vehicles would slow their chase and possibly stop pursuing them. Although, the pursuing vehicles slowed their chase, one or more of the vehicles fired shot at the vehicle in which Petitioner and Kendell occupied.

Lauren Hiller did not investigate to determine how many shots were fired by Trooper King at the fleeing vehicle of Petitioner. Hiller also did not investigate whether one of the shots fired from King's weapon hit the windshield of the car driven by Constable Glen Turner. Hiller did not investigate whether it was even possible for Kendell to have fired a shot through the windshield of Constable Turner who was approaching from the opposite direction from the passenger side of the fleeing vehicle. Kendell had no reason to fire shots at the approaching vehicle of Constable Turner; since Turner's vehicle was not pursuing them.

Petitioner and his brother were charged with attempted murder for firing at Deputy Tracy Causey as they were leaving the residence of Ms. Hattie Pernell after a failed attempt at home invasion. Supposedly, one of the shots fired toward Causey hit a shotgun in which he was carrying, which led to Petitioner and his brother being charged with attempted murder of Deputy Causey.

After Petitioner and his brother Kendell gained entry into the residence of Ms. Hattie Pernell and attempted to find the location of the drug money that was being held by Ms. Pernell, officers arrived and inquired whether everything was okay. Even though, the officers were assured by Ms. Pernell that all was well, the officers did not leave and one of the officers was calling a report in to dispatch.

Once Kendell and Jayme became trapped in the residence with officers at the front of the residence, they took their chance and left the residence but did not reach their vehicle. Deputy Causey stationed himself toward the back of the residence as Petitioner and his brother decided to make a break for their vehicle. Seeing Deputy Causey clearly, one of the brothers fired shots to create confusion, but he did not shoot directly at Deputy

Causey. Shots were fired from somewhere else toward Petitioner and his brother as they ran to retrieve their vehicle to escape.

Lauren Hiller did not investigate the caliber of the bullet that struck Deputy Tracey Causey's shotgun as he surveillanced the rear of the house on July 21, 2017. The firearm used by the Kendell as he ran from the rear of the residence was Glock 9 mm caliber firearm; Petitioner carried a Taurus Model PT 740 .40 caliber, but it was not fired.

Lauren Hiller also did not investigate to determine how many shots were fired by the officers in the other pursuing vehicles. Someone firing shots from behind the fleeing vehicle of Petitioner and his brother fired the shot that went through the Constable's windshield and whoever fired the shot is not a part of "the hand of one is the hand of all", practiced in South Carolina justice system.

Defense counsel's investigative efforts should commence promptly and should explore appropriate avenues that reasonably might lead to information relevant to the merits of the matter, consequences of the criminal proceedings, and potential dispositions and penalties. Although investigation will vary depending on the circumstances, it should always be shaped by what is in the client's best interests, after consultation with the client. Defense counsel's investigation of the merits of the criminal charges should include efforts to secure relevant information in the possession of the prosecution, law enforcement authorities, and others, as well as independent investigation.

Counsel's investigation should also include evaluation of the prosecution's evidence (including possible re-testing or re-evaluation of physical, forensic, and expert evidence) and consideration of inconsistencies, potential avenues of impeachment of prosecution witnesses, and other possible suspects and alternative theories that the

evidence may raise. Defense counsel should determine whether the client's interests would be served by engaging fact investigators, forensic, accounting or other experts, or other professional witnesses such as sentencing specialists or social workers, and if so, consider, in consultation with the client, whether to engage them. Counsel should regularly re-evaluate the need for such services throughout the representation.

Lauren Hilled wanted a guilty plea to the offenses charged and his only interest was whether the plea was going to be straight up or an agreed upon maximum sentence for the most serious offense, *Burglary 1<sup>st</sup> degree*. Lauren Hiller provided ineffective assistance of counsel for his failure to investigate the facts of the case as cited above, and her deficient performance prejudiced Petitioner.

V.

**5. Counsel for Petitioner provided ineffective assistance of counsel for failing to explain the consequences of a negotiated plea agreement versus an open plea.**

Lauren Hiller provided ineffective assistance of counsel for her failure to explain the consequences of a negotiated plea agreement versus an open plea. Hiller informed Petitioner about the State's 30-year cap sentences for the offenses, which meant that Petitioner would receive no more than 30 years for the most serious offense, *Burglary 1<sup>st</sup> degree*, which carried a maximum sentence of life imprisonment. Hiller also informed Petitioner that the other side of the 30-year cap sentences for the offenses would be an open plea, which meant relying on the discretion of the Court to impose any sentence for the most serious offense, *Burglary 1<sup>st</sup> degree*, up to life imprisonment.

Hiller ensured Petitioner that if he took the open plea, he could receive less than 30 years; because he was pleading guilty to offenses straight up without any agreement and Petitioner was accepting responsibility for his actions as charged. Hiller did not

attempt to challenge the *Burglary 1<sup>st</sup> degree* offense, and she failed to do any investigation of the facts of the case. Instead, Hiller merely accepted the discovery from the State and failed to do any independent investigation of the law or the facts herself.

This was ineffective assistance of counsel by Lauren Hiller, and this deficient performance prejudiced Petitioner; because, he made an unintelligent open plea to offenses that should not have been charged and which could not have been proven.

#### VI.

- 6. Counsel for Petitioner provided ineffective assistance of counsel for failing to ensure that the Court explained the nature of each offense and elements that had to be proven for each offense.**

Petitioner was charged with eight different felony offenses which were attempted murder (3 counts), kidnapping, attempted armed robbery, burglary 1<sup>st</sup> degree, possession of weapon during violent crime, and failure to stop for blue light. Hiller did not explain the nature of the offenses or the elements of the offenses, nor, did Hiller ensure that the Court explained the nature of the offenses and the elements of the offenses the State had to prove beyond a reasonable doubt before Petitioner pled guilty to the offenses.

Therefore, Petitioner had no way of knowing the nature of the offenses and the elements for the offenses the State had to prove to find him guilty of the offenses beyond a reasonable doubt.

In Boykins, the United States Supreme Court held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he is waiving.

Boykins v Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury

trial, and the right to confront one's accusers. Id. In the instant matter, the Court explained the constitutional rights Applicant was waiving by pleading guilty.

While the Court did explain the constitutional rights Petitioner was waiving in the instant matter, it did not explain the nature of the offenses, and it did not explain the elements the State had to prove beyond a reasonable doubt to prove guilt if there was a trial for the offenses. In order for a plea of guilty to be knowingly, intelligently, and voluntarily, the defendant has to know the elements of the offense, the nature of the offense, the minimum and maximum penalties, and whether any promises, or coercion has been used to obtain the guilty plea. See Dover v State, 304 S.C. 433, 405 S.E.2d 391 (1991) (In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea.). To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed. Id. at 434-435, 405 S.E.2d at 392

In the instant matter, the Court explained the minimum and maximum penalties for the offenses, and the Court ensured that the Applicant had not been promised anything to get him to plead guilty. But the Court did not explain the nature of the offenses, or the elements for the offense. Therefore, Petitioner was not fully aware of the consequences of the plea.

If the Petitioner had known the nature of charges and the elements which would have had to be proven beyond a reasonable doubt by the State, he would not have pled guilty to some of the charged offenses. The State gave a factual basis for the offenses to which the Petitioner was pleading guilty to, but this was not an explanation of the nature

of the offenses or the elements for the offenses. If Petitioner had known that attempted murder has elements of *intent to murder* and an *intent to murder with malice afterthought*, he would not have pled guilty to attempted murder, three counts.

South Carolina has no equivalent to Rule 11 of the Federal Rule of Criminal Procedure, but the mandates of the federal rule must be observed in order for the plea to be knowingly and voluntarily. See United States v Goins, 51 F.3d 400 (4<sup>th</sup> Cir. 1995) (the district court's failure to inform the defendant of the mandatory minimum sentence during plea colloquy constituted a substantial violation of his rights and is reversible error.); and United States v Hourihan, 936 F.2d 508, 510 m.3 (11<sup>th</sup> Cir. 1991) (same).

In Smith, the United States Court of Appeals for the Ninth Circuit held that the failure to explain the nature of the charge was reversible error. The Ninth Circuit said “[w]e are not dealing with the failure to explain an element of the crime, where the defendant’s responses in open court showed knowledge of that element. We are dealing instead with a total failure to identify the crime, much less explain it, and Smith’s responses indicated nothing at all about his possible knowledge of the charge. United States v Smith, 60 F.3d 595, 599 (9<sup>th</sup> Cir. 1994). See also United States v Quinones, 97 F.3d 473, 475 (5<sup>th</sup> Cir. 1996) (the district court failed to address a core concern of Rule 11. We have identified three core objectives of Rule 11: (1) ensuring that the guilty plea is free of coercion; (2) ensuring that the defendant understands the nature of the charges against him; and (3) ensuring that the defendant is aware of the direct consequences of the guilty plea. Failure to satisfy any of the core objectives violates the defendant’s substantial rights. In this case, the district court failed to satisfy the core objective that the defendant understands the nature of the charges against him.); and United States v

Gigot, 147 F.3d 1193 (10<sup>th</sup> Cir. 1998) (Failure to admonish defendant of elements of offense and possible penalties rendered plea involuntary). See also Dover v State, 304 S.C. 433, 405 S.E.2d 391 (1991) (To ensure the defendant understands, the trial judge should question the defendant about the facts surrounding the crime and the punishment which could be imposed.).

In the instant matter, Lauren Hiller failed to ensure that the nature and elements of the offenses were explained to Petitioner by the Court, and this was ineffective assistance of counsel that prejudiced the Petitioner. Plus, Hiller did not explain the nature of the offenses or the elements for the offenses in which the Petitioner was pleading guilty to committing. Counsel told the Petitioner that he faced some serious charges, he read the indictment to Petitioner with no explanation for each charged offense, and she told him that he had a good judge who would be fair, but this did not enhance Petitioner's knowledge on the nature and elements for the offenses.

During the guilty plea and sentencing for the eight felony offenses, the Court merely gave the short title for each offense without even a rote recitation of the Indictment for each count. The Court did not explain the elements that had to be proven beyond a reasonable doubt if there has been a trial. Petitioner was charged with Burglary 1<sup>st</sup> degree, Attempted Armed Robbery (7 counts); Kidnapping (7 counts); Attempted Murder (5 counts); Discharging a Firearm into a Vehicle; Conspiracy; Possession of a Stolen Handgun, Failure to Stop for Blue Light, and Possession of a Weapon during Commission of Violent Crime. Petitioner pled guilty to Burglary 1<sup>st</sup> degree, Armed Robbery, Kidnapping; Possession of a Weapon during Commission of a Violent Crime, Failure to Stop for Blue Light, and three counts of Attempted Murder.

From the records of the guilty plea and sentencing, there is no indication as to which three of five attempted murder offenses Petitioner was pleading guilty to committing; it is not known which one of the seven kidnapping counts he was pleading guilty to committing, and, it is not known which one of the seven attempted armed robbery offenses he was pleading guilty to committing.

The test for determining the validity of a guilty plea based upon alleged ineffective assistance of counsel is whether counsel's advice was within the range of competence demanded of attorneys in criminal cases and whether there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty. Hill v Lockhart, 474 U.S. 52 (1985); Ray v State, 303 S.C. 374, 401 S.E.2d 151 (1991); Hinson v State, 297 S.C. 456, 377 S.E.2d 338 (1989). "A defendant who pleads guilty upon the advice of counsel may only attack the voluntary and intelligent character of the guilty plea by showing the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases." Richardson v State, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993).

The records do not show that the Court explained the nature of the offenses, or, the elements for the offenses. The records also do not show that the Court inquired of Lauren Hiller to determine whether Hiller had performed these functions. Therefore, counsel was ineffective and this ineffectiveness caused the Petitioner to make an uninformed decision to plead guilty.

## VII.

### **7. Counsel for Petitioner provided ineffective assistance of counsel for failing to move to reduce the Burglary 1<sup>st</sup> degree count to Burglary 2<sup>nd</sup> degree.**

In Count One of the Indictment, Petitioner was charged as follows:

That JAYME DELSHON GAMBLE did in Marion County on or about July 21, 2017, willfully and unlawfully attempt to enter the dwelling of Hattie Pernell located at 6116 Vincent Road, Mullins, SC, without consent and with the intent to commit a crime therein, and the defendant was armed with a deadly weapon, in violation of the Common Law and Section 16-11-311. S. C. Code of Laws, 1976, as amended.

**Exhibit I.** Lauren Hiller provided ineffective assistance of counsel for her failure to challenge the *Burglary 1<sup>st</sup> degree* count; since, the offense should have been charged as *Burglary 2<sup>nd</sup> degree*. Burglary is broken into three categories, with increasing penalties according to severity of the crime. *Burglary in the first degree* occurs when the defendant unlawfully entered a dwelling with the intent to commit a crime therein and either was armed, caused physical injury to another person (other than an accomplice), used or threatened to use a dangerous instrument, or displayed a weapon during the crime (or while fleeing the crime scene); if the defendant had two or more prior burglary convictions; or if the entry occurred at nighttime. Burglary in the first degree is punished with a minimum of 15 years to life imprisonment. (S.C. Laws Ann. Section 16-11-311.)

