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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable David P Caraker, Jr, Circuit Court Judge

MICHAEL M. NOWINSKI,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001128

APPENDIX

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State of South Carolina

Court of General Sessions

County of Lexington

State	)	
	)	
	)	Transcript of Record
v.	)	2020-GS-32-1397
	)	2020-GS-32-1411
Michael Nowinski	)	2020-GS-32-1414
	)	2020-GS-32-1415
Defendant.	)	2020-GS-32-1421

October 15, 2020
Lexington, South Carolina

B E F O R E:

The Honorable Walton J. McLeod, IV, Judge.

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

Sutania Fuller, Assistant Solicitor
Attorney for the State

Taylor Bell, Esquire
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

I N D E X

WITNESS	PAGE

(No Witnesses.)

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

(No Exhibits.)

P R O C E E D I N G S

* * *

THE CLERK: 2020-GS-32-1397, State versus Michael Nowinski, indicted for armed robbery. He is pleading as charged. 2020-GS-32-1414, State versus Michael Nowinski, indicted for kidnapping. He is pleading as charged. 2020-GS-32-1415, State versus Michael Nowinski, indicted for kidnapping. He is pleading as charged.

2020-GS-32-1411, State versus Michael Nowinski, indicted for burglary first degree. He is pleading to burglary second. 2020-GS-32-1421, State versus Michael Nowinski, indicted for possession of a weapon during the commission of a violent crime. He is pleading as charged.

All indictments have been true-billed. He's represented by Mr. Bell.

MICHAEL NOWINSKI

being first duly sworn, testified as follows:

THE DEFENDANT: I do.

THE COURT: Mr. Bell, good morning.

MR. BELL: Good morning, Your Honor. How are you?

THE COURT: I'm good. Have you had the opportunity to meet with Mr. Nowinski?

MR. BELL: I have, Your Honor.

THE COURT: Is he aware of the nature of the charges pending against him today?

MR. BELL: He is.

THE COURT: Has he been advised on the potential future sentencing enhancements?

MR. BELL: He has. It's the most serious offense here.

THE COURT: Okay.

MR. BELL: It is also a violent offense; 85 percent, no parole eligibility, community supervision.

THE COURT: Okay. And, obviously, he's fully aware of that?

MR. BELL: He is.

THE COURT: Okay. Has he indicated a desire to plead guilty to you to all these charges?

MR. BELL: He has, Your Honor.

THE COURT: Okay. Do you believe that's in his best interest?

MR. BELL: I do.

THE COURT: All right.

Mr. Nowinski, good morning.

THE DEFENDANT: Good morning.

THE COURT: What type of work have you done in

the past, sir?

THE DEFENDANT: I've been an electrician for the past ten years.

THE COURT: The charge of armed robbery, Mr. Nowinski, carries a potential sentence of ten to 30 years. Do you understand that?

THE DEFENDANT: Yes, sir, I do.

THE COURT: The charge of kidnapping carries a potential sentence of zero to 30 years. The second indictment for kidnapping carries a potential sentence of zero to 30 years as well. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Burglary second degree violent carries a potential sentence of zero to 15 years. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And possession of a weapon during a violent crime in this case carries a potential sentence of up to five years. Do you understand that?

THE DEFENDANT: Yes, sir, I do.

THE COURT: Knowing all of that, do you still wish to proceed forward this morning?

THE DEFENDANT: I do.

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THE COURT: Okay. Do you understand, Mr. Nowinski, that you have a right to remain silent, but you give up that right to remain silent in order to plead guilty because you'll have to tell me you're guilty today to all these charges? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you also understand you have a right to a jury trial where your attorney could assert defenses on your behalf and confront the State's witnesses, and the State would have to prove their case against you beyond a reasonable doubt. You'd be entitled to the presumption of innocence throughout the entire trial.

But, by pleading guilty today, you're giving up your right to a jury trial; you're giving up your right to assert defenses; you're giving up your right to confront the State's witnesses. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand you have a right to --

These are all true-billed, aren't they?

MS. FULLER: They are, Your Honor. He signed just acknowledging that he's pleading, not that he's

waiving presentment.

THE COURT: Yeah. I just saw the writing on the back and wanted to make sure.

Mr. Nowinski, have you had the chance to meet with your attorney?

THE DEFENDANT: I did, yes, sir.

THE COURT: Has he answered all your questions?

THE DEFENDANT: He has.

THE COURT: Are you satisfied with his services?

THE DEFENDANT: Yes, sir.

THE COURT: You heard your attorney say this earlier, but I want to -- I would like for you to hear it again: You understand that in the instance of several of these crimes, including the armed robbery and the kidnapping, that they are most serious offenses under South Carolina law?

THE DEFENDANT: Yes, sir, I do.

THE COURT: You understand they're no-parole offenses?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Do you have any additional questions for your attorney now?

THE DEFENDANT: No, sir, I don't.

THE COURT: Okay. As to Indictment

2020-GS-32-1397, armed robbery, how do you plead, sir?

THE DEFENDANT: Guilty.

THE COURT: As to Indictment 2020-GS-32-1414, kidnapping, how do you plead to that charge?

THE DEFENDANT: Guilty.

THE COURT: As to Indictment 2020-GS-32-1415, how do you plead to that charge?

THE DEFENDANT: Guilty.

THE COURT: As to Indictment 2020-GS-32-1411, burglary second degree violent, how do you plead to that charge?

THE DEFENDANT: Guilty.

THE COURT: As to Indictment 2020-GS-32-1421, possession of a weapon during a violent crime, how do you plead to that charge?

THE DEFENDANT: Guilty.

THE COURT: All right. Are you pleading guilty to all these charges of your own free will?

THE DEFENDANT: Yes, sir.

THE COURT: Are you doing so freely and voluntarily?

THE DEFENDANT: Yes, sir.

THE COURT: Are you doing this knowingly and intelligently?

THE DEFENDANT: Yes, sir, I am.

THE COURT: Has anyone forced you, threatened you, or coerced you into pleading guilty?

THE DEFENDANT: No, sir.

THE COURT: Has anyone offered or promised you anything in exchange for pleading guilty today?

THE DEFENDANT: No, sir.

THE COURT: But you're pleading guilty to these charges because you are guilty of these charges?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. You have ten days from today to appeal this plea to a higher court, but you must do so in writing to this Court. Do you understand that?

THE DEFENDANT: Yes, sir.

MS. FULLER: Thank you, Your Honor. For the record, the State is dismissing, in exchange for this plea today, three counts of assault and battery first degree, criminal conspiracy, as well as two additional counts of kidnapping.

Also, for the purposes of your plea information sheet, Your Honor, the days served, before I forget, should be two additional days since we did the paperwork based on Tuesday's plea date.

THE COURT: Noted.

MS. FULLER: Your Honor, this incident occurred back on August 19th of 2019 when law enforcement responded to a mobile home on [redacted] Drive in the West Columbia area, but in Lexington County Sheriff's Department jurisdiction, in reference to a home invasion.