*Burglary in the second degree* occurs when the defendant unlawfully entered a dwelling with the intent to commit a crime therein. Penalties include up to ten years in prison. *Second degree burglary* also includes unlawful entry into a non-residential building with criminal intent when either the defendant was armed, caused physical injury to another person (other than an accomplice), used or threatened to use a dangerous instrument, or displayed a weapon during the crime (or while fleeing the crime scene); if the defendant had two or more prior burglary convictions; or if the entry occurred at nighttime. Penalties include up to 15 years in prison. (S.C. Laws Ann. § 16-11-312.)

*Burglary in the third degree* occurs when the defendant unlawfully entered a building with the intent to commit a crime therein under circumstances not included in first- or second-degree burglary. Penalties include up to five years in prison for a first conviction, and up to ten years for a second conviction. (S.C. Laws Ann. § 16-11-313).

On July 21, 2017 at the break of day, 7:30 am, Petitioner and his brother entered the residence of Hattie Pernell without consent and with intent to commit a crime while armed. Petitioner does not have any prior convictions for burglary and the burglary was not committed at night. Therefore, Lauren Hiller should have objected to the overcharge in Count 1 of the Indictment.

In State v. Zulfer, 345 S.C. 258, 547 S.E.2d 885 (Ct. App. 2001), the South Carolina Court of Appeals faced a similar question under the statute defining burglary in the first degree -- subsection 16-11-311 (A) of the South Carolina Code of Laws (2003). The Court held that Subsection 16-11-311 (A) (2) provides that what would otherwise be a second-degree burglary is elevated to first-degree if "the burglary is committed by a person with a prior record of two or more convictions for burglary . . . ". Zulfer, 345 S.C. at 265. See also S.C. Code Ann. section 16-11-312 (A) (2003) (defining second-degree burglary of a dwelling).

Lauren Hiller's failure to object to Burglary 1<sup>st</sup> degree being charged instead of the lesser included offense of Burglary 2<sup>nd</sup> degree was ineffective assistance of counsel and this deficient performance caused Petitioner to be sentenced to a term of imprisonment of 50 years when he should have faced a maximum sentence of 15 years for Burglary 2<sup>nd</sup> degree. This is prejudice under Strickland.

## CONCLUSION

Petitioner respectfully requests that his convictions for Burglary 1<sup>st</sup> degree, Armed Robbery (or attempted armed robbery), Attempted Murder (3 counts), and Unlawfully Possession of Firearm be vacated, so that, he can proceed to trial, or in the alternative, so that he can plead again with a full understanding of the nature of the offenses and the elements of the offenses.

Respectfully submitted this 16 day of Sept., 2019.

Jayne Delshon Gamble  
Jayne Delshon Gamble #356776  
Lieber Correctional Institutional  
P.O. Box 205, F2-2141-T  
Ridgeville, SC 29472

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STATE OF SOUTH CAROLINA )  
 COUNTY OF MARION )  
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 Jayme D. Gamble, #356766, )  
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 Applicant, )  
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 v. )  
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 State of South Carolina, )  
 )  
 Respondent, )  
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IN THE COURT OF COMMON PLEAS  
 FOR THE TWELFTH JUDICIAL CIRCUIT

2019-CP-33-0654

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

2021 FEB 17 AM 10: 22  
 MARION COUNTY SC  
 CHRISTY M. GRAY  
 CLERK OF COURT

**FILED**

In response to Jayme Gamble’s (Applicant) action for post-conviction relief (PCR) commenced September 18, 2019, the State makes this return:

**I. Procedural History**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. Applicant was indicted at the February 2018 term of the Marion County Grand Jury on a twenty-five count indictment for: one count of first-degree burglary; seven counts of attempted armed robbery; seven counts of kidnapping; five counts of attempted murder; one count of discharging a firearm into a vehicle; one count of conspiracy; one count of possession of a stolen pistol; one count of possession of a weapon during the commission of a violent crime; and one count of failure to stop for blue light (2018-GS-33-0120). Applicant was represented by Laura Hiller (Counsel). Assistant Solicitor Patti Parker prosecuted the case.

Applicant pleaded guilty to one count of first-degree burglary, one count of attempted armed robbery, one count of kidnapping, three counts of attempted murder, one count of possession of a weapon during the commission of a violent crime, and one count of failure to stop

for blue light on August 1, 2018, before the Honorable William H. Seals, Jr.<sup>1</sup> The State recommended that Applicant receive concurrent sentences. Additionally, in exchange for Applicant's guilty plea, the State dropped Applicant's seventeen remaining charges. Judge Seals accepted Applicant's guilty plea and sentenced him to serve concurrent terms of: fifty years for first-degree burglary; twenty years for attempted armed robbery; thirty years for kidnapping; thirty years for each attempted murder; five years for the weapons charge; and three years for failure to stop for blue light. Applicant appealed.

Counsel filed a notice of appeal, along with a statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, with the Court of Appeals on August 9, 2018. The Court of Appeals dismissed the appeal on October, 12, 2018. *State v. Gamble*, S.C. Ct. App. Order filed October 12, 2018. The Case was remitted back to the circuit court on November 1, 2018.

Applicant timely commenced this PCR action on September 18, 2019.

## II. Facts

Applicant's charges stem from an incident that occurred around 7:30 a.m. on July 21, 2017. That morning, Hattie Pernell was inside her home getting ready for work when she heard a loud knock on the door. Plea Tr. 10. Pernell noticed a truck parked in her driveway she did not recognize, and did not recognize the two men standing outside her front door, so she went and woke-up Lawanda Williams, the mother of Pernell's grandchildren who was asleep in the house. There were also four children in the home. Plea Tr. 10; 11. Williams also did not recognize the truck or the men standing outside the front door. Plea Tr. 10. Pernell then decided to call 911. Plea Tr. 10-11. As Pernell dialed 911, the two men busted through the front door wielding guns and

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<sup>1</sup> Applicant's codefendant and brother, Kendall Gamble, pleaded guilty at the same time as Applicant before Judge Seals. Kendall Gamble was represented by Jonathan Hiller, Esquire.

hollering for everyone inside to get on the floor. The men demanded Pernell to put down her phone; however, they did not realize the call to 911 had already connected. Plea Tr. 11.

The 911 operator could hear yelling—the intruders ordering the residents to tell them where the money was located and to get down on the floor. Plea Tr. 11. Hearing the demands, the operator dispatched deputies to the home. Plea Tr. 11.

The men kept asking where the money was located, but Pernell did not know what money they were referring to. The intruders were speaking to someone on the phone, and one of the victims heard the person on the other end of the phone instruct the intruders to “just kill them.” Plea Tr. 12. The intruders were convinced there was money in the home, so they grabbed one of the children and held a knife to his throat and kept demanding the money’s location. Plea Tr. 12.

Corporal Tracy Causey and Deputy Herring were the first officers to arrive at the home, and while waiting for backup, Causey attempted to clear the back-yard. Plea Tr. 12. By this time, the intruders had fled the house from a side-door and were hiding behind a storage building in the backyard. Plea Tr. 12-13. The two men then attempted to flee Causey, and fired three shots in Causey’s direction. Plea Tr. 13. One of the shots struck Causey’s shotgun, disarming Causey. Plea Tr. 13. The men then fled to the car parked in the driveway—a rented Dodge Durango. Plea Tr. 13. A high-speed chase ensued. Plea Tr. 13. During the chase, two shots were fired from the Durango into Constable Glen Turner’s patrol car windshield. Plea Tr. 15. Turner was responding to the call and not pursuing the men. Plea Tr. 15. Additionally, two shots were fired from the passenger side of the Durango towards Trooper Jimmy King in his patrol car before the chase ended. Plea Tr. 15.

The chase ended when the men crashed the Durango. Plea Tr. 13-14. Applicant, the driver, attempted to flee on foot but was apprehended and arrested on site. Plea Tr. 14. Kendall Gamble stayed in the vehicle and surrendered to law enforcement. Plea Tr. 14.

### **III. Current Application**

Applicant alleges he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
  - a. Counsel represented Applicant under a conflict of interest;
  - b. Failure to move to dismiss the armed robbery count;
  - c. Failure to move to dismiss the three counts of attempted murder;
  - d. Failure to investigate the facts surrounding the case;
  - e. Failure to explain the difference between a negotiated and open plea;
  - f. Failure to ensure the plea court explained the nature of each offense and elements that had to be proven for each offense; and
  - g. Failure to move for the first-degree burglary charge to be reduced to second-degree burglary.

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated herein are the X County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records which includes an entire trial transcript, and the records of this PCR action.

### **IV. Response to Allegation of Ineffective Assistance of Counsel**

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 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

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State

will request a continuance in the matter. *See Id.* at 24 (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.”).

**VI. Any and All other Allegations**

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 claims 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

MICHAEL D. DAVIDSON  
Assistant Attorney General

By: s/Michael D. Davidson  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

February 12, 2021

STATE OF SOUTH CAROLINA )  
 COUNTY OF MARION )  
 )  
 Jayme D. Gamble, #356766 )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 Respondent, )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2019-CP-33-0654

Certificate of Service by Mail

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

**Joshua A. Bailey, Esquire**  
**Snow & Bailey Law Firm, P.A.**  
**PO Box 555**  
**Florence, SC 29503**

MARION COUNTY SC  
 CHRISTY M. GRAY  
 CLERK OF COURT

2021 FEB 17 AM 10:22

**FILED**

DATED this 12<sup>th</sup> day of February, 2021.

*Jennifer Jennison*  
 \_\_\_\_\_  
 Jennifer Jennison, Administrative Coordinator  
 For Respondent

State of South Carolina	)	In the Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Marion	)	Case No. 2019-CP-33-00634
	)	
Jayne Delshon Gamble,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

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January 23, 2024  
Florence, South Carolina

B E F O R E:

The Honorable G.D. Morgan, Jr., Judge

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

Joshua Bailey, Esquire  
Attorney for the Applicant

Talida Balaj, Esquire  
Attorney for the Respondent/State

Krystal J. Smith  
Official Circuit Court Reporter III

I N D E X

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption
	or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 JANUARY 23, 2024

2 (WHEREUPON, the proceedings began at 10:27 a.m.)

3 THE COURT: All right. You are Jayme Gamble?

4 THE APPLICANT: Yes, sir.

5 THE COURT: All right. I recognize the State to call the  
6 case.

7 MS. BALAJ: May it please the Court. Talida Balaj on  
8 behalf of the State of South Carolina. This is the post-  
9 conviction relief matter of Jayme D. Gamble versus the State,  
10 Case Number 2019-CP-33-0654 out of Marion County.

11 Applicant was indicted at the February 2018 term of the  
12 Marion County Grand Jury on a 25-count indictment for one  
13 count of first-degree burglary, seven counts of attempted  
14 armed robbery, seven counts of kidnapping, five counts of  
15 attempted murder, one count of discharging a firearm into a  
16 vehicle, one count of conspiracy, one count of possession of a  
17 stolen pistol, one count of possession of a weapon during the  
18 commission of a violent crime, and one count of failure to  
19 stop for a blue light, Indictment Number 2018-GS-33-0120.  
20 Applicant was represented by Laura Hiller. Assistant  
21 Solicitor Patty Parker prosecuted the case.

22 Applicant pleaded guilty to one count of first-degree  
23 burglary, one count of attempted armed robbery, one count of  
24 kidnapping, three counts of attempted murder, one count of  
25 possession of a weapon during the commission of a violent

1 crime, and one count of failure to stop for a blue light on  
2 August 1st, 2018, before the Honorable William H. Seals, Jr.  
3 The State recommended that applicant receive concurrent  
4 sentences. Additionally, in exchange for applicant's guilty  
5 plea, the State dropped applicant's 17 remaining charges.

6 Judge Seals accepted applicant's guilty plea and  
7 sentenced him to serve concurrent terms of 50 years for first-  
8 degree burglary, 20 years for attempted armed robbery, 30  
9 years for kidnapping, 30 years for each attempted murder, five  
10 years for weapons charge, and three years for failure to stop  
11 for a blue light. Applicant appealed.

12 Counsel filed a notice of appeal, along with a statement  
13 pursuant to Rule 203(a)(1)(B)(4), South Carolina Appellate  
14 Court Rules, with the Court of Appeals on August 9th, 2018.  
15 The Court of Appeals dismissed the appeal on October 12th,  
16 2018. The case was remitted back to the Circuit Court on  
17 November 1st, 2018.

18 Applicant then timely commenced this PCR action on  
19 September 18th, 2019, and applicant asserts that he is being  
20 held in custody unlawfully, alleging ineffective assistance of  
21 counsel in that counsel represented applicant under a conflict  
22 of interest, failure to move to dismiss the armed robbery  
23 count, failure to move to dismiss the three counts of  
24 attempted murder, failure to investigate the facts surrounding  
25 the case, failure to explain the difference between a

1 negotiated and open plea, failure to ensure the plea court  
2 explained the nature of each offense and elements that had to  
3 be proven for each offense, and failure to move for the first-  
4 degree burglary charge to be reduced to second-degree  
5 burglary. Applicant requested relief in the form of a new  
6 trial.

7 Before this Court are the Marion County Clerk of Court's  
8 records, applicant's records from the South Carolina  
9 Department of Corrections, applicant's appellate records,  
10 which also includes the entire plea transcript, and the  
11 records of this PCR action. And at this time, we would ask  
12 counsel to indicate all the allegations they wish to proceed  
13 on.