One of the victims was able to call 911 after the burglary occurred and informed the dispatcher about what had happened. He indicated he had been covered in blood and was assaulted by an intruder. Upon arrival, deputies with the Lexington County Sheriff's Department observed that one of the victims had injuries to his head and his arm. This victim was David Chase, a 72-year-old individual at the time. And he was actively bleeding from both of his injury areas.

The officer then located James Chase, 73 years old at the time, and noted his injuries to his face and his head. He was actively bleeding as well. There are two individuals -- other -- two other individuals in the home that were present during the home invasion: A Kenneth Jeffrey, as well as an Ashley Kirschner.

Kenneth had a minor injury to his back. And once -- during the home invasion, one of the victims

was actually able to shoot this intruder. But, prior to leaving the residence, this individual took the victim's rifle, struggled with him, and then left the home.

Nowinski, the defendant standing before you today, was later located not too far from the incident location down [redacted] Drive, suffering from a gunshot wound. So it was rather easy and quick for law enforcement to discover who this intruder was. The victim's rifle was also located down [redacted] Road near where Mr. Nowinski was located. And other evidence of this crime was obtained as well.

The co-defendant in this case was eventually identified as Joel Hendrix, a friend, possibly a best friend, of Mr. Nowinski. And he admitted to driving Nowinski to commit this home invasion and gave a statement to law enforcement implicating Nowinski in this crime. He admitted to driving him there and staying outside.

Your Honor, he was -- later, he was taken to the hospital for his treatments and later booked into the Lexington County Detention Center where he has been in custody ever since.

Your Honor, I believe, at this time, that is

enough briefly for a factual basis to accept the plea. And I will present a full presentation of the facts, photos, prior record, victim impact, and law enforcement input after you accept the guilty plea.

THE COURT: Very well.

Mr. Nowinski, did you hear the State's allegations?

THE DEFENDANT: I did.

THE COURT: Did you understand them?

THE DEFENDANT: Yes, sir.

THE COURT: And as to the general nature of the allegations, do you agree with them?

THE DEFENDANT: Yes, sir, I do.

THE COURT: All right. I'll accept the plea. I find there's a substantial factual basis for the plea. The defendant's decision to plead guilty has been freely, voluntarily, and intelligently made. He's had the advice and counsel of a competent attorney with whom which he's satisfied.

Madam Solicitor?

MS. FULLER: Thank you, Your Honor. The first victim that law enforcement was able to speak with was Mr. James Chase. I indicated that the two older victims were in their 70s at the time that this occurred. He reported to law enforcement that this

was roughly around 6:00 in the morning. He heard his bog barking and then a knocking at the door.

The other individual in the home, Kenneth, told the person to go around to the other door because the door that the knock was taking place was not the door that they normally used. So, to them, they didn't believe it was someone who had frequented the residence, because that door was not operable.

He indicated to law enforcement that he went and opened the door, and as soon as he opened the door, he was immediately struck in the head and fell to the floor. He then heard the intruder go into the living room and yell at Kenneth and Ashley not to move. He heard his brother David yelling.

James then indicated that he was able to regain his footing, and he went to his bedroom and retrieved this Marlin 30-30 rifle at that point. He indicated that he sat down on the bed and loaded his rifle. When law enforcement and crime scene processed, you can actually see the blood trail from his injury going to the bedroom, to the side of the bed that he indicated where his rifle was stored.

After loading it, he went back into the hallway, and that's when he saw the individual coming from David Chase's room, carrying a shotgun

in his hand, the same one he saw when he gained entry into the mobile home. At that point, he then fired and he struck the intruder. They struggled, started wrestling for the rifle, and that's when, like I indicated, he took it and left the residence. The shotgun that was brought into the residence did remain behind; it was damaged.

According to law enforcement, based on how Mr. Nowinski was holding the shotgun is probably the only reason why he's alive today, because it slowed the impact of the actual rifle shot. James indicated that he didn't see the individual's face because it was covered, but he was able to describe the individual as about six feet tall, approximately about 200 pounds. And, I believe, at the time, and possibly still now, he still matches that description.

Mr. David Chase, the individual that was in the room, he indicated that he heard yelling from the living room. He has to use an actual walker to move around, so he said by the time he was able to try to get up and grab his walker, the individual came in and struck him in the head with the shotgun. He reported he tried to grab his walking stick to get back up and that he was hit again and told to stay

down.

He was asked where the safe was. David stated that he stayed down until he had heard that he had left the -- until he heard that he had left. And when he had walked out -- by the time he had walked out, the individual was gone.

The other individual in the home, Kenneth Jeffrey, reports that he was sleeping on the living room when he heard the banging. He was the one that yelled to the individual to go to that other door. He saw James get struck -- was struck -- was struck and fell to the floor. He reported he was forced down on the living room floor, and he stayed there until he heard the shot and saw that James and the individual were fighting. He got up and exited the home to get help.

He also told law enforcement that when he went outside, he saw a small car sitting on the roadside that drove off as he was trying to -- as he was starting his truck. He tried to leave to get help, but then realized he had a flat tire on his truck. He then observed that all the vehicles in the yard had flat tires. He had scratches on his back from the injury, but -- from the assault, but he doesn't really know how that actually occurred.

Ashley, she was not injured in this home invasion, but she did witness it and see -- she could hear David crying from the room and heard the individual yelling, asking about a safe. She described the individual as decent size, face covered, approximately six-one, in her opinion. She also told law enforcement that all of the vehicles' rear tires had been cut in the yard.

That's when -- around the same time, shortly after, that's when law enforcement received the report of the individual with a gunshot wound in his chest located near the corner of [redacted] Drive and Highway 301 -- 302. And he was identified as Michael Nowinski.

What we know from the crime scene, law enforcement located an orange-handled hunting knife that they believe was likely used to slash the tires. Three tires [sic] parked in the yard, rear driver's side tires were cut and flat so the -- no one in the home could leave to get help.

I mentioned the blood trails confirmed what James' account was in terms of retrieving the -- according to law enforcement, there was nothing of real value in this home. It was a single-wide mobile home, individuals living off of social

security. They do some type of warranty work with appliances where this -- so if you look at the crime scene photos, their yard is filled with different types of appliances.

There were also no signs of narcotics or signs of narcotics use or sales found in the home. They -- where the 30-30 rifle, the victim's rifle, was located near Nowinski, law enforcement also located the gloves that he wore and the black mask that he wore during the commission of this home invasion.

Law enforcement, during their investigation, wanted to identify the co-defendant, of course. And that's when they were able to speak with Nowinski's mother who indicated to law enforcement that he had an underlying problem with illegal drugs. And I've been doing this long enough to know that when substance abuse problems go untreated, we end up in situations like this.