14 THE COURT: All right. I recognize the applicant.  
15 Counsel?

16 MR. BAILEY: Thank you, Your Honor. May it please the  
17 Court.

18 Judge, the relief that the Attorney General's Office  
19 stated into the record as filed in my client's initial  
20 application are what we will be proceeding on this day.

21 THE COURT: All right. Mr. Gamble, do you understand if  
22 you are successful here and I grant your application that  
23 there's no reduction in your sentence or anything like that?  
24 It goes back and starts over. Do you understand that?

25 THE APPLICANT: Yes, sir.

JAYME GAMBLE - DIRECT BY MR. BAILEY

1 THE COURT: And so any kind of charges that may have been  
2 out there that were pending against you or any kind of deals  
3 that may have been made to you are off the table. Do you  
4 understand that?

5 THE APPLICANT: Yes, sir.

6 THE COURT: All right. The applicant's case, I'll call  
7 on the first witness.

8 MR. BAILEY: Thank you, Your Honor. At this time, we'll  
9 call Mr. Gamble to the stand.

10 THE COURT: All right. Mr. Gamble, come up here and be  
11 sworn.

12 THE CLERK: Walk over to the Bible. Place your left hand  
13 on the Bible. Raise your right hand as much as you can.

14 THE BAILIFF: You can set it right here.

15 THE CLERK: Left hand. Raise your right hand. Do you  
16 swear or affirm the testimony you give will be the truth, the  
17 whole truth, and nothing but the truth, so help you God?

18 THE APPLICANT: Yes.

19 THE CLERK: Thank you. You can have a seat in the  
20 witness chair.

21 THE COURT: All right.

22 MR. BAILEY: Thank you, Your Honor.

23 JAYME GAMBLE, being first duly  
24 sworn, testified as follows:

25 DIRECT EXAMINATION

## JAYME GAMBLE - DIRECT BY MR. BAILEY

1 BY MR. BAILEY:

2 Q: Mr. Gamble, I'm going to ask you to speak loudly into  
3 that microphone so everyone can hear your responses to our  
4 questions this morning. Okay?

5 A: Yes, sir.

6 Q: Now, you heard the Attorney General's Office recite your  
7 convictions and sentences. Was that accurate?

8 A: Yes.

9 Q: And you are here seeking a new trial; is that correct?

10 A: Yes.

11 Q: Who was the attorney that represented you in those cases  
12 in Marion County?

13 A: Laura Hiller.

14 Q: And was Ms. Hiller hired or was she appointed to you?

15 A: Hired.

16 Q: And in your application, the first issue that you have  
17 raised is that there was a conflict of interest?

18 A: Yes.

19 Q: Can you explain to the Court your allegations as it  
20 relates to this conflict of interest?

21 A: My co-defendant and my brother, Hiller is the wife of his  
22 lawyer. So . . .

23 Q: Okay. So Mrs. Hiller, your attorney --

24 A: Uh-huh.

25 Q: -- is married to your brother's former attorney?

## JAYME GAMBLE - DIRECT BY MR. BAILEY

1 A: Yes.

2 Q: In the same case that you all had pending in Marion  
3 County?

4 A: Yes.

5 Q: Can you please tell the judge as to why you believe there  
6 was a conflict of interest?

7 A: I feel like she didn't do her -- the proper  
8 investigation.

9 Q: Did you have any meetings with Mrs. Hiller?

10 A: One in Dillon County, and that's it. And the one before  
11 we took our -- the case to court.

12 Q: Okay. So -- so to make sure the record is clear, you met  
13 with her once in Dillon County?

14 A: Yes.

15 Q: Is that where you were being detained for pretrial  
16 detention?

17 A: Yes.

18 Q: And then you met with her on the day of your plea; is  
19 that correct?

20 A: Yes.

21 Q: Were there any issues during the course of your  
22 representation that concerned you about Mrs. Hiller and her  
23 relationship with Mr. Hiller and your brother's  
24 representation? Did one of the attorneys make the decisions  
25 for both of you?

## JAYME GAMBLE - DIRECT BY MR. BAILEY

1 A: They told us we wouldn't receive more than 15 years. So  
2 take an open plea.

3 Q: And that leads -- that carries over into another one of  
4 your allegations here --

5 A: Yes.

6 Q: -- today; correct?

7 A: Yes.

8 Q: And that is that Mrs. Hiller did not explain to you the  
9 difference between a -- what you refer to as an open plea or a  
10 negotiated plea?

11 A: Right.

12 Q: All right. Were there any offers made in your case that  
13 were relayed to you by Mrs. Hiller?

14 A: No. No.

15 Q: So tell the Court what discussions you had with your  
16 attorney about your plea.

17 A: Just the no more than 15. We went up before to a judge  
18 and they were saying 30 years, and the judge was like, nah,  
19 that's too much, 30 is too much, and they took us back to the  
20 county, to Marion County then.

21 Q: Okay. So you say Mrs. Hiller told you that you would be  
22 looking at one to 15 years if you pled guilty to these  
23 charges?

24 A: No more than 15.

25 Q: No more than 15?

## JAYME GAMBLE - DIRECT BY MR. BAILEY

1 A: Yes.

2 Q: Did she explain to you what all of the maximum sentences  
3 were that you could potentially receive?

4 A: No, sir.

5 Q: Did she explain the no more than 15-year plea during your  
6 meeting at the detention center in Dillon --

7 A: No.

8 Q: -- or on the day of your plea?

9 A: That was before we caught our time.

10 Q: So on the day --

11 A: Not in the courtroom.

12 Q: On the day of your plea?

13 A: Yes. And with that, we were just going up for a bond  
14 hearing and they told us if we don't calm down, they're going  
15 to take us to trial, and that's foolish. We really didn't  
16 know how to cope with the situation at all. So we jumped on  
17 the first thing.

18 Q: And so was it your understanding at the time that you  
19 pled guilty in front of Judge Seals you would receive no more  
20 than 15 years?

21 A: Yes, sir.

22 Q: And that was based upon the advice your attorney had  
23 provided you?

24 A: (No verbal response.)

25 Q: Now, Mr. Gamble, you've also asked for a new trial based

## JAYME GAMBLE - DIRECT BY MR. BAILEY

1 upon your attorney failing to secure a dismissal of the  
2 attempted murder indictments that you pled guilty to; is that  
3 correct?

4 A: Right.

5 Q: One of those involved Trooper King. Do you recall that?

6 A: Yes.

7 Q: One of those involved Constable Glenn Turner. Do you  
8 recall that?

9 A: Yes.

10 Q: And then the third attempted murder indictment was Deputy  
11 Causey. Do you remember that?

12 A: Uh-huh.

13 Q: Okay. Now, will you please tell the Court as to why you  
14 believe Mrs. Hiller was ineffective for failing to secure a  
15 dismissal of these indictments?

16 A: Because she didn't do the -- the proper investigation --

17 Q: Okay.

18 A: -- to see who was the shooter.

19 Q: Okay. Well, let's talk about the incident that involved  
20 Trooper King. Okay?

21 A: Uh-huh.

22 Q: Do you recall those facts?

23 A: Yes.

24 Q: Tell us briefly about those facts.

25 A: We both got charged in a shooting and there was only one

## JAYME GAMBLE - DIRECT BY MR. BAILEY

1 shooter.

2 Q: All right.

3 A: My brother -- he said he was -- was the shooter, but we  
4 both still got charged for it.

5 Q: Okay. Trooper King's involvement on that day in Marion  
6 County was through a pursuit; correct?

7 A: Right.

8 Q: And where was Trooper King's position in his vehicle in  
9 relation to the vehicle you and your brother were in?

10 A: We was coming forward, we was going one way, and he was  
11 coming another way.

12 Q: And that was -- that was Trooper King or was Trooper King  
13 behind you?

14 A: I get them mixed up, King and Constable.

15 Q: And Constable was the one coming towards y'all?

16 A: Yes, sir.

17 Q: Okay. Now, who was driving the vehicle you were in?

18 A: Me.

19 Q: Who shot from your vehicle as alleged by the State? Was  
20 it you or your brother that did the shooting from the vehicle?

21 A: They shot at both of us.

22 Q: No, no. Which one of you, you or your brother --

23 A: My brother.

24 Q: -- shot towards law enforcement?

25 A: My brother.

## JAYME GAMBLE - DIRECT BY MR. BAILEY

1 Q: Okay. Before your brother shot out of the vehicle, did  
2 you have any knowledge that he was going to shoot at law  
3 enforcement?

4 A: No, sir.

5 Q: And he was shooting to the rear of your vehicle or  
6 forward?

7 A: Rear.

8 Q: Did Mrs. Hiller investigate those shots from your  
9 brother's gun?

10 A: I don't believe so.

11 Q: Did she ever discuss any investigation with you regarding  
12 those shots?

13 A: No, sir.

14 Q: How about Mr. King? Trooper King? Did she investigate  
15 any shots that he made?

16 A: I don't believe so.

17 Q: Now, Constable Turner you testified was coming towards  
18 you in an oncoming fashion; correct?

19 A: Yes, sir.

20 Q: Was Mr. -- or Constable Turner's vehicle struck by a  
21 bullet?

22 A: Yes, sir.

23 Q: And that's one of these attempted murder indictments;  
24 correct?

25 A: Yes, sir.

## JAYME GAMBLE - DIRECT BY MR. BAILEY

- 1 Q: Did your attorney conduct any type of investigation to  
2 see whose gun that bullet was that --
- 3 A: I don't believe so.
- 4 Q: -- went into Constable Turner's vehicle?
- 5 A: I don't believe so.
- 6 Q: Did she ever discuss that investigation with you?
- 7 A: No.
- 8 Q: Then we have Deputy Causey; correct?
- 9 A: Yes, sir.
- 10 Q: And Deputy Causey's attempted murder indictment involves  
11 facts at the house; correct?
- 12 A: Uh-huh.
- 13 Q: Do you recall what those are?
- 14 A: He said his shotgun got shot out of his hands.
- 15 Q: Okay. Did your attorney conduct any investigation that  
16 you're aware of into who fired at Deputy Causey?
- 17 A: No, sir.
- 18 Q: She never discussed that with you?
- 19 A: No, sir.
- 20 Q: Okay. Have you seen any type of evidentiary reports as  
21 to matching bullets and casings to the shotgun?
- 22 A: No, sir.
- 23 Q: As you sit here today, Mr. Gamble, are you aware of who  
24 shot Deputy Causey's shotgun out of his hand?
- 25 A: Yes, sir.

## JAYME GAMBLE - DIRECT BY MR. BAILEY

1 Q: And who did it?

2 A: My brother.

3 Q: Now, you've also alleged ineffective assistance of  
4 counsel because Mrs. Hiller did not secure a reduction from  
5 the burglary first-degree charge to the burglary second-degree  
6 charge?

7 A: Yes, sir.

8 Q: Tell the Court why you think Mrs. Hiller was ineffective  
9 in that regard.

10 A: Because she said she was going to drop the burglary first  
11 down to burglary second.

12 Q: Did she tell you why?

13 A: I don't remember what she said, like why she said it.

14 Q: But that is a statement that she made?

15 A: Yes.

16 Q: And was that a statement at the Dillon County Detention  
17 Center or was that a statement on the day of your plea?

18 A: Dillon County.

19 Q: You've also alleged that Mrs. Hiller was ineffective  
20 because she did not explain the elements of the charges  
21 contained in your indictment to you?

22 A: Right.

23 Q: At any point in time, did she review any of the statute  
24 -- statutes related to the charges that you were facing in  
25 your indictment?

## JAYME GAMBLE - DIRECT BY MR. BAILEY

1 A: She did.

2 Q: But did she explain the elements to you?

3 A: No, no.

4 Q: Did she --

5 A: She told me about it, like she talked about it, but she  
6 didn't explain the details of it.

7 Q: All right. Did she sit down and explain to you how the  
8 facts of your particular case applied to each element?

9 A: No.

10 Q: Did she ever talk to you about presenting any defenses to  
11 the charges that you were facing in the indictment?

12 A: No, sir.

13 Q: Is there anything else that you'd like to tell the Court  
14 this morning about your allegations for a new trial?

15 A: I just feel like I wasn't treated fairly.

16 Q: Okay. All right.

17 MR. BAILEY: Please answer any questions that the  
18 Attorney General's Office has for you. Okay?

19 THE APPLICANT: Yes, sir.

20 THE COURT: All right. Cross?

21 MS. BALAJ: May it please the Court.

22 CROSS-EXAMINATION

23 BY MS. BALAJ:

24 Q: Good morning, Mr. Gamble.

25 A: Good morning.

## JAYME GAMBLE - CROSS BY MS. BALAJ

1 Q: Okay. So jumping straight into your allegations, you  
2 allege that Ms. Hiller had a conflict of interest and stated  
3 on direct that the conflict of interest existed just because  
4 she was married to the attorney for your co-defendant, your  
5 brother?

6 A: Right.

7 Q: Was there anything else? Could you explain that a little  
8 bit more?

9 A: I feel like --

10 Q: You just believe there was a conflict of interest?

11 A: No, I feel like -- yes, I feel like she didn't do a  
12 proper investigation for me because probably my brother -- her  
13 husband was my brother's attorney. So I just feel like she  
14 ain't did proper what she need to do for me.

15 Q: Going to your discussions with Ms. Hiller, you said you  
16 met with Ms. Hiller about two times, one time at Dillon County  
17 and the day of your plea. And during those times, did you  
18 discuss at all -- did you tell her about things that you  
19 wanted her to investigate or discuss? What did you discuss  
20 about your case?

21 A: Yes. I wanted her -- the shooter, because we both was  
22 being charged with the shooting. So she didn't, like, see  
23 which one was the shooter.

24 Q: So what did you tell Mis. Hiller? Did you tell her who  
25 the shooter was?

## JAYME GAMBLE - CROSS BY MS. BALAJ

1 A: No.

2 Q: No?

3 A: No.

4 Q: Did you know? You said on direct that the shooter was  
5 your brother. Did you know at that time that the shooter was  
6 your brother? You were in the vehicle with him?

7 A: Yes.

8 Q: You did? And did Ms. Hiller know that your brother was  
9 the one who was the shooter?

10 A: He told them. He -- he admitted to being the shooter.

11 Q: So what could she have investigated if she knew who the  
12 shooter was besides that?

13 A: Like, I just feel like she ain't fight for me.

14 Q: Okay. Did you -- you stated that you didn't -- Ms.  
15 Hiller didn't discuss any possible defenses with you. Did --  
16 did you discuss going to trial?

17 A: No, ma'am.

18 Q: Not at all? It was always a plea?

19 A: Yes, ma'am. And we never had one plea. Like, they --  
20 they never gave us no plea. They threw 30 years out, the --  
21 the solicitor, and one judge was like, no, that's too much  
22 time, like.

23 Q: The judge said it was too much time?

24 A: Yes. One of the judges was, like, no, that's too much  
25 time.

## JAYME GAMBLE - CROSS BY MS. BALAJ

1 Q: Did you want --

2 A: And they took me back to the county.

3 Q: Did you want a plea?

4 A: Yes.

5 Q: And did you want to accept the 30-year offer that was  
6 given to you?

7 A: I didn't want it, but we never had no pleas to --

8 Q: So did you reject that offer?

9 A: No. The judge just said that's too much time, but we  
10 never even went in front of him.

11 Q: Did you -- during your discussions with Ms. Hiller during  
12 this time --

13 A: Uh-huh.

14 Q: -- you said that she explained to you the elements, but  
15 she talked to you about it, but she didn't explain it. Did  
16 you know all the charges that were against you?

17 A: Yes.

18 Q: And you understood which ones you were pleading to as  
19 well?

20 A: She was supposed to get some thrown out. Burglary was  
21 supposed to be dropped to burglary second, and she was  
22 supposed to get the attempted -- the armed robberies dropped,  
23 attempted burglary. I think it was only supposed to plea to,  
24 like, three charges and get the rest thrown out and dropped  
25 down.

## JAYME GAMBLE - CROSS BY MS. BALAJ

1 Q: So you said that Ms. Hiller said that she would reduce  
2 the first degree burglary to second degree burglary? Excuse  
3 me.

4 A: Yes.

5 Q: On what basis would she -- did she say she would reduce  
6 this charge?

7 A: I'm not sure, but that's what she said.

8 Q: And do you recall -- since you said that Ms. Hiller told  
9 you she was going to get the attempted murder charges against  
10 you dismissed as well, do you recall how she was going to do  
11 that? What --

12 A: It's not attempted murder. Attempted murder is -- she --  
13 I did my research. Attempted murder -- that's -- that's not  
14 attempted murder.

15 Q: Could you explain what's not attempted murder?

16 A: Attempted murder is -- let's see. How it go? I got it  
17 in my paperwork.

18 Q: You did say in your application that Ms. Hiller said that  
19 she would reduce the attempted murder to assault and battery  
20 with intent to kill. Do you understand that attempted murder  
21 replaced assault and battery with intent to kill?

22 A: No.

23 Q: So at the time, she wouldn't have been able to reduce it  
24 to that charge.

25 And moving on to one of your other allegations, you

## JAYME GAMBLE - CROSS BY MS. BALAJ

1 stated the plea court failed to explain the nature of each  
2 offense. Do you recall at your plea hearing the judge stating  
3 each offense that you were pleading to and the minimum and  
4 maximum time?

5 A: Yes.

6 Q: And you also allege that Ms. Hiller failed to explain the  
7 difference between a negotiated and an open plea?

8 A: Right.

9 Q: When you went to your plea, what did -- what did you  
10 believe you were pleading to?

11 A: Lesser charges.

12 Q: Lesser charges?

13 A: Yes.

14 Q: Did you understand that the Court would be able to decide  
15 what sentence to impose?

16 A: No, ma'am.

17 Q: You don't understand that? And you're alleging that Ms.  
18 Hiller didn't explain that to you?

19 A: Yes.

20 Q: You also stated that you were made to plead because when  
21 you came to court, someone told you that it was either you  
22 plea or you go straight to trial?

23 A: Yes,

24 Q: Who told you that?

25 A: Hiller.

## JAYME GAMBLE - CROSS BY MS. BALAJ

1 Q: Ms. Hiller told you that?

2 A: Yes.

3 Q: And so did you plea because of that or did you --

4 A: Yes.

5 Q: -- plea because you wanted to plea?

6 A: No. That's why.

7 Q: So would you have gone to trial?

8 A: Yes.

9 Q: You would have gone to trial?

10 A: (No verbal response.)

11 MS. BALAJ: I have no further questions for him.

12 THE COURT: All right. Any redirect?

13 MR. BAILEY: No redirect, Your Honor.

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

16 All right. Next witness?

17 MR. BAILEY: That would be the applicant's case, Your  
18 Honor.

19 THE COURT: All right. I'll hear from the State.

20 MS. BALAJ: Your Honor, we would call Laura Hiller.

21 THE COURT: All right. Ms. Hiller, come up and please be  
22 sworn.

23 THE CLERK: Place your left hand on the Bible and raise  
24 your right hand. Do you swear or affirm the testimony you  
25 give will be the truth, the whole truth, and nothing but the

## LAURA HILLER - DIRECT BY MS. BALAJ

1 truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. Please have a seat in the witness  
4 chair.

5 THE BAILIFF: Watch your step.

6 THE APPLICANT: Thank you.

7 MS. BALAJ: May it please the Court.

8 LAURA HILLER, being first duly  
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. BALAJ:

12 Q: Good morning, Ms. Hiller.

13 A: Good morning.

14 Q: Just to start off, how long have you been practicing law?

15 A: I am working through my 15th year right now.

16 Q: And how much of that has been in criminal law?

17 A: All of it.

18 Q: And you were retained to represent applicant?

19 A: I was.

20 Q: How were you retained?

21 A: I was working for Axelrod and Associates at the time, and  
22 Mr. Gamble reached out and his family retained that firm, and  
23 I was handling the vast majority of the criminal at the firm  
24 at that time.

25 Q: So Mr. Gamble called you?

## LAURA HILLER - DIRECT BY MS. BALAJ

1 A: Yes.

2 Q: And did he explain to you why he wanted to hire you?

3 A: He was looking for representation for his charges. I  
4 think he had reached out to me first.

5 Q: Okay. And roughly how long before the plea were you  
6 retained?

7 A: I -- I don't recall. It was some time. It was not a  
8 short -- you know, we -- we didn't plead two weeks after we  
9 got the case. It was -- it was some number of months, and I  
10 don't recall. I don't have my notes. They're at the office I  
11 used to be at. I never got those released. I apologize.

12 Q: And -- excuse me. Did you receive discovery --

13 A: We did.

14 Q: -- on time?

15 A: Yes.

16 Q: And did you review all that scope of discovery with the  
17 applicant?

18 A: We did. I recall we did watch some videos at the Marion  
19 County Detention Center at one point, and we reviewed all the  
20 paper discovery. There were -- there were significant videos  
21 in this case, like I think it was 12 different CDs of body  
22 cams and video from the incident site, from everything, and  
23 then so it was pretty significant. We reviewed key parts at  
24 the detention center.

25 Q: Excuse me. And in your discussions, how many times did

1 you meet with Mr. Gamble?

2 A: That -- I don't have my notes. I know it was at least  
3 three times. I expect it was more, but I do not know. I  
4 honestly do not know.

5 Q: And during those times, what did you discuss with Mr.  
6 Gamble? Was it just reviewing discovery or did you discuss  
7 other options with him?

8 A: We did review discovery. When Mr. Gamble and I spoke, my  
9 understanding from him was that he did not want this case to  
10 go to trial. He didn't think it was an appropriate -- he  
11 didn't think that was a good direction for the case to go, and  
12 I was of the impression that he also was not interested in --  
13 in harming his brother's case in any way as well. Those were  
14 the main topics I would say we talked about and, of course,  
15 about what he was charged with, how much time they carry, what  
16 kind of plea offer we may be able to get.

17 And like he testified to, we didn't have a plea offer on  
18 the table until the day we went to court for that bond  
19 hearing, and it was a week before -- we were on the trial  
20 roster for the next week and, at that time, the first plea  
21 offer that was made was a 30-year negotiated offer, and that  
22 was something we shared with him that morning. It was  
23 basically on the table that day and only that day, one of  
24 those high-pressure situations.

25 And the -- the Gamble brothers had a chance to talk to

## LAURA HILLER - DIRECT BY MS. BALAJ

1 us. We did our best to explain the difference between an open  
2 plea, which was the other option, or that negotiated 30.

3 Apparently, we didn't do a very good job, and then we -- they  
4 also had a chance to talk to their family about it as well.

5 Like, their family had come up from Georgetown and was in the  
6 courtroom, and they had a chance to talk to them, too.

7 Q: And Mr. Gamble testified that the judge said that 30  
8 years was too much. Did he reject the plea?

9 A: He did not. I -- I'm confused by that statement. I  
10 mean, I think that they thought 30 years was too much. I  
11 think they thought that there was a chance that they would get  
12 less in an open plea.

13 I mean, we were pleading to burglary first, which carries  
14 mandatory 15 years. I thought that had been carefully  
15 explained that day that that was the absolute rock bottom he  
16 could get. Like, he could not -- like, a judge cannot help  
17 you any more than 15 years, and that if you plead guilty, of  
18 course, some of these charges can carry life, like -- like the  
19 burg first. So it could be anything. It was just going to be  
20 a consecutive sentence is all that we knew.

21 Q: And during your discussions, did you explain to him all  
22 the charges against him, the elements of the charges?

23 A: I believe so.

24 Q: And did he express to you that he wanted you to  
25 investigate something?

## LAURA HILLER - DIRECT BY MS. BALAJ

1 A: I don't recall that. I feel like the -- the evidence  
2 that we got from the State, the discovery was pretty difficult  
3 discovery. I mean, this was a very heavily recorded incident.  
4 Everything was pretty much on camera. Everything that  
5 happened happened on camera. There was never a time that we  
6 thought it would be helpful to go out and get any, you know,  
7 ballistics work or anything like that done outside of what was  
8 in the discovery.

9       Again, this case, almost from the beginning, was viewed  
10 by both my client and me as something that was going to be a  
11 plea, not a trial. It's not because I was afraid of going to  
12 trial. I'm happy to try a case. It's just it seemed to be  
13 overwhelming evidence.

14 Q: And moving on to one of applicant's -- one of Mr.  
15 Gamble's allegations, he said that there was a conflict of  
16 interest and pointed to the fact that you were or are married  
17 to his brother's attorney.

18 A: That is true. Jonathan is my husband, and he at the time  
19 was working for himself. At the time when Jayme reached out  
20 to me to retain me at Axelrod and Associates, they were asking  
21 for attorneys for Kendell, like suggestions, because, of  
22 course, we couldn't take both brothers' case, and he had  
23 wanted someone that would work closely beside -- like, work  
24 together on the case as sort of a more unified defense. I  
25 suggested my husband. I certainly didn't tell them they had

## LAURA HILLER - DIRECT BY MS. BALAJ

1 to hire him, and then the family reached out and retained  
2 Jonathan to represent his brother.

3 Q: Can you just explain a little bit more detailed why you  
4 recommended your husband?

5 A: They were looking for an attorney that would work  
6 alongside. My husband and I had practiced in the past  
7 together as law partners, and we certainly are comfortable  
8 working alongside each other on a case.

9 We -- you know, I think in this case -- and I don't  
10 recall. I think we had them sign waivers, but I don't know  
11 for sure. But in this case, it did seem that they were not --  
12 at the time, we weren't going through it looking to harm each  
13 other in any way. They wanted a unified defense. That's what  
14 they told us, and that's why.

15 Q: And Mr. Gamble also testified that you informed him you  
16 would try or you were going to dismiss -- get the attempted  
17 robbery counts against him dismissed. Did you express that to  
18 him?

19 A: I don't think so. I -- I just don't recall anything like  
20 that in conversation. I'm sure we talked about trying to get  
21 charges reduced, but that was just never something that the  
22 Solicitor's Office was amenable to. I mean, it's not that we  
23 didn't have the conversation -- I didn't have conversations  
24 with the Solicitor's Office about reducing charges. It's that  
25 they were not open to it at all based on the facts of this

1 case.

2 Q: And does that also apply to the attempted murder charges  
3 and the first-degree burglary charge?

4 A: For sure, everything. It was just they weren't backing  
5 down because they had a very strong case and some very damaged  
6 police officers.

7 Q: And you testified that you explained to Mr. Gamble the  
8 difference between a negotiated and open plea. What did you  
9 tell him an open plea was?