She indicated that her son was living with his best friend, Tripp, and that's who we come to find out is the co-defendant in this case. Shortly after, Investigator Hart, who is present and will address the Court momentarily, received a phone call from Hendrix. And he admitted that Nowinski was at

his house, but initially told law enforcement he didn't know where Nowinski was.

Nowinski's mom then called back Investigator Hart and told her [sic] that Nowinski admitted to her on the jail call that he went to the house with Hendrix and that Hendrix was using his company car. The investigation did lead them to discover the car was a small car, similar to -- that matched the description that the victim Kenneth saw when he ran out the residence.

Law enforcement did attempt to interview Nowinski at that point. He indicated that the shotgun belonged to Tripp. He identified Tripp from a DMV photo. He made a statement saying that he was piss broke and then ended the interview. I would venture out to say it wasn't much of an interview; it wasn't much of a true admission to anything. Law enforcement did terminate the interview because Mr. Nowinski was not in the proper frame of mind to actually give a formal statement, in my opinion.

The co-defendant in this case, he eventually acknowledged to driving Nowinski to the incident location. He indicated it took them about an hour to get there because they were living in Camden in Kershaw County -- or near Camden in Kershaw County.

He indicated that Nowinski discussed committing a lick and asked him to drive him. He told law enforcement that he didn't want to take him, but decided to do it to avoid a physical fight. He described Nowinski as not letting up, potentially on drugs at this time, in my opinion.

He told law enforcement that he dropped Nowinski off and parked outside no longer than 15 minutes. He said he drove off when he heard Nowinski yelling. He said he saw one of the victims exit the home prior to him leaving.

He said prior to going to the residence though, he didn't know that the shotgun was in his car. I don't know how much I believe that, but that's what he told law enforcement. He claimed he didn't know that -- he didn't see the shotgun until Nowinski took it out of the vehicle. I think he admitted to driving the Ford Focus.

Your Honor, like I told you, these victims that were injured in this -- and I'll show you the first one -- that was able to shoot the defendant in this case, this is how he looked when law enforcement arrived on the scene. You can see the blood injury there. He described injury to his hand. The color is not showing up that great, so I apologize for

that. And then a closer look at the head injury.

The -- David, that was in his room, that was struck multiple times with this shotgun. And these all have been provided in discovery. You can't really see it there, so I will try to hold it up, because it looks a little -- Your Honor, I'm holding the photo up here so you can actually see the amount --

THE COURT: You can hand them up to me, if you want.

MS. FULLER: Your Honor, we're not supposed to pass paper.

THE COURT: Oh.

MS. FULLER: But it's up to you.

THE COURT: No, no, no. Let's follow the rules.

MS. FULLER: Sorry.

THE COURT: I said that without thinking.

MS. FULLER: Sorry. But I will hold it up.

THE COURT: I see -- well, I mean --

MS. FULLER: You can see it?

THE COURT: I can see it fine.

MS. FULLER: Okay.

And then here's the injury to his hand, and then the back of his elbow. And then, like I

indicated, Kenneth only had this injury. But he -- I guess with everything going on, he really doesn't know how he got it, but it happened during the home invasion.

Your Honor, in my victim's advocate conversation and in speaking with the victims in this case, they -- you know, they indicate to be living a simple life. They simply did not deserve what happened to them. They indicated that they do want Mr. Nowinski to be held accountable for what he did and for him to go to prison. He said their biggest fear is him coming back to their home or him hurting someone else.

Your Honor, in terms of the -- it's always -- it's never easy standing here, asking for a significant prison sentence. It's not. Some people may view this as just putting people away. And it's -- I do believe that Nowinski has an underlying drug problem. And that's always hard to see someone his age, 27. I -- I'm more hurt for the family more so because they're like, how could this happen; how did we get here?

At the same time, I have to balance that with what happened to these victims. And they don't deserve what happened to them. No one deserves --

no matter how they live, whether it's a big house or a mobile home, they don't deserve for anyone to come in their home in the wee hours of the morning and victimize them and assault them the way that they did. I mean, their movements were restricted; ordered to the ground, and struck with a shotgun. Especially a soft spot for older people as well. 70 years old, I mean, that could have been my grandfather.

So I don't want the Court to think that the reduction of the burglary first suggests anything to me -- suggests to the Court. Defense and I -- from day one, as soon as he got the case, he reached out to me. So this isn't a case that's sat. It's probably been an active conversation back and forth with defense counsel.

And, because of the Coronavirus and the shutdown of court and reality of coming into trial, we were oft in our negotiations by reducing the mandatory minimum from 15 to 10, that five years' difference. And I said I -- there's enough in this case to get the sentence that I believe Mr. Nowinski deserves in this case. And it gives defense counsel an opportunity to ask for a broader range. He's pleading straight up to these charges.

And so when I initially made an offer, it was a 15-to-35-years, because I believed he deserved 35 years for what he did. He broke into someone's home and assaulted elderly people. But, with the back-and-forth, I figured five years -- going to trial off of five years isn't necessarily fruitful, especially with all that's going on. So I don't want that to be indication that -- this is a home invasion. I don't want the reduction to send any type of message to the Court.

Your Honor, his prior record, as you have, he has a 2008 conviction that I cannot publicly announce because of his age at the time. He has a 2011 assault and battery third degree; a 2016 domestic violence second degree; a -- 2017 and 2018, looks like he has three violations of probations. I'm not sure what the results of those were, actually, but they're showing up on his rap sheet. He has other arrests, Your Honor, that were handled in different ways, but they're all of the domestic violence nature from 2015, 2017, and 2018.

At this point, Your Honor, I believe Investigator Hart would like to address the Court.

THE COURT: Investigator Hart?

MS. FULLER: H-A-R-T.

DETECTIVE HART: Yes, Your Honor. I'm detective Michael Hart with the Lexington County Sheriff's Department. Your Honor, when we responded to the scene, we were responding to a home invasion, obviously. And one of the first things we noticed were the flattened tires on the vehicles; which one tire would obviously be a coincidence, but every tire and a knife on scene that the victims don't recognize, it's obvious it was an intentional act by the defendant, Your Honor.

And after speaking with the co-defendant -- the defendant didn't really give us much, didn't want to talk about it, which is his right, Your Honor, but never really showed any remorse to us or anything about what he did, own -- took any ownership of what he did; kept trying to say that the victims were drug dealers.

As Ms. Fuller spoke, she said that we didn't find any evidence of any drug sales. He kept demanding a safe. We did find a safe in the residence. It still contained the warranty paperwork, like it was a brand new safe, Your Honor. It didn't have any drugs, any large amounts of cash, anything like that. We didn't see any logs for drug sales, anything like that.

So the victim -- or, I'm sorry, the defendant and the co-defendant were trying to blame the victims for the reason that they committed this act, Your Honor.

And I believe it speaks volumes that they drove over an hour from two counties away to commit this crime at a house, Your Honor, that they claim that they're familiar with and that they know that they sell drugs out of, but the defendant went to the wrong door. They had to tell him that he was at the wrong door, for him to go around to use the right door to go into the house. And, at that point, he struck them with a shotgun.