10 A: I mean, I recall that we talked about a negotiated plea  
11 is a plea that it is entirely up to the -- like, it's the deal  
12 that it is. It is what it is. They -- the judge can't give  
13 you more. They can't give you less. They can only give you  
14 this negotiated plea or reject it outright. There's no in-  
15 between on a negotiated situation.

16 An open plea, a judge can give you the mandatory minimum  
17 or they can give you the maximum. It's entirely up to the  
18 judge what they do in an open plea. I really recall having  
19 that exact conversation with Jayme. I guess it wasn't clear.

20 Q: Excuse me. And Mr. Gamble testified that when he came to  
21 the court for his plea that he was told it was either plea or  
22 go to trial. Did you express that to him?

23 A: We were certainly in that place. I mean, there was -- we  
24 were on the trial roster for the next week, and if we didn't  
25 plea that day, it was first up on the roster the next week.

## LAURA HILLER - DIRECT BY MS. BALAJ

1 We would have been happy to try it. It was the Gamble  
2 brothers that did not want a trial.

3 Q: Did you explain to him that it was ultimately his choice  
4 whether or not he wanted a trial?

5 A: Absolutely. I have never pushed a client to a plea, and  
6 I never will.

7 Q: And lastly, Mr. Gamble also testified that you did not  
8 explain any possible defenses to him.

9 A: Well, we -- I don't know that we specifically talked  
10 about, you know, defenses in this case because there were very  
11 not -- not very strong defenses. Like I said, the -- the  
12 discovery -- everything was pretty much on video, and we were  
13 dealing with any -- if it wasn't on video, there was a 9-1-1  
14 recording that had a lot of details on it as well.

15 It was not a strong case for trial. I mean, we could  
16 have maybe tried to fight against the hand of one is the hand  
17 of all in the attempted murder charges, but it did seem to be  
18 that the two were acting in concert, and that's what it  
19 appeared we talked about and seemed to be in agreement that  
20 that was where the case was.

21 MS. BALAJ: Thank you, Ms. Hiller. Please answer any  
22 questions of opposing counsel. No further questions.

23 THE COURT: All right. Cross?

24 MR. BAILEY: Thank you, Your Honor. May it please the  
25 Court.

## LAURA HILLER - CROSS BY MR. BAILEY

CROSS-EXAMINATION

1

2 BY MR. BAILEY:

3 Q: You testified for the State that my client didn't ask you  
4 to go through any type of specific investigation?5 A: That's what I recall. And again, Mr. Bailey, I don't  
6 have my notes, but I don't recall him ever asking for a  
7 specific investigation.8 Q: And you would agree with me that you have a duty to  
9 investigate --

10 A: Absolutely.

11 Q: -- the facts and circumstances of the case, even if a  
12 client doesn't specifically request it?

13 A: One hundred percent.

14 Q: Now, did you conduct an investigation into the number of  
15 shots fired by Trooper King as he pursued the Gamble brothers?

16 A: I -- not outside of the discovery that was provided.

17 Q: So you don't know how many shots that he fired towards  
18 the Gambles' --

19 A: I don't.

20 Q: -- vehicle?

21 A: No.

22 Q: How about into Constable Turner's vehicle as he was  
23 oncoming? Did you investigate anything with regards to that  
24 shot through the window?

25 A: Nothing outside of the discovery.

## LAURA HILLER - CROSS BY MR. BAILEY

1 Q: Did you know that during the course of your  
2 representation that Kendell was the one who was the shooter in  
3 the vehicle?

4 A: It did seem that was clear on the video, at least of the  
5 video of the -- of the -- of the vehicle. Definitely, that  
6 was clear on video. The shooting of the -- the gun out of the  
7 guy's hand was less clear on video. We could only see him,  
8 the gun being hit, not who was firing the shot.

9 Q: Did you discuss with Jayme his potential challenges as it  
10 relates to the intent requirement for attempted murder?

11 A: We may have. I don't remember.

12 Q: And how about with Deputy Causey, who had the shotgun  
13 allegedly shot out of his hand at the house? Did you conduct  
14 any investigation as to that?

15 A: Nothing outside of the discovery and talking with -- with  
16 Jayme.

17 Q: Who did most of the work in the case between you and your  
18 husband?

19 A: I think it was pretty equal. I think we both reviewed  
20 all of the discovery separately. We both met with our clients  
21 separately.

22 Q: Were there any joint meetings between the four of y'all?

23 A: I believe there was one where the Marion County Detention  
24 Center let us all sit down. I think that might have been when  
25 we watched videos, but I -- again, I apologize. I don't have

## LAURA HILLER - REDIRECT BY MS. BALAJ

1 my notes, but I do believe there was one.

2 MR. BAILEY: Court's indulgence for one moment.

3 THE COURT: All right.

4 MR. BAILEY: Judge, I have no further questions. Thank  
5 you.

6 THE COURT: All right. Any redirect?

7 MS. BALAJ: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. BALAJ:

10 Q: Ms. Hiller, during the course of your representation and  
11 your discussions with Mr. Gamble, what did he tell you about  
12 his involvement in this incident?

13 A: I don't like to disclose even here, you know, the  
14 attorney-client privilege, but it was clear that there was  
15 some culpability there.

16 Q: And did you know -- did they tell you or did you know  
17 that his brother was the shooter?

18 A: Yes. It was on camera that his brother was the shooter,  
19 yes.

20 Q: So what could you have investigated outside of the  
21 discovery if it was on camera?

22 A: I at the time and still do not know what else I could  
23 have investigated.

24 MS. BALAJ: Thank you, Ms. Hiller. No further questions.

25 THE COURT: Any recross?

1 MR. BAILEY: Nothing further, Your Honor.

2 THE COURT: All right. You may step down. Thank you,  
3 ma'am.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: All right. Next witness?

6 MS. BALAJ: Your Honor, I have no other witnesses.

7 THE COURT: All right. Anything in reply from the  
8 applicant?

9 MR. BAILEY: Nothing further from the applicant, Your  
10 Honor.

11 THE COURT: All right. Do y'all want to give any kind of  
12 summary? I mean, I've heard it, but I'll hear you if you  
13 want, if you want to give me one.

14 MS. BALAJ: Your Honor, we would just request that you  
15 deny Mr. Gamble's application based on the testimony here  
16 today from Ms. Hiller and the record.

17 THE COURT: All right. Mr. Bailey?

18 MR. BAILEY: Judge, we have no further arguments other  
19 than what's on the record.

20 THE COURT: All right. Having heard the testimony, I'll  
21 take a look at it. I've already reviewed it, and then I'll  
22 take a look at it again, based on the testimony. I'll let you  
23 know my decision. Thank you.

24 MR. BAILEY: Thank you very much, Judge.

25 (WHEREUPON, the proceedings ended at 11:11 a.m.)



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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA )  
COUNTY OF MARION )

Jayne D. Gamble #356766, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

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

) CASE NO. 2019-CP-33-00654  
)

**ORDER OF DISMISSAL  
WITH PREJUDICE**

Presiding Judge: Hon. G.D. Morgan, Jr.  
Applicant's Attorney: Joshua A. Bailey, Esq.  
Respondent's Attorney: Talida Balaj, Esq.  
Trial Counsel: Laura L. Hiller, Esq.  
Date of Hearing: January 23, 2024  
Court Reporter: Krystal J. Smith

This matter comes before this Court by way of Jayme D. Gamble's (Applicant) application for Post-Conviction Relief (PCR) timely commenced on September 18, 2019. Respondent, the State of South Carolina, filed its Return on February 17, 2021, requesting an evidentiary hearing to resolve the claims set forth in the application.

On January 23, 2024, an evidentiary hearing was held at the Florence County Courthouse before the Honorable G. D. Morgan, Jr. Applicant was present and represented by Joshua A. Bailey, Esquire. Assistant Attorney General Talida Balaj represented Respondent. Applicant proceeded on the allegations within his original PCR application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Laura L. Hiller, Esquire (Plea Counsel).

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

any constitutional violations or deprivations entitling him to any form of relief. Accordingly, this Court denies relief and dismisses this action with prejudice.

#### PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted at the February 2018 term of the Marion County Grand Jury on a twenty-four count indictment for: one count of first-degree burglary; seven counts of attempted armed robbery; seven counts of kidnapping; five counts of attempted murder; one count of discharging a firearm into a vehicle; one count of conspiracy; one count of possession of a stolen handgun; and one count of possession of a weapon during the commission of a violent crime (2018-GS-33-0121). Applicant was represented by Laura L. Hiller, Esquire (Plea Counsel). Twelfth Circuit Assistant Solicitor Patti M. Parker prosecuted the case.

On August 1, 2018, Applicant appeared before the Honorable William H. Seals, Jr. and pleaded guilty to one count of first-degree burglary, one count of attempted armed robbery, one count of kidnapping, three counts of attempted murder, and one count of possession of a weapon during the commission of a violent crime, and failure to stop for a blue light.<sup>1</sup> The State recommended that Applicant receive concurrent sentences. Additionally, in exchange for Applicant's guilty plea, the State dropped Applicant's sixteen remaining charges. Judge Seals accepted Applicant's plea and sentenced him to serve concurrent terms of fifty (50) years for first-degree burglary, twenty (20) years for attempted armed robbery, thirty (30) years for kidnapping, thirty (30) years for each attempted murder, five (5) years for the weapons charge, and three (3) years for failure to stop for a blue light.

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<sup>1</sup> Applicant's codefendant and brother, Kendall A. Gamble, pleaded guilty at the same time as Applicant before Judge Seals. Kendall A. Gamble was represented by Jonathan M. Hiller, Esquire.

Applicant filed a timely Notice of Appeal and a statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, with the Court of Appeals on August 9, 2018. The Court of Appeals dismissed the appeal on October 12, 2018, by filed order. The Remittitur was returned to the circuit court on November 1, 2018.

#### FACTS GIVING RISE TO CONVICTION

The facts giving rise to Applicant's conviction were articulated by the State at Applicant's plea hearing, as follows:

This incident occurred on a Friday morning July 21st 2017 at 12 approximately -- it was a little before 7:30 in the morning. Ms. Hattie [REDACTED] who resides on at [REDACTED] in the Mullins area of Marion County. Ms. Hattie [REDACTED] was up that morning getting ready for work about to iron clothes and she heard what sounded like a loud knock on the door. She looked out the window and did not recognize the truck in the driveway, looked out the peephole and did not recognize these individuals that were knocking at her door. She went and woke up a Ms. Lawanda [REDACTED] that was asleep in the residence, that is her grandchild's mother that was there. There were also children in the home. And got Lawanda up and Lawanda also said I don't recognize this truck I don't know who they. Something didn't seem right to Ms. Hattie and she picked up her cell phone and dialed 9-1-1 and about that time the door was busted up. These individuals busted in Ms. Hattie's home. They had guns. They had weapons. They started hollering for them to get down on the floor, pulled the guns on these women and children that were in the home. She had dialed 9-1-1 and press send, but when he hollered put down your phone, of course, these individuals didn't realize that the call to 9-1-1 already gone through. And so she placed the phone down and so a dispatcher here in Marion County thought that something wasn't right, could hear the commotion in the background, could hear hollering and screaming where's the money, get down on the floor, where's the money and women screaming in the background. And so this dispatcher did a very good job that day with this call and thought that she needed to send deputies out to this residence and so deputies did respond to the residence. Before I get to what happened after deputies responded, I'll talk about what they did in the house. They demanded money from these women and children. There were four children total in

the residence a ten year old by the name of [REDACTED], a 16 year old [REDACTED], 24 year old Dennis who was Ms. Lawanda's son and five year old [REDACTED] (sic). Three of the children were Ms. Hattie's grandchildren. They were all woken by this incident and two of the women were slapped. They had guns put to their head. And even when they kept demanding money, Ms. Hattie and the ladies in the house didn't know what they were talking about. These individuals were corresponding with somebody on the cell phone on the other end of the phone. And one of the ladies heard from the other end of the phone just kill them all and so they were terrified for their life. At one point they grabbed [REDACTED], who is five years old, and put a knife to his throat trying to up the intimidation, up the threats because they thought there was some money there that they could get and threaten this child, threaten to cut his fingers off if these women didn't produce the money. So when law enforcement responded to the residence, they did get there rather quickly. Deputy Causey was the first. Deputy Causey along with Deputy Herring were the first two to arrive. And Deputy Causey kind of parked his car kind of by the driveway. Deputy Herring a little further back. And they were waiting on backup to get there, but Deputy Tracy Causey wanted to go ahead and clear the backyard, kind of clear the back portion of the residence. So he had his county issued shotgun that he retrieved from his patrol car and went around the back of the residence. Deputy Causey did not realize that these two individuals just prior to him walking around the backside of the house, they had ran out of the side door of the house and actually were hiding behind what looks like a storage barn, like a storage building. And you'll see shortly hear in the video when they decided to make a run for it, they did fire three shots at Deputy Causey. One of the shots actually got so close to him that it struck his shotgun and actually knocked the shotgun out of his hand. And he then later grabbed it and tried to, you know, to use it to fire some shots, but it was disabled because, you know, that -- one of the shots had actually hit his shotgun. These two individuals run, jump in the Dodge Durango that they were driving. It was a rental car that they had. They had carefully planned this out. The rental car had a North Carolina license plate. They had put a South Carolina license plate on top of the North Carolina plate. They proceeded to back out of the driveway and they're going to run from the police and they're not going to stop. So you have Deputy Herring along with Deputy Cribb and Trooper Jimmy King also hears what's going on on the radio. You have several law enforcement officers responding and this chase ensues throughout the county at some instances well in excess