Your Honor, in drug rips, which is essentially what this was -- or what he believed it to be when he went to do it -- are some of the most violent crimes we get. We had a murder just last year of an eight-year-old child in a drug rip. So these are some of the violent crimes that we get, and this was certainly no exception. It was very violent. And you saw the pictures yourself, Your Honor.

The State believes that Mr. Nowinski is being offered a substantial reduction in his potential sentence. You saw the charges that had been dismissed and what he could potentially face if he

didn't have a reduced sentence. So, Your Honor, the State would ask for the maximum on what he is facing.

THE COURT: Thank you.

DETECTIVE HART: Yes, sir.

MS. FULLER: Thank you, Your Honor. And just to echo what Investigator Hart said, we are asking for that significant active prison sentence in this case. This isn't just a regular armed robbery where this week you sentenced someone to 11 years with no prior record. I mean, this is coming in someone's home and assaulting multiple people, kidnapping them, essentially holding them against their will.

So while the sentence is definitely in your discretion, you have a broad -- a broad number there. And we definitely leave it in your discretion. That's it from the State.

THE COURT: All right.

Mr. Rentiers, before I go to the defendant, can you tell me about his prior probation case?

AGENT RENTIERS: Your Honor, he has one prior probation case, a domestic violence second degree; sentenced April 5th, 2019, and -- correcting that, November 16th, 2016. It was closed April 5th, 2019, expired. He did have some problems while on

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probation, but it was handled administratively. And so he successfully completed it finally at the end. So...

THE COURT: Okay. Thank you.

Mr. Bell?

MR. BELL: Thank you, Judge. Judge, just a backdrop on Michael: He's 27 years old, born and raised in Lexington since he was five years old. Your Honor, he's an electrician by trade. He has two children. He's got a nine-year-old and a five-year-old.

Your Honor, Michael has not had the easiest life. Between the ages of nine and 12, he was molested by his brother. At the same time, mental health records diagnosed him as bipolar, schizophrenic, and severe depression. He was prescribed lithium and Risperdal, very powerful drugs to treat schizophrenia.

Mental health and drug abuse come hand in hand; poverty and drug abuse come in hand in hand; mental health, poverty, and drug abuse all come hand in hand. Many times it is self-medication of mental health conditions that lead to drug abuse.

It is individuals who are unable to get the treatment for mental health; that they resort to

putting away the voices in their head, the things that are going on in their head, that cause them to abuse drugs. It is not that Michael is a bad human being; it is Michael has mental health conditions, that he exacerbated the drug use.

From day one, when I met Michael, he said, this is not a trial; I did these things, but what they're saying happened is not how it happened. He's always admitted this was an armed robbery; he's always admitted he went over there.

Lacking from what, I believe, the government's presentation is, is the fact that an individual went over an hour away to a specific residence. There's a reason he went to that residence. This was not a random break into a home that they're driving by and seeing. This was a drug dealer's house. I'm not saying his actions are excused from that. An armed robbery carries ten years. He's admitting to committing an armed robbery here.

However, this is not a random old parent's house. And it wouldn't have been her grandfather's house, because her grandfather doesn't sell drugs. I'm not saying they deserved anything, but what I'm trying to provide is the Court context. It all surrounds drugs, it does, and it's Michael's fault.

It's Michael's fault that he used drugs; that he went over there and robbed a drug dealer. That is his fault, and that is what he should be punished for. But the idea that he randomly chose a house here in Lexington County out of the blue just to break in, that's not what happened.

Lacking from the government's presentation is the statement that his wife gave to law enforcement about them being up at night, just been kicked out of the family's house, was living with Tripp; there was drug use going on that night, and his wife walked out and overheard conversations about them going back and forth about this, what they were going to do; they needed money, they had bills due, and just everything was spiraling out of control in his life. He had no place to live. The family was living on an individual's couch. And I'm not excusing that, but I'm trying to provide context to Michael's life at the time this occurred.

Your Honor, they made the decision to go over there, and they went over there. And they -- you hear about a safe. How would Michael know there was a safe in the house if he'd never been there before and never brought drugs there before, never sold prescription drugs there before to whoever was

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willing to accept it to make a dollar off of it?

Your Honor, I believe, the idea of what they presented, that this is the house of an innocent bystander -- and they don't deserve it -- but, I think, is a mischaracterization of what happened.

Your Honor, in the courtroom here is his family. His mother Tracy is here; his wife Nicolet is here; his stepfather is here; his aunt, and his sister. He has family. He's made bad decisions in life, but he's not a bad human being. He's got people that care about him.

Your Honor, ultimately, I think, also what occurred here is a 2014 matter where he has a hip impingement that resulted in surgery. It resulted in surgery that placed him on numerous narcotic medications. And, from there, he resorted to heroin after that; he resorted to methamphetamines after that. There's a lot going on here as to what happened as to how he became addicted to drugs. Your Honor, none of what I'm saying is excusing the conduct, but it's providing context to what occurred.

Your Honor, I'd like for the Court to hear from his mother, and I'd ask the Court to hear from his wife, if that's okay.

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THE COURT: Sure.

Ma'am, if you could say your name so the Court Reporter can hear it.

MS. OWENS: I couldn't hear you. I'm sorry.

THE COURT: If you could just say your name so the Court Reporter can hear it.

MS. OWENS: My name is Nicolet Owens. I'm Michael Nowinski's wife. I came in here not knowing a hundred percent of what to say. My husband and I have both suffered from drug addiction. We have two beautiful kids together. They deserve to, you know, have their father in their life. I'm not saying what happened that night is excusable. We bought our drugs from David and his brother, the people that lived at that trailer.

He's a good man; he's a great father; he's a hard worker. We've both suffered. I'm a recovering addict. I have been clean for a year now. We both had moved to Tripp's house probably a couple days prior to the incident. And it was not the 19th. It was the 18th of August; it was my birthday when it occurred.

Our drug addiction really started spiraling when Michael had his hip surgery. There's no excuse in what occurred. There are pieces in the system of

why other things occurred. It wasn't a random house. We bought drugs; we had been there several times. I have no way to prove that. But I just want you to have mercy on my family, have mercy on him, and understand that we all make mistakes, and it's not right to happen. But please let him come home sooner than later. Thank you.

THE COURT: Thank you.

MR. BELL: This is his mother, Tracy.

THE COURT: Good morning.

MS. NOWINSKI: Good morning, Your Honor. As my daughter-in-law said, I have prayed for the words to -- for God to put the words in my mouth to tell you today. I can just reiterate a little bit upon what you've already been told.

At a young age, my son has suffered from a mental illness. He was diagnosed at seven years old for a non-specific mood disorder and intermittent rage disorder, and then, at the age of 12, a firmer diagnosis of cyclomythemia [sic], which is rapid-cycling bipolar disorder.