of 100 miles an hour. And eventually you'll see here shortly on the video ends with a crash right here outside of the City of Marion. There was a civilian vehicle that was struck and then when deputy excuse me -- when Trooper King follows after them when they lose control of the vehicle and go into like a grassy area off like the main highway, he's able to disable their vehicle by hitting it in the side and then he jumps out and runs. Jayme Gamble was the driver of that vehicle. He ran from the vehicle and Trooper King was able to catch him and apprehend him and he was arrested there on site. The passenger, I believe, surrendered and put his hands up and never tried to run from the car. So, Your Honor, I guess, to try to sum this up from the time they run from the house through some of the home surveillance video we have and then through various dash cam videos we have, we have sight on them. We have our eyes on them throughout these videos up until the point they're both apprehended. And so no question at all in the State's case that it was them. While they were driving and during part of the chase and the video's going to touch on this, but I want to point out because it's not -- doesn't jump out at you when you're watching the video. One of the accounts of attempted murder --of course, they're pleading to one count to attempted murder for Deputy Causey for firing those three shots at him. You'll hear that on the video. Constable Glen Turner had heard what was going on on the radio and he was responding. And you'll see when they're on one of our roads here in Marion County they -- during the chase, they take a right at the first stop sign and go down that road and deputy constable excuse me -- Constable Glen Turner was just coming from the opposite direction and they fire a shot into his windshield, two shots. Fired two shots at him. One shot I had a picture. One shot goes in the front of the windshield right there at his rear view mirror, so would have been inches from his head and he pose no threat to them. He was just literally just responding to the call and was coming in the opposite direction. He was not in pursuit of them. And also I have a picture of the shotgun that shows, you know, where it was hit. It was actually very close to Deputy Causey's body when that bullet struck the shotgun. They also right before this chase ends that you see there at the intersection coming into the City of Marion and Trooper King makes reference to this in the video there were shots fired from the passenger side of the vehicle at him right before the chase ended. They were firing shots out the car at him. Certainly they were indicted for, I think, two additional counts of attempted murder, but in consideration of this plea, the State did try to pair it down. It was two rather large indictments paired down. And they're pleading to

about eight or nine counts each. I'm trying to think if I'm leaving anything out other than I want to play the video. And at the appropriate time, I know Deputy Causey wants to speak and Ms. [REDACTED] may want to speak also and also the sheriff. Obviously, you know, we indicted the burglary first degree because they entered the house with the weapons and immediately pulled them on the ladies that were in the home.

THE COURT: All right. Go ahead and play it.

Your Honor, I prepared three pieces of video. This first video is the homeowner's surveillance footage and has no sound. And then immediately after this you'll see a clip from Deputy Herring's dash cam and kind of what happened when he arrived at the house. You can kind of -- by seeing this video and then listening to and seeing the second one, you can kind of see when the shots were fired at Deputy Causey. And then the final video I'm not going to show the whole chase, but we edited to just show the last few moments of the chase. It was a very high speed chase and you can see how there were several civilian cars that were put in danger and one that actually hit.

(WHEREUPON, videos played for the Court.)

Your Honor, that last video was Trooper Jimmy King. And right after he crashed his vehicle into the defendant's vehicle, he did a foot chase and eventually apprehended Jayme Gamble, but you saw on the video when his car hit the curve, you kind of see it kind of knocked his camera loose. He did suffer a concussion to the head where his head hit the top of his patrol car. And not long after this, you know, suffering from headaches eventually he's now on medical retirement and he's not here today. He was willing to come, you know, had this gone to trial and would have been available as a witness for us.

(Plea Tr. pp. 10-17).

#### CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief filed on September 18, 2019, Applicant alleged he is being held in custody unlawfully for the following reasons:

- I. Ineffective Assistance of Counsel:
  - a. "For representing [Applicant] under a conflict of interest."

- b. "For failing to move to dismiss the armed robbery count."
- c. "For failing to move to dismiss the attempted murder counts involving Constable Glen Turner, and Deputies Jonathan Herring and Daniel Cribb."
- d. "For failing to investigate the facts of the case."
- e. "For failing to explain the consequences of a negotiated plea agreement versus an open plea."
- f. "For failing to ensure that the Court explained the nature of each offense and elements that had to be proven for each offense."
- g. "For failing to move to reduce the Burglary 1<sup>st</sup> degree count to Burglary 2<sup>nd</sup> degree."

Attached to Applicant's PCR applicant was a "Memorandum of Supporting Facts" for all claims of ineffective assistance of counsel. Applicant requests relief in the form of a new trial and to vacate the convictions/sentences.

Before this Court are the Marion County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from SCDC, Applicant's guilty plea transcript, Applicant's appellate records, and the records of Applicant's current PCR action.

#### STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act<sup>2</sup> (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

<sup>2</sup> S.C. Code Ann. §§ 17-27-10 to -160.

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

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

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 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 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), SCRPC (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*

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing **credible** and **persuasive**, where he presented well-recalled testimony of

relevant background, facts, and discussions leading up to and during the plea hearing. 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).

From the record, this Court makes the following findings: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 4–5); 2. Applicant clearly indicated he was satisfied with his attorneys (Plea Tr. pp. 8–9); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 6–8); 5. Applicant indicated he had enough time with his attorneys (Plea Tr. p. 9); 6. Applicant indicated his attorneys answered all of his questions, and he had no more questions for them (Plea Tr. p. 9); 7. Applicant indicated no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. pp. 9–10); 8. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 9); 9. Applicant understood the range of sentencing (Plea Tr. pp. 4–6); 10. Applicant was clearly advised of his right to appeal (Plea Tr. p. 8); 11. Applicant did not disagree with the facts surrounding the State's case against him and apologized (Plea Tr. pp. 10–27); 12. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p. 29).

*INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS***Allegation 1a: Plea Counsel represented applicant under a conflict of interest.**

Applicant alleged Plea Counsel was constitutionally ineffective and represented him under a conflict of interest because Plea Counsel is married to his co-defendant's defense counsel. This Court finds this allegation to be without merit.

"The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." Jordan v. State, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013) (quoting Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008)). An actual conflict of interest occurs:

when a defense attorney places himself in a situation inherently conducive to divided loyalties. . . . If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Lomax, 379 S.C. at 101, 665 S.E.2d at 168 (quoting Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984)). "[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance." Id. "However, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice to obtain relief." Id. (quoting Staggs v. State, 372 S.C. 549, 551-52, 643 S.E.2d 690, 692 (2007)). Conflicts of interest may be waived so long as such waiver is done knowingly, intelligently, and voluntarily. Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

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**PCR Evidentiary Hearing**

On direct examination, Applicant testified he retained Plea Counsel to represent him. (PCR Tr. p. 8). Applicant testified that a conflict of interest existed as Plea Counsel was married to his co-defendant's attorney. Id. Applicant testified he believed this was a conflict of interest as it caused Plea Counsel not to conduct a proper investigation. (PCR Tr. p. 9).

On cross-examination, Applicant testified he feels that Plea Counsel did not conduct a proper investigation due to her relationship with his co-defendant's attorney. (PCR Tr. p. 18).

On direct examination, Plea Counsel testified that Applicant retained her services several months prior to Applicant's plea. (PCR Tr. pp. 24–25). Plea Counsel testified that in their meetings Applicant expressed to her that he did not desire to go to trial, and she was under the impression that Applicant did not want to harm his co-defendant's case. (PCR Tr. p. 26). Plea Counsel testified that when Applicant reached out to her for her services, he asked for suggestions for attorneys for his co-defendant. (PCR Tr. p. 28). Plea Counsel testified that her firm could not take both his case and his co-defendant's, and Applicant wanted to have a unified defense with his brother, so she suggested her husband. Id. Plea Counsel testified she did not advise Applicant that he needed to hire her husband, and the co-defendant later reached out and hired her husband. (PCR Tr. pp. 28–29). Plea Counsel testified she believes they had Applicant and his co-defendant sign waivers. (PCR Tr. p. 29).

On cross-examination, Plea Counsel testified the work was split equally between her and her husband. (PCR Tr. p. 33). Plea Counsel testified that they reviewed discovery separately with their respective clients and met with their clients separately. Id. Plea Counsel testified they did have one joint meeting at the Mario County Detention Center. Id.

### Findings

This Court finds the combination of the record and Plea Counsel's **credible** testimony that there was no conflict of interest. Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. In support of this allegation, Applicant merely offered that his attorney and his co-defendant's attorney are married, without more. Plea Counsel **credibly** testified Applicant sought her services and inquired about an attorney for his co-defendant that would work with Plea Counsel, and Plea Counsel suggested her husband. Plea Counsel **credibly** testified she and her husband represented Applicant and his co-defendant separately, meeting and reviewing discovery separately. This Court finds Applicant has failed to prove that Plea Counsel actively represented conflicting interests. Applicant chose to plead guilty and chose not to withdraw his guilty plea. Therefore, this Court finds Plea Counsel's representation of Applicant was not ineffective, and Applicant cannot demonstrate any prejudice flowing from Plea Counsel's performance in this matter.

Accordingly, this Court finds that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

**Allegation 1b: Failure to move to dismiss the armed robbery count.**

Applicant alleged Plea Counsel was constitutionally ineffective for failing to move to dismiss the armed robbery charge. This Court finds this allegation to be without merit.

### PCR Evidentiary Hearing

On cross-examination, Applicant testified that Plea Counsel was supposed to have the burglary dropped to burglary—2<sup>nd</sup> degree and the armed robberies reduced to attempted robbery.

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(PCR Tr. p. 20). Applicant testified that they were only supposed to plead to three charges and the rest were supposed to be dismissed or reduced. Id.

### Findings

As an initial matter, this Court finds Applicant's testimony on this matter **not credible** and **not persuasive**. 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. The record before this Court provides that Applicant was fully aware of the charges he was pleading to and the sentencing ranges the plea court could impose. Also, the record provides Applicant informed the plea court that no one had promised him anything. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.").

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation on the charges he was pleading to, he was presented an opportunity to express his dissatisfaction and/or misunderstanding to 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 that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

**Allegation 1c: Failure to move to dismiss the three counts of attempted murder and he should have been charged with ABWIK.**

Applicant alleged Plea Counsel was constitutionally ineffective for failing to dismiss the three counts of attempted murder and, instead, he should have been charged with assault and battery with intent to kill. This Court finds this allegation to be without merit.

Attempted murder requires a person, with intent to kill, attempts to kill another person with malice aforethought, either express or implied. S.C. Code Ann. § 16-3-29. Attempted murder was formerly classified as common law assault and battery with intent to kill. It is now a statutory offense, and the common law offense has been repealed. 2010 Act No. 273, § 7.B. "Under [the hand of one, the hand of all] theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999)

#### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that Plea Counsel failed to secure a dismissal of the attempted murder indictments that he pled guilty to. (PCR Tr. pp. 11–12). Applicant testified that those three charges involved Trooper King, Constable Glenn Turner, and Deputy Causey. (PCR Tr. p. 12). Applicant testified he and his co-defendant were both charged in the shooting, but there was only one shooter. (PCR Tr. pp. 12–13). Applicant testified that his co-defendant was the shooter. (PCR Tr. p. 13).

Applicant testified to the events that gave rise to the attempted murder charges, as follows:

- Q: Okay. Trooper King's involvement on that day in Marion 5 County was through a pursuit; correct?
- A: Right.
- Q: And where was Trooper King's position in his vehicle in relation to the vehicle you and your brother were in?
- A: We was coming forward, we was going one way, and he was coming another way.
- Q: And that was -- that was Trooper King or was Trooper King behind you?
- A: I get them mixed up, King and Constable.
- Q: And Constable was the one coming towards y'all?
- A: Yes, sir.
- Q: Okay. Now, who was driving the vehicle you were in?
- A: Me.
- Q: Who shot from your vehicle as alleged by the State? Was it you or your brother that did the shooting from the vehicle?
- A: They shot at both of us.
- Q: No, no. Which one of you, you or your brother --
- A: My brother.
- Q: -- shot towards law enforcement?
- A: My brother.

(PCR Tr. p. 13, ll. 5–25). Applicant testified that he had no knowledge that his co-defendant would shoot at law enforcement. (PCR Tr. p. 14).

On cross-examination, Applicant testified that the charge against him should not have been attempted murder. (PCR Tr. p. 21). Applicant testified that he did not know attempted murder had replaced assault and battery with intent to kill. Id.

On direct examination, Plea Counsel testified that the Solicitor's Office was not open to reducing the charges against Applicant based on the facts and circumstances. (PCR Tr. pp. 29–30). Plea Counsel testified the State had a very strong case and police officers that were harmed. (PCR Tr. p. 30).

On cross-examination, Plea Counsel testified she discussed Applicant's charges as it relates to the intent requirement for attempted murder. (PCR Tr. p. 33).

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### **Findings**

As an initial matter, Applicant's claim fails as a matter of law. Applicant's attempted murder charges could not have been reduced to assault with intent to kill as it was repealed and replaced by attempted murder.

Nevertheless, this Court finds Plea Counsel was not deficient in his performance with regard to this allegation because there was no meritorious motion Plea Counsel could have made. Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. Plea Counsel **credibly** testified the State was not open to reducing the charges based on the facts and circumstances. Additionally, Applicant was appropriately charged with attempted murder under the hand of one, the hand of all theory, and Plea Counsel could not have had Applicant's charges reduced even if he did not have knowledge his co-defendant would shoot at law enforcement.

Furthermore, the record before this Court provides that Applicant was fully aware of the charges he was pleading to and the sentencing ranges the plea court could impose. Also, the record provides Applicant informed the plea court that no one had promised him anything. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.").

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation on the charges he was pleading to, he was presented an opportunity to express his dissatisfaction and/or misunderstanding to the plea court, knowingly opted not to do so, and instead chose to avail himself of the benefit of his guilty plea.

Accordingly, this Court finds that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

**Allegation 1d: Failure to investigate the facts surrounding the case.**

Applicant alleged Plea Counsel was constitutionally ineffective for failing to investigate the facts surrounding the case. This Court finds this allegation to be without merit.

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

"In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691; cf. Green v. French, 143 F.3d 865, 892 (4th Cir. 1998) ("Although counsel should conduct a

reasonable investigation into potential defenses, Strickland does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client."), abrogated on other grounds by Williams v. Taylor, 529 U.S. 362 (2000).

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

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

#### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that Plea Counsel never investigated the facts surrounding the shooting that led to the attempted murder charges. (PCR Tr. p. 14). Applicant

testified he was driving the vehicle and his brother was the one who was shooting at the officers. (PCR Tr. pp. 13–14). Applicant testified Plea Counsel never discussed any investigations concerning the shots fired from his brother's gun and the shots fired by the officers. (PCR Tr. p. 14). Applicant testified that one of the attempted murder charges resulted from Constable Turner's vehicle being struck by a bullet while he was driving towards Applicant. Id. Applicant testified the second attempted murder charge resulted from Deputy Causey's shotgun being shot out of his hand at the house, and Plea Counsel did not investigate who fired at Deputy Causey. (PCR Tr. p. 15). Applicant testified that Plea Counsel never discussed investigating who fired the shots, and he has not seen any evidentiary reports related to the bullets and casings of the shotgun. Id. Applicant testified his brother was the one who shot the shotgun out of Deputy Causey's hand. (PCR Tr. pp. 15–16).

On cross-examination, Applicant testified he wanted Plea Counsel to investigate the shooter to determine who the actual shooter was. (PCR Tr. p. 18). Applicant testified that he did not inform Plea Counsel who the shooter was, even though he knew who the shooter was at the time. (PCR Tr. pp. 18–19). Applicant testified that his co-defendant admitted to Plea Counsel and his attorney that he was the shooter. (PCR Tr. p. 19). When questioned about what Plea Counsel could have investigated concerning the identity of the shooter when she was already aware of it, Applicant answered, "Like, I just feel like she ain't fight for me." (PCR Tr. p. 19, l. 13).

On direct examination, Plea Counsel testified she received discovery prior to Applicant's plea and reviewed it with Applicant. (PCR Tr. p. 25). Plea Counsel testified she did not recall Applicant requesting her to conduct investigations into anything specific. (PCR Tr. pp. 27–28). Plea Counsel testified the incident was heavily recorded and everything was on camera, so investigating the ballistics would not have been helpful. (PCR Tr. p. 28).

On cross-examination, Plea Counsel testified that she does not recall Applicant asking for any specific investigation. (PCR Tr. p. 32). Plea Counsel testified she did not investigate the number of shots fired by Trooper King, Constable Turner, or Deputy Causey outside the discovery provided to her. (PCR Tr. pp. 32–33). Plea Counsel testified that it seemed clear from some of the video that Applicant's co-defendant was the shooter. (PCR Tr. p. 33).

On redirect examination, Plea Counsel testified that the video clearly showed Applicant's co-defendant as the shooter and that she did not know what else she could have investigated outside the discovery provided. (PCR Tr. p. 34).

### **Findings**

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

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's investigation, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to 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 that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

**Allegation 1c: Failure to explain the consequences between a negotiated and open plea.**

Applicant alleged Plea Counsel was constitutionally ineffective for failing to explain the difference between a negotiated and open plea. Additionally, Applicant alleged Plea Counsel advised him he would receive no more than fifteen years. This Court finds this allegation to be 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).

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**Guilty Plea Hearing**

The following colloquy occurred between the plea court and Applicant:

MRS. LAURA HILLER: Your Honor, I did just want to clarify one thing. The only recommendation or negotiation was that you would recommend concurrent.

MS. PARKER: Concurrent that is correct, Your Honor, that any sentence impose by the Court would run concurrent.

THE COURT: All right. Mr. Jayme Gamble, you are pleading guilty to burglary first degree which carries a minimum of 15 years and a maximum of life; is that correct?

JAYME GAMBLE: Yes, sir.

THE COURT: All right. You need to speak up. And you are pleading guilty to armed robbery which carries a maximum of 20 years; is that correct?

JAYME GAMBLE: Yes, sir.

THE COURT: And you're pleading guilty to kidnapping which carries a maximum of 30 years?

JAYME GAMBLE: Yes, sir.

THE COURT: Pleading guilty to attempted murder which carries a maximum of 30?

JAYME GAMBLE: Yes, sir.

THE COURT: Another count of attempted murder which carries a maximum of 30?

JAYME GAMBLE: Yes, sir.

THE COURT: Another count of attempted murder which carries a maximum of 30?

JAYME GAMBLE: Yes, sir.

THE COURT: And possession of a weapon during the commission of a violent crime which carries up to five years; is that correct?

JAYME GAMBLE: Yes, sir.

THE COURT: And you are pleading guilty to failure to stop for a blue light which carries a minimum of 90 days and a maximum of three years; is that correct?

JAYME GAMBLE: Yes, sir.

(Plea Tr. pp. 4–5).

### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that Plea Counsel advised him to take the open plea and that he would not receive more than fifteen years. (PCR Tr. p. 10). Applicant testified Plea Counsel did not explain the difference between a negotiated and open plea. Id. Applicant testified Plea Counsel did not relay any plea offers to him, only advised him that he would receive no more than fifteen years. Id. Applicant testified that at one point they went before a judge and were offered thirty years, but the judge said that was too much and sent them back to Marion County. Id. Applicant testified that it was his understanding that he would receive fifteen years when he pled before Judge Seals. (PCR Tr. p. 11).

On cross-examination, Applicant testified he understood that he was pleading to lesser charges, and did not know the plea judge could decide what sentence to impose. (PCR Tr. p. 22).

On direct examination, Plea Counsel testified the State made a negotiated plea offer of thirty years, and she informed Applicant of the offer, but the offer was only available that day. (PCR Tr. p. 26). Plea Counsel testified she did her best to explain the difference between the open plea and the negotiated thirty years offer. (PCR Tr. p. 27). Plea Counsel testified that Applicant and his co-defendant had time to discuss the plea offer with their family. Id. Plea Counsel testified that she had carefully explained that a judge cannot give a lesser sentence than fifteen years and that burglary first degree carries a sentence of up to life. Id. Plea Counsel testified she explained that anything could happen. Id.

Plea Counsel testified that she recalled advising Applicant what a negotiated plea was, and that with an open plea the judge could give the mandatory minimum or maximum. (PCR Tr. p. 30). Plea Counsel testified she explained to Applicant that with an open plea the sentence was

entirely up to the judge. Id. Plea Counsel testified she recalled having this conversation with Applicant. Id.

### **Findings**

This Court finds the combination of the record and Plea Counsel's **credible** testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin. See Boykin supra. Plea Counsel **credibly** testified she carefully explained the difference between an open and negotiated plea. Plea Counsel **credibly** testified she carefully advised Applicant that the plea judge could not impose a sentence of less than fifteen years and that burglary carries up to life. Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's alleged erroneous advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided supra. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

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 that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

**Allegation 1f: Failure to ensure that the plea court explained the nature of each offense and elements that had to be proven for each charged offense.**

Applicant alleged Plea Counsel was constitutionally ineffective for failing to ensure the plea court explained the nature of the charges and elements for each offense. This Court finds this allegation to be without merit.

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

An applicant who enters a plea on the advice of counsel may only attack the voluntary and

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

### **Guilty Plea Hearing**

At Applicant's plea hearing, the State advised the plea court, and Applicant was present, of the charges Applicant was pleading to, as follows:

Jayme Gamble is represented by Mrs. Laura Hiller. And he's pleading to Count 1 burglary in the first degree. Count 2 on that indictment attempted armed robbery, Count 15 kidnapping, Count 16 attempted murder, Count 17 attempted murder and Count 20 attempted murder. He's also pleading to possession of a weapon during the commission of a violent crime and failure to stop for a blue light. He is also pleading straight up without any recommendations or negotiations from the State. Your Honor, we have numerous victims that are present here that at the appropriate time that they would like to speak. I also have a presentation on the facts and have a short video at the appropriate time.

(Plea Tr. pp. 3–4).

The plea court then questioned Applicant as to his intention to plea to each charge, informing him of the maximum sentence of each charge. (Plea Tr. pp. 4–6). Applicant affirmed he was pleading to each one of these charges and that he understood the sentence associated with each charge. Id.

### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that, ~~Plea Counsel did not~~ advise him of the

minimum and maximum sentences he could potentially receive. (PCR Tr. p. 11). Applicant testified Plea Counsel reviewed the statutes related to the charges with him. (PCR Tr. pp. 16–17). Applicant testified that Plea Counsel did not explain the elements of the charges to him. (PCR Tr. p. 17).

On cross-examination, Applicant testified he understood all the charges against him. (PCR Tr. p. 20). Applicant testified that he understood that he was only supposed to be pleading three charges and the rest would be thrown out. *Id.* Applicant testified he recalled the plea court stating each offense he was pleading to and the minimum and maximum sentence for each offense. (PCR Tr. pp. 21–22).

On direct examination, Plea Counsel testified she explained the charges and elements of the charges to Applicant. (PCR Tr. p. 27).

### **Findings**

This Court finds Plea Counsel's testimony that she explained to Applicant the elements of the charges and what the State had to prove to convict Applicant **credible**. Additionally, the record establishes Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin. *See Boykin supra*; (Plea Tr. pp. 4–6). Further, this Court finds Applicant has failed to show that, but for Plea Counsel's performance, he would have proceeded to trial. *See Roddy supra*.

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

Accordingly, this Court finds that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of

this allegation is **DENIED** and **DISMISSED**.

**Allegation 1g: Failure to move for the first-degree burglary charge to be reduced to second-degree burglary.**

Applicant alleged Plea Counsel was constitutionally ineffective for failure to move to reduce the first-degree burglary charge to second-degree burglary. This Court finds this allegation to be without merit.

**PCR Evidentiary Hearing**

On direct examination, Applicant testified that Plea Counsel advised him she would reduce his first-degree burglary charge to second-degree burglary. (PCR Tr. p. 16). Applicant testified he did not recall on what basis Plea Counsel would reduce his charge. *Id.* Applicant testified that Plea Counsel advised him she would reduce the charge at the Dillon County Detention Center. *Id.*

On cross-examination, Applicant testified that he does not know how Plea Counsel would have reduced his charges, only that she told him that she would. (PCR Tr. p. 21).

On direct examination, Plea Counsel testified that she is sure she discussed the possibility of reducing charges with Applicant, but that the State was not open to reducing charges based on facts of Applicant's case. (PCR Tr. pp. 29–30). Plea Counsel testified the State was not backing down because they had a strong case against Applicant and injured police officers. (PCR Tr. p. 30).

**Findings**

As an initial matter, this Court finds Plea Counsel's testimony **credible** and Applicant's testimony on this matter **not credible** and **not persuasive**. 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*. The record before this Court provides that Applicant was fully aware of the charges he was pleading to and the sentencing

ranges the plea court could impose. Also, the record provides Applicant informed the plea court that no one had promised him anything. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.").

Furthermore, this Court finds the record is without any evidence that Applicant's charge of first-degree burglary was not appropriate and that second-degree burglary would have been a more appropriate charge. The record provides Applicant and his co-defendant entered a home with guns and knives with the intent to commit a crime. Thus, this satisfies the statutory requirements for a charge of first-degree burglary. Additionally, Plea Counsel credibly testified the State was not open to even entertain reducing Applicant's charges because the State had a strong case against Applicant.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation on the charges he was pleading to, he was presented an opportunity to express his dissatisfaction and/or misunderstanding to 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 that the Applicant has failed to establish any deficiency by

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Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

***ALLEGATIONS RAISED DURING THE EVIDENTIARY HEARING***

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

Applicant alleged Plea Counsel was constitutionally ineffective for failing to meet with him a sufficient number of times prior to his plea. 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) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). Mere speculation and

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

#### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that Plea Counsel met with him once before his plea in Dillon County and then on the day of his plea. (PCR Tr. p. 9).

On direct examination, Plea Counsel testified she was retained by Applicant several months before his plea hearing. (PCR Tr. pp. 24–25). Plea Counsel testified she reviewed all the discovery with Applicant prior to his plea, including some videos during a meeting at the Marion County Detention Center. (PCR Tr. p. 25). Plea Counsel testified she met with Applicant at least three times. (PCR Tr. pp. 25–26).