As time progressed and things got worse and worse -- and, as Taylor said, my son had a hip replacement surgery in 2014 where his surgeon put him on OxyContin and percocet. And, hence, his

addiction with hardcore drugs began. It caused many issues within his marriage, as you see, and his record with the criminal domestic violence situation; both of them being high, both of them accosting each other, not just one, but both, as drugs does.

As Taylor said and my daughter-in-law, I'm not saying what my son did was right. I'm telling you that if my son was not high, this would not have happened. He's a good boy; he's good kid; he loves his children and his family. He made a bad choice that night when he decided to go back there and do what he did.

I also know the victims. I've been to their home. When the detective came to my home that morning and told me my son was involved in a home invasion and shot, I said to the detective, let me guess, [redacted] Drive? And his exact words were, how did you know? Because I know the home.

I have been there to plead with the victims to stop what they're doing and stop poisoning our community. This wasn't a random act of violence. It doesn't make it right. I'm not saying they deserved what they got, but I'm saying that all hands are not clean.

I just pray that you will have mercy on my son and get him home sooner than later. I believe this time has changed him. Yes, he's been locked up; yes, he's been in a controlled environment. But during that time, he has chose to study theology. He is one exam away from his certificate. He has found God, and I believe that has been the biggest change in his life: Not being behind bars, not being scared of a 30-year sentence, but becoming saved. That's all.

THE COURT: Thank you.

MR. BELL: Your Honor, I'd ask that you hear from Michael himself who would like to address the Court.

THE COURT: Yes, sir?

THE DEFENDANT: Your Honor, a few days before my arrest, my mother did evict my family and I, including my two children, from her home because of the drug use and the dysfunction it caused in her home. And she was right to do so. That's what brought us to Camden with my co-defendant, Joel Hendrix.

Your Honor, I brought myself into a dark place emotionally, mentally, financially. I felt a tremendous burden and an immense amount of

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responsibility that I didn't know how to manage by my own. My wife was in a depression and mentioned not wanting to live anymore. And I handled it like I handled most struggles in my life and difficulties: Impulsively and with drug use. I got extremely high on crystal meth; I drank a few beers, and made the terrible decision to go to my drug dealer's house and attempt to rob them of their drugs.

My mental illnesses nor drug addictions do not justify my actions, nor excuse the fact that I still had a choice. Being shot like I was, was an experience of its own, one of divine intervention. And I'm so thankful for the breath in my lungs. That itself was extremely scary.

I've never been to prison. And the thought of the time that I'm facing away from my children who desperately need me, my family, the real me, the sober me, the new me, it is scary. But I do want to emerge from this struggle as a successful, law-abiding, contributing citizen to society; leading the life of relevance, meaning, and purpose.

I realize now what a precious gift time really is. And I, myself, ask for mercy from you, Your Honor, and compassion upon imposing a sentence.

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THE COURT: Thank you.

MR. BELL: Your Honor, there's nothing that ten years won't teach him; that 30 years won't teach him. Ten years is sufficient, Your Honor. We're asking for the minimum sentence here. Ten years for a man that's never been in prison.

I look at his record. I don't see any felonies. He's never committed a felony. Ten years, with whenever he gets out and gets arrested for something similar to this, he's going to prison for life.

But ten years is enough to teach a man who has never been to prison before. If ten years won't, 20 years won't; 30 years won't; nothing will. He's remorseful. He understands what he did was wrong. Never once in my conversations from day one has he ever said, I didn't do this, Taylor. He's always said, I did this; but what they're saying happened is not how it went down and not why it happened that way. He's always been honest, and that's all we've tried to present here today.

Your Honor, he has two kids. He wants to see those kids before they graduate college, before they graduate high school. Your Honor, if being shot in the chest doesn't teach you something, nothing will.

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So I'd ask for the minimum of ten in this case. I think it's appropriate; it's within your discretion. So that's where I stand.

THE COURT: Thank you, sir.

MS. FULLER: Your Honor, if I may?

Your Honor, I appreciate Mr. Nowinski's words. I appreciate him acknowledging that his drug use and his life experience isn't an excuse for what happened today. And I have sympathy for what he's experienced. I can't say that -- or empathy, I guess, because I haven't really walked in his shoes.

It's always a tough spot though, because I appreciate people who take responsibility. I don't necessarily -- and he didn't intend to do this, and he didn't, but other people that spoke, I don't care if the victims were drug dealers. There's no proof that they were. I can't stand up here and present facts that I can't prove. Law enforcement can't prove that they were.

I understand what they're saying. But even if it's true, it does not excuse the behavior, period. In their presentation, they didn't disagree with the facts, they disagreed with the why. So the facts haven't changed in terms of what happened once he entered that door, which is he hit someone over the

head with a shotgun at 72 years old. That has -- that wasn't disputed; nothing about what happened, him driving an hour, him getting a shotgun, slashing tires, putting a mask over his face, and going in armed.

Your Honor, you do have a broad discretion here since it's straight up to all charges. But I've been before you; I've been before many judges in this courtroom, and we've given people ten years for doing less than what he did. So I would say ten years is absolutely unreasonable.

I still believe, when I made my offer, that 35 years was the appropriate sentence. I came down just for the purposes of this plea. But what he did doesn't change. And I do pray that he is reformed. But he needs to be punished and held accountable for what he did.

THE COURT: Thank you.

Anything, Mr. Bell? I'll give you the last word.

MR. BELL: Your Honor --

THE COURT: And you don't need to go back and --

MR. BELL: I'm not going to -- I'm not going to do that.

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Your Honor, you've heard from the individuals. You can judge their credibility and whether they were telling you the truth or not about the situation. And never once has my client ever said his actions were excused by what we presented.

THE COURT: Okay. I'm going to take a very short recess --

MR. BELL: Thank you, Judge.

THE COURT: -- about five minutes.

MS. FULLER: Thank you, Judge.

(Brief recess.)

THE COURT: All right. Obviously, you know, another almost tragic case, really. I mean, Mr. Nowinski's got a family that cares about him. They care about him here and they're here today to stand with him. He's in a better place now mentally, at least from a drug standpoint, than he has been in a while.

You know, one of the things the solicitor said in her presentation was it's tough to ask for prison time. Well, it's tough to come up with an appropriate sentence as well. There's nothing -- it's painful at times from this standpoint too.

When you see these situations where drugs -- in this case, mental health as well -- has contributed

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to a real unfortunate history that led up to a day where, as often we see, it's a miracle nobody is dead, in light of all the circumstances. You know, when you have a certain range of sentencing because it is an armed robbery plea, but make no mistake, I would suspect that if this case had gone to trial on burglary first, these facts would have been there as well and you could have been facing life in prison. That's not lost on me as well.

I want you to know that when you're in the department of corrections, I'm going to order you to undergo drug treatment. I think you're in a better place now, but it can't hurt. I'll also order you to undergo mental health counseling while you're there, and hope in the end that when you do complete your sentence, hopefully you'll be in as good of a place as you can. That's our hope. I believe you when you say you want to do right when you get out. And I hope you'll continue to -- continue your theological studies. Okay? That will at least keep you on the right path.

But, you know, on one hand, the State asked for their sentencing request. But I need to be upfront with you: I don't see anything minimal about your conduct. I can't lose sight of that, regardless of

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all the circumstances. But, you know, you endeavor and try to make a reasonable sentence in light of all the facts.

So these will all run concurrent: On the armed robbery and both kidnappings, concurrent, those will be 20 years at the department of corrections; five on the possession of a weapon during a violent crime; 15 on the burglary second violent. I wish you luck, sir. That is all.

-- END OF TRANSCRIPT OF RECORD --

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 15th of October, 2020.

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

October 18, 2021

s/*Bethanie K. Creppon*

Bethanie K. Creppon
Circuit Court Reporter

I, Michael Matthew Nowinski plead guilty to the within indictment.

x Michael M

WITNESSES

Lexington County Sheriffs Department

Michael J Hart

Law Enforcement Case #: 19016003

SF

ARREST WARRANT NUMBER

2019A3210201566

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 7/13/20

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2020GS3201421

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2020

THE STATE

vs.

Michael Matthew Nowinski

CDR #: 0549

Indictment for

Possession of a Weapon during the Commission of a Violent Crime

§ 16-23-0490

S.R. Hubbard III, SOLICITOR

A TRUE COPY
Lex. Co. C.C.C.P. G.S. & F.C.

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Possession of a Weapon during the Commission
COUNTY OF LEXINGTON	)	of a Violent Crime
	)	
		§ 16-23-0490

At a Court of General Sessions, convened on July 2020, the Grand Jurors of Lexington County present upon their oath:

That **Michael Matthew Nowinski** did, in Lexington County, South Carolina, on or about August 18, 2019, knowingly and willfully possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime or attempt to commit a violent crime, to wit: during a Burglary First Degree, Armed Robbery, and/or Kidnapping, and such weapon described as a shotgun in violation of § 16-23-490 of the Code of Laws of South Carolina (1976, as amended).

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

Sutania A. Fuller

ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Michael J Hart

Law Enforcement Case #: 19016003

SF

ARREST WARRANT NUMBER

2019A3210201563

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 7/15/20

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2020GS3201415

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2020

THE STATE

vs.

Michael Matthew Nowinski

CDR #: 0095

Indictment for

Kidnapping

§ 16-03-0910

S.R. Hubbard III, SOLICITOR

I Michael Matthew Nowinski plead guilty to the within indictment.

x Michael

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

SEAL

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR Kidnapping
COUNTY OF LEXINGTON	)	§ 16-03-0910

At a Court of General Sessions, convened on July 2020, the Grand Jurors of Lexington County present upon their oath:

That **Michael Matthew Nowinski** did, along with Joel Hendrix, in Lexington County, South Carolina, on or about August 18, 2019, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one James Chase by any means whatsoever without authority of law, and without his consent, during the commission of a home invasion, in violation of § 16-3-910 of the Code of Laws of South Carolina (1976, as amended).

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

Sutania A. Fuller

ASSISTANT SOLICITOR

I, Michael Matthew Nowinski plead guilty to the within indictment.

x Michael

WITNESSES

Lexington County Sheriffs Department

Michael J Hart

Law Enforcement Case #: 19016003

SF

ARREST WARRANT NUMBER

2019A3210201562

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 7/13/20

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2020GS3201414

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2020

THE STATE

vs.

Michael Matthew Nowinski

CDR #: 0095

Indictment for

Kidnapping

§ 16-03-0910

S.R. Hubbard III, SOLICITOR

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Kidnapping
COUNTY OF LEXINGTON	)	
	)	§ 16-03-0910

At a Court of General Sessions, convened on July 2020, the Grand Jurors of Lexington County present upon their oath:

That **Michael Matthew Nowinski** did, along with Joel Hendrix, in Lexington County, South Carolina, on or about August 18, 2019, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one David Chase by any means whatsoever without authority of law, and without his consent, during the commission of a home invasion, in violation of § 16-3-910 of the Code of Laws of South Carolina (1976, as amended).

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

Sutania A. Fuller

ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Michael J Hart

Law Enforcement Case #: 19016003

SF

ARREST WARRANT NUMBER

2019A3210201560

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 7/13/20

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2020GS3201411

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2020

THE STATE

vs.

Michael Matthew Nowinski

CDR #: 0079

Indictment for

Burglary First Degree

§ 16-11-0311

S.R. Hubbard III, SOLICITOR

I, Michael Matthew Nowinski plead guilty to the lesser included offense of Burglary 2nd (Violent).

+ Michael M

A TRUE COPY
Clk. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Burglary First Degree
COUNTY OF LEXINGTON	)	
	)	§ 16-11-0311

At a Court of General Sessions, convened on July 2020, the Grand Jurors of Lexington County present upon their oath:

That **Michael Matthew Nowinski** did, along with Joel Hendrix, in Lexington County, South Carolina, on or about August 18, 2019, knowingly and willfully enter a dwelling, to wit: a dwelling located at [redacted], West Columbia being occupied by David Chase and/or James Chase, without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the Defendant was armed with a deadly weapon, caused physical injury to a person who is not a participant in the crime, used or threatened the use of a dangerous instrument, and/or displayed what was or appeared to be a shotgun or other firearm; OR the entering or remaining occurred in the nighttime, in violation of section 16-11-311 of the Code of Laws of South Carolina (1976, as amended).

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

Sutania A. Fuller
ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Michael J Hart

Law Enforcement Case #: 19016003

SF

ARREST WARRANT NUMBER

2019A3210201556

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 7/13/20

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2020GS3201397

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2020

THE STATE

vs.

Michael Matthew Nowinski

CDR #: 0139

Indictment for

Armed Robbery

§ 16-11-0330(A)

S.R. Hubbard III, SOLICITOR

I, Michael Matthew Nowinski plead guilty to the within Indictment

X Michael

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR Armed Robbery
COUNTY OF LEXINGTON	)	
	)	§ 16-11-0330(A)

At a Court of General Sessions, convened on July 2020, the Grand Jurors of Lexington County present upon their oath:

That **Michael Matthew Nowinski** did, along with Joel Hendrix, in Lexington County, South Carolina, on or about August 18, 2019, knowingly and willfully while armed with a deadly weapon, to wit: a shotgun, did feloniously take from the person or presence of the occupants of [redacted], West Columbia, namely James William Chase, David Lee Chase, Kenneth Troy Jeffrey, and/or Ashley Esthel Kircher, by means of force, threats, or intimidation goods or monies being described as follows: a shotgun, with intent to deprive the owner of the use of such property during the commission of a home invasion in search of a safe, in violation of Section 16-11-330 (A) of the Code of Laws of South Carolina (1976, as amended).