#### **Findings**

This Court finds Plea Counsel's well recollected testimony **credible** and Applicant's testimony **not credible**. This Court further finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catog, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland). Plea Counsel's **credible** testimony indicates she met with Applicant several times and reviewed Applicant's charges and the evidence against him. Notably, Applicant failed to present "any evidence of how additional preparation or communication would have resulted in a different outcome." Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012); see Harris, 377 S.C. at 75, 659 S.E.2d at 145 (finding that, when there is evidence counsel met with a defendant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial,

counsel cannot be said to have been ineffective), abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

Moreover, to whatever extent Applicant was not entirely satisfied with the number of times Plea Counsel met with him, he was presented an opportunity to express his dissatisfaction to 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 that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

**Allegation: Plea Counsel coerced Applicant to plead guilty.**

Applicant alleged his plea was involuntary as he was coerced into pleading by Plea Counsel. This Court finds this allegation to be without merit.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him or her. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have “a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a

record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories.”). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

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

#### **PCR Evidentiary Hearing**

On direct examination, Applicant testified that he believed he was going to court for a bond hearing, and Plea Counsel then told him they were taking them to trial. (PCR Tr. p. 11). Applicant testified he did not know what to do in the situation, so he jumped on the first thing that came to him. Id.

On cross-examination, Applicant testified Plea Counsel did not discuss possible defenses with him and did not discuss the possibility of going to trial. (PCR Tr. p. 19). Applicant testified that Plea Counsel told him that the choice was to plea or go straight to trial. (PCR Tr. p. 22). Applicant testified he did not want to plea and wanted to go to trial, but he pled because of Plea Counsel’s advice. (PCR Tr. pp. 22–23).

On direct examination, Plea Counsel testified she reviewed all the discovery with

Applicant, and in their meetings, Applicant expressed to her that he did not want his case to go to trial. (PCR Tr. p. 25–26). Plea Counsel testified the State did not make a plea offer until the day of Applicant's bond hearing, and the State offered a negotiated plea of thirty years. (PCR Tr. p. 26). Plea Counsel testified she advised Applicant of the plea offer that same morning, and the offer was only available on that same day. Id. Plea Counsel testified Applicant had a chance to discuss the plea offer with her and his family. (PCR Tr. pp. 26–27). Plea Counsel testified that she believes Applicant thought thirty years was too much and that Applicant believed there was a chance he could get a better offer. (PCR Tr. p. 27).

Plea Counsel testified that Applicant advised her he wanted a unified defense with his co-defendant. (PCR Tr. p. 29). Plea Counsel testified that Applicant's case was on the trial roster, and it was a plea or go to trial. (PCR Tr. p. 30). Plea Counsel testified she was ready to go to trial, but it was Applicant and his co-defendant that did not want to go to trial but plea. (PCR Tr. p. 31). Plea Counsel testified she explained to Applicant that it was his decision whether to plea, and that she has never pushed a client to plea and never will. (PCR Tr. p. 31). Plea Counsel testified she was not sure if she discussed possible defenses with Applicant and that everything was on video and 911 recordings. Id. Plea Counsel testified she could have tried to fight against "hand of one, hand of all," but it seemed Applicant and his co-defendant were acting in concert, and Applicant seemed to be in agreement with her about that. Id.

### **Findings**

This Court finds Applicant has failed to show his plea was coerced by Plea Counsel's advice. The record before this Court reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Additionally, Plea Counsel credibly testified she advised Applicant

it was his decision to plea, and Applicant chose to plead guilty. Plea Counsel **credibly** testified she advised Applicant of the plea offer, and Applicant chose not to accept it. Plea Counsel **credibly** testified she reviewed discovery with Applicant, and he agreed with her assessment of the case. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so).

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's representation, he was presented an opportunity to express his dissatisfaction to 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 that the Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

**[CONCLUSION PAGE FOLLOWS]**

CONCLUSION

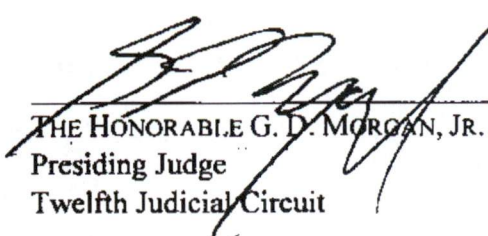
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED** and **DISMISSED WITH PREJUDICE**.

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), SCRPC, 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 31<sup>st</sup> day of July, 2024.

  
\_\_\_\_\_  
THE HONORABLE G. D. MORGAN, JR.  
Presiding Judge  
Twelfth Judicial Circuit

Greenville, South Carolina

**WITNESSES**

Arthur R Hotaling Jr

Marion County Sheriff

145

John W. Holt, IV

**ARREST WARRANT NUMBERS**

- 2017A3310100478 ✓ 2017A3310100491 ✓
- 2017A3310100492 ✓ 4102P0258059 ✓
- 2017A3310100494 ✓ 2017A3310100495 ✓
- 2017A3310100497 ✓ 2017A3310100498 ✓
- 2017A3310100499 ✓ 2017A3310100480 ✓
- 2017A3310100481 ✓ 2017A3310100482 ✓
- 2017A3310100484 ✓ 2017A3310100486 ✓
- 2017A3310100487 ✓ 2017A3310100489 ✓
- 2017A3310100500 ✓ 2017A3310100502 ✓
- 2017A3310100503 ✓ 2017A3310100505 ✓
- 2017A3310100507 ✓ 2017A3310100508 ✓
- 2017A3310100509 ✓ 2017A3310100510 ✓
- 2017A3310100511 ✓

**ACTION OF GRAND JURY**

Foreperson of Grand Jury

Date: 2-8-18

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-33-00120

The State of South Carolina

County of

MARION

**COURT OF GENERAL SESSIONS**

FEBRUARY

TERM

2018

THE STATE

vs.

JAYME DELSHON GAMBLE

TRUE BILL

Indictment for

- BURLGARY 1ST DEGREE;
- ATTEMPTED ARMED ROBBERY (7 COUNTS);
- KIDNAPPING (7 COUNTS);
- ATTEMPTED MURDER (5 COUNTS);
- DISCHARGING FIREARM INTO OCCUPIED VEHICLE; CONSPIRACY;
- POSSESSION OF A STOLEN PISTOL;
- POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME; AND
- FAILURE TO STOP FOR BLUE LIGHT

2018 FEB -8 PM 2:11  
MARION COUNTY CLERK  
MARION COUNTY, SOUTH CAROLINA

FILED

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF MARION )

INDICTMENT FOR  
 BURLGARY 1ST DEGREE  
 ATTEMPTED ARMED ROBBERY (7 COUNTS)  
 KIDNAPPING (7 COUNTS)  
 ATTEMPTED MURDER (5 COUNTS)  
 DISCHARGING FIREARM INTO AN OCCUPIED  
 VEHICLE; CONSPIRACY;  
 POSSESSION OF A STOLEN PISTOL;  
 POSSESSION OF WEAPON DURING COMMISSION  
 OF VIOLENT CRIME; AND FAILURE TO STOP FOR  
 BLUE LIGHT

At a Court of General Sessions, convened on FEBRUARY 8, 2018 the Grand Jurors of MARION County present upon their oath:

**COUNT ONE- BURLGARY 1ST DEGREE**

CDR: 0079 C/L 16-11-311, 16-1-80,16-1-60

That JAYME DELSHON GAMBLE did in Marion County on or about July 21, 2017, willfully and unlawfully attempt to enter the dwelling of Hattie Pernell located at 6216 Vincent Road, Mullins SC, without consent and with the intent to commit a crime therein, and the defendant was armed with a deadly weapon, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

**COUNT TWO- ATTEMPTED ARMED ROBBERY**

CDR: 0026 16-11-0330(B)

That JAYME DELSHON GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of Hattie Pernell, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

**COUNT THREE- ATTEMPTED ARMED ROBBERY**

CDR: 0026 16-11-0330(B)

That JAYME DELSHON GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of Whitney Pernell, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

**COUNT FOUR- ATTEMPTED ARMED ROBBERY**

CDR: 0026 16-11-0330(B)

That JAYME DELSHON GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of Lawanda Williams, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

**COUNT FIVE- ATTEMPTED ARMED ROBBERY**

CDR: 0026 16-11-0330(B)

That JAYME DELSHON GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of a sixteen (16) year old minor, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

**COUNT SIX- ATTEMPTED ARMED ROBBERY**

CDR: 0026 16-11-0330(B)

That JAYME DELSHON GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of a fourteen (14) year old minor, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

**COUNT SEVEN- ATTEMPTED ARMED ROBBERY**

CDR: 0026 16-11-0330(B)

That JAYME DELSHON GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of a ten (10) year old minor, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

**COUNT EIGHT- ATTEMPTED ARMED ROBBERY**

CDR: 0026 16-11-0330(B)

That JAYME DELSHON GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of a five (5) year old minor, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

**COUNT NINE - KIDNAPPING**

CDR: 0095 16-3-0910

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Hattie Pernell, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

**COUNT TEN - KIDNAPPING**

CDR: 0095 16-3-0910

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Whitney Pernell, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

**COUNT ELEVEN - KIDNAPPING**

CDR: 0095 16-3-0910

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Lawanda Williams, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

**COUNT TWELVE - KIDNAPPING**

CDR: 0095 16-3-0910

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one sixteen (16) year old minor, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

**COUNT THIRTEEN - KIDNAPPING**

CDR: 0095 16-3-0910

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one fourteen (14) year old minor, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

**COUNT FOURTEEN - KIDNAPPING**

CDR: 0095 16-3-0910

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one ten (10) year old minor, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

**COUNT FIFTEEN - KIDNAPPING**

CDR: 0095 16-3-0910

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one five (5) year old minor, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

**COUNT SIXTEEN - ATTEMPTED MURDER**

CDR: 3410 16-03-0029

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, with intent to kill, with malice aforethought, either expressed or implied, attempt to murder Marion Sheriff's Deputy Tracy Causey, by shooting at him with a firearm, causing great bodily injury and/or substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

**COUNT SEVENTEEN - ATTEMPTED MURDER**

CDR: 3410 16-03-0029

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, with intent to kill, with malice aforethought, either expressed or implied, attempt to murder Marion County Constable Glen Turner, by shooting at him with a firearm, causing great bodily injury and/or substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

**COUNT EIGHTEEN - ATTEMPTED MURDER**

CDR: 3410 16-03-0029

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, with intent to kill, with malice aforethought, either expressed or implied, attempt to murder Marion Sheriff's Deputy Daniel Cribb, by shooting at him with a firearm, causing great bodily injury and/or substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

**COUNT NINETEEN ATTEMPTED MURDER**

CDR: 3410 16-03-0029

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, with intent to kill, with malice aforethought, either expressed or implied, attempt to murder Marion Sheriff's Deputy Johnathan Herring, by shooting at him with a firearm, causing great bodily injury and/or substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

**COUNT TWENTY - ATTEMPTED MURDER**

CDR: 3410 16-03-0029

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, with intent to kill, with malice aforethought, either expressed or implied, attempt to murder Highway Patrol Trooper Jimmy King, by shooting at him with a firearm, causing great bodily injury and/or substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

**COUNT TWENTY-ONE - DISCHARGING FIREARM AT/INTO A VEHICLE**

CDR: 2907 16-23-0440

That JAYME DELSHON GAMBLE did in Marion County on or about July 21, 2017, willfully and unlawfully discharge, or cause to be discharged, a firearm at or into a vehicle, aircraft, watercraft, or other conveyance, device or equipment, to wit: a vehicle occupied by Glen Turner; in violation of Section 16-23-0440(B), S.C. Code of Laws, 1976, as amended.

**COUNT – TWENTY-TWO - POSSESSION OF STOLEN HANDGUN**

CDR: 2364 16-23-0030

That JAYME DELSHON GAMBLE did in Marion County on or about July 21, 2017, willfully and knowingly have in his possession or on his person, a pistol, to wit: a .40 caliber Taurus handgun, which he knew, or should have known to be stolen; in violation of Section 16-23-0030(C), S. C. Code of Laws, 1976, as amended.

**COUNT TWENTY-THREE – CONSPIRACY**

CDR: 0049 16-17-0410

That JAYME DELSHON GAMBLE did in Marion County on or about July 21, 2017, together with co-defendant Kendell Gamble, unlawfully, willfully, knowingly, wickedly and feloniously unite, combine, and conspire for the purpose of committing the crime of Burglary and Armed Robbery; in violation of Section 16-17-0410, S.C. Code of Laws, 1976, as amended.

**COUNT TWENTY-FOUR - POSSESSION OF WEAPON DURING THE COMMISSION  
OF A VIOLENT**

CDR: 0549 16-23-0490

That JAYME DELSHON GAMBLE did in Marion County on or about July 21, 2017, was in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: a handgun, during the commission of a violent crime, to wit: Burglary 1<sup>st</sup> Degree, Attempted Armed Robbery, and/or Attempted Murder; in violation of Section 16-23-0490, S.C Code of Laws, 1976, as amended.

**COUNT TWENTY-FIVE - FAILURE TO STOP FOR BLUE LIGHT**

CDR: 0065 56-05-0750

That JAYME DELSHON GAMBLE did in MARION County on or about July 21, 2017, while operating a motor vehicle upon the public streets or highways in this State, willfully refuse and fail to stop when signaled to do so by a law enforcement vehicle by means of a siren or flashing light; in violation of Section 56-05-0750(B)(1), 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.



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**E.L. Clements, III**  
TWELFTH CIRCUIT SOLICITOR