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

Sutania A. Fuller

ASSISTANT SOLICITOR

54

0-5 years

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington)
STATE VS.)
Michael Matthew Nowinski)
AKA:)
Race: White Sex: M Age: 27)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Lexington, SC 29073-8109)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2020GS3201421
A/W#: 2019A3210201566
Date of Offense: 8/18/2019
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

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

Solicitor	SC Bar#	Defendant	Attorney for Defendant	SC Bar#
Sutania A. Fuller	100730	Michael M	T Beal	100022

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

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

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

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

SPECIAL CONDITIONS:

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

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114 (BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$ 125

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

☐ Appointed PD or appointed other counsel,
§Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge Walt McDonald
Judge Code: 2765
Sentence Date: 10-15-2020

Clerk of Court/ Deputy Clerk Lisa Comeau
Court Reporter: B. Clapp

SCCA/217(04/2018)

A TRUE COPY
Lex. Co. C.C.C.P. G.S. & F.C

0-30 years

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington)
STATE VS.)
Michael Matthew Nowinski)
AKA:)
Race: White Sex: M Age: 27)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Lexington, SC 29073-8109)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2020GS3201415
A/W#: 2019A3210201563
Date of Offense: 8/18/2019
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Kidnapping / Kidnapping

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

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

Sutania A. Fuller — Solicitor
100730 — SC Bar#
Michael Nowinski — Defendant
[signature] — Attorney for Defendant
100022 — SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections; ☐ County Detention Center,
for a determinate term of 20 days/months/(years) or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code 425 days §24-13-40 to be calculated and applied by the SCDOC.

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

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

SPECIAL CONDITIONS:

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

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114 (BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$ 125

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

☐ Appointed PD or appointed other counsel,
§Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [signature]
Judge Code: 2765
Sentence Date: 10-15-2020

Clerk of Court/ Deputy Clerk [signature]
Court Reporter: [signature]

SCCA/217 (04/2018)

A TRUE COPY
[signature]
Lex. Co. C.C.C.P., G.S. & F.C.

Amended: 3/22/2021 wp

0-30 years

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington)
STATE VS.)
Michael Matthew Nowinski)
AKA:)

INDICTMENT/CASE#: 2020GS3201415
A/W#: 2019A3210201563
Date of Offense: 8/18/2019
S.C. Code § : 16-03-0910
CDR Code #: 0095

Race: White Sex: M Age: 27
DOB: [redacted] SS#: [redacted]
Address: [redacted]
City,State,Zip: Lexington, SC 29073-8109
DL#: [redacted] SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Kidnapping / Kidnapping

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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

Sutania A. Fuller — Solicitor
100730 — SC Bar#
Defendant
Attorney for Defendant
100022 — SC Bar#

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

for a determinate term of 20 days/months/~~years~~ or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code 425 days §24-13-40 to be calculated and applied by the SCDOC.

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

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

SPECIAL CONDITIONS:

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

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: NOT SEXUAL OFFENSE IN NATURE
NUNC PRO TUNC 10-15-2020 (wp)

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 50.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114 (BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$ 125

☐ Appointed PD or appointed other counsel,
§Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: Walton J. McLeod
Judge Code: 2765
Sentence Date: 10-15-2020

Clerk of Court/ Deputy Clerk: Lisa Conner
Court Reporter: Tapper

SCCA217 (04/2018)

A TRUE COPY
Lisa Conner
Lex. Co. C.C.C.P., G.S. & P.C.

0-30 years

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington)
STATE VS.)
Michael Matthew Nowinski)
AKA:)
Race: White Sex: M Age: 27)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Lexington, SC 29073-8109)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2020GS3201414
A/W#: 2019A3210201562
Date of Offense: 8/18/2019
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Kidnapping / Kidnapping

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

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

Sutania A. Fuller — Solicitor; 100730 — SC Bar#; Michael Nowinski — Defendant; [signature] — Attorney for Defendant; 100022 — SC Bar#

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

for a determinate term of 20 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114 (BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$ 125.00

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

☐ Appointed PD or appointed other counsel,
§Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge Walton McLeod
Judge Code: 2765
Sentence Date: 10-15-2020

A TRUE COPY
Clerk of Court/ Deputy Clerk [signature]
Court Reporter: [signature]
Lex. SCCA/217 (04/2018) C.P., G.S. & F.C.

58

Amended: 3/22/2021 up

0-30 years

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington)
STATE VS.)
Michael Matthew Nowinski)
AKA:)
Race: White Sex: M Age: 27)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Lexington, SC 29073-8109)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2020GS3201414
A/W#: 2019A3210201562
Date of Offense: 8/18/2019
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Kidnapping / Kidnapping

In violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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

Sutania A. Fuller — Solicitor; 100730 — SC Bar#; Michael [illegible] — Defendant; [illegible] — Attorney for Defendant; 100022 — SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code 425 days §24-13-40 to be calculated and applied by the SCDOC.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

*Fine:		$
§ 14-1-206 (Assessments 107.5%)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114 (BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$ 125.00

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: NOT SEXUAL OFFENSE IN NATURE. (WAIVE PRE TRIAL 10-15-20) (up)

☐ Appointed PD or appointed other counsel, §Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge Walton McLeod
Judge Code: 2765
Sentence Date: 10-15-2020

Clerk of Court/ Deputy Clerk Lisa Conrad Thompson
Court Reporter: BR Thompson

SCCA/217 (04/2018)

A TRUE COPY
Lisa Conrad
Lex. Co. C.C.C.P. G.S. & F.C.

0-15 years

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington)
STATE VS.)
Michael Matthew Nowinski)
AKA:)
Race: White Sex: M Age: 27)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Lexington, SC 29073-8109)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2020GS3201411
A/W#: 2019A3210201560
Date of Offense: 8/18/2019
S.C. Code § : 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Burglary / Burglary (Violent) (After 06/20/85) - Second degree

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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

Sutania A. Fuller — Solicitor; 100730 — SC Bar#; Michael M — Defendant; [signature] — Attorney for Defendant; 100022 — SC Bar#

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

for a determinate term of 15 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code 425 days §24-13-40 to be calculated and applied by the SCDOC.

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

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

SPECIAL CONDITIONS:

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

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114 (BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$ 125

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

☐ Appointed PD or appointed other counsel,
§Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [signature]
Judge Code: 2765
Sentence Date: 10-15-2020

Clerk of Court/ Deputy Clerk [signature]
Court Reporter: L Lupp

SCCA/217 (04/2018)

A TRUE COPY
Lex. Co. C.C.P., G.S. & F.C.

60

10-30 years

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington)
STATE VS.)
Michael Matthew Nowinski)
AKA:)
Race: White Sex: M Age: 27)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Lexington, SC 29073-8109)
DL#: [redacted] SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2020GS3201397
A/W#: 2019A3210201556
Date of Offense: 8/18/2019
S.C. Code § : 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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

Sutania A. Fuller — Solicitor
100730 — SC Bar#
Michael M — Defendant
J Hall — Attorney for Defendant
100022 — SC Bar#

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

for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114 (BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$ 125.00

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

☐ Appointed PD or appointed other counsel,
§Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: [signature]
Judge Code: 2765
Sentence Date: 10-15-2020

Clerk of Court/ Deputy Clerk: [signature]
Court Reporter: Bethanie Crepps

SCCA/217 (04/2018)

A TRUE COPY
Lex. Co. C.C.C.P. G.S. & F.C.

ORIGINAL

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
)	
The State)	**MOTION FOR RECONSIDERATION OF SENTENCE**
)	
v.)	
)	CASE NO(S): **2020GS3201397; 2020GS3201411; 2020GS3201415; 2020GS3201414; 2020GS3201421**
Michael Matthew Nowinski,)	
)	
Defendant.)	

FILED
2020 OCT 23 PM 1:56
BERNEICE COOMER
CLERK OF COURT
LEXINGTON COUNTY, S.C.

TO: ASSISTANT SOLICITOR SUTANIA FULLER

Procedural History

On or about August 18, 2019 the Defendant was arrested and charged with the following offenses: Armed Robbery; Assault & Battery 1st Degree (3 counts); Burglary 1st Degree; Criminal Conspiracy; Kidnapping (4 counts); and Possession of a Weapon during the Commission of a Violent Crime.

On October 15, 2020, the Defendant pled guilty in front of the Honorable Walton J. McLeod to the following charges: Armed Robbery; Burglary (Violent) 2nd Degree; Kidnapping (2 counts); Possession of a Weapon during the Commission of a Violent Crime. The Honorable Judge McLeod sentenced the Defendant to the following: Armed Robbery – 20 (twenty) years; Burglary 2nd Degree – 15 (fifteen) years; Kidnapping – 20 (twenty) years; Kidnapping – 20 (twenty) years; and Possession of a Weapon during the Commission of Violent Crime – 5 (five) years. All sentences to run concurrently and the Defendant to be given credit for time served while in pretrial detention.

Guilty Plea & Sentencing Hearing

The Defendant's guilty plea and sentencing hearing occurred on October 15, 2020. The victims in the case did not appear at the guilty plea and sentencing hearing. During the

State's presentation, the State portrayed the victims in the case as law-abiding elderly citizens who could have been her grandparents. The State also focused on the victims' fear of the Defendant. The State at one point requested a significant prison sentence of 35 years and at another point requested the "maximum sentence". The State during its presentation portrayed the victims as also wanting significant prison time for the Defendant.

The State further made statements during its presentation to the effect that there was no evidence of drug activity at the residence. The discovery previously provided to the Defendant specifically notes that "(2) glass smoking devices" were located by law enforcement inside the residence. Furthermore, the State rather than mentioning that one of the victims is a registered sex offender with the State of South Carolina compared the victims as law-abiding citizens who could have been her grandparents.

Undisclosed Victim Letter

On October 20, 2020, counsel for the Defendant was contacted by counsel for the co-defendant in this case and apprised that the victims in this case provided a statement to the State expressing a request for leniency in regard to the co-defendant. Counsel for the Defendant has been apprised that the letter contains something along the lines that a plea to criminal conspiracy is sufficient. Criminal conspiracy is a 0 – 5 (zero to five) year, nonviolent offense. Counsel for the Defendant has emailed the State and asked whether or not such a letter exists and has been apprised that the letter does exist. Counsel for the Defendant has expressed concern about this letter and requested a copy of this letter from the State. The State has not turned this letter over to the Defendant after request from Counsel for the Defendant.

Law

"The prosecution's affirmative duty to disclose evidence favorable to a defendant can trace its origins to early 20th-century strictures against misrepresentation." *Kyles v. Whitley*, 115 S.Ct. 1555, 1565 (1995). *Maryland v. Brady* "held that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Kyles v. Whitley* at 1565 quoting *Maryland v. Brady*, 83 S.Ct. 1194, 1196-1197 (1963). Under *Brady* the prosecution must disclose information or material that is: (1) Material, (2) Relevant to guilt or punishment, (3) Favorable to the accused, and (4) within the actual or constructive knowledge or possession of anyone acting on behalf of the State.

Argument

Failure of the State to turn over the undisclosed victim letter while framing its presentation at sentencing as the victims wanting significant prison time violated the Defendant's due process rights under *Brady* and its progeny and entitles the Defendant to reconsideration of the sentence imposed. While counsel for the Defendant has not been provided the undisclosed victim letter, counsel for the Defendant has been provided a basic understanding by counsel for the codefendant of what information is contained within the undisclosed victim letter.

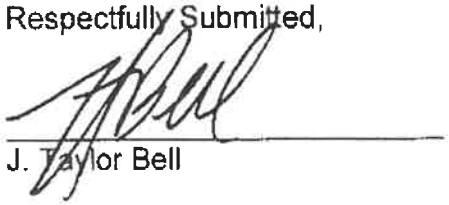
The statement by the victim as to the appropriate punishment for the co-defendant of a nonviolent criminal conspiracy charge that carries a sentence of only up to 5 (five) years was within the undisclosed victim letter and is material and relevant to guilty or punishment. This information relates to what the victim believes is the appropriate charge and sentence

in the case and sheds light on how the victim accesses the overall case as it relates to the impact on the victim. This information is significantly different than the way the State's portrayal of what the victims believed the appropriate sentence should be during the guilty plea and sentencing hearing. This information would have used by a sentencing judge in deciding the appropriate sentence. This information was not provided to the Defendant for use during the guilty plea and sentencing hearing.

The statement by the victim as to the appropriate punishment of not more than 5 (five) years for the co-defendant within the undisclosed victim letter is favorable to the accused and was within the actual possession of the prosecutor representing the State. This information would have been used to undermine the State's presentation of portraying the incident as one that had a life lasting impact on the victims while arguing that a significant prison sentence was what the victims wanted during the guilty plea and sentencing hearing. This information was not available for the Defendant to use in presenting its mitigation and to counter the State's presentation as to the appropriate punishment in this case.

Wherefore, the Defendant respectfully requests this Court for a hearing on reconsideration of the Defendant's sentence and an order requiring the State to disclose the undisclosed victim letter.

Respectfully Submitted,



J. Taylor Bell

The Jeffcoat Firm
1333 Main Street, Suite 510
Columbia, SC 29201
Phone: (803) 200-2000

Fax: (803) 808-2270
Email: Taylor@TheJeffcoatFirm.com

Date: **October 23, 2020**

FILED
2021 FEB 24 PM
LISA M. COVER
CLERK OF COURT
LEXINGTON

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF GENERAL SESSIONS FOR THE ELEVENTH JUDICIAL CIRCUIT
STATE, v. MICHAEL MATTHEW NOWINSKI, DEFENDANT.	Warrant Numbers: 2019A3210201556, 60, 62, 63, 66 Indictment Numbers: 2020GS3201397, 1411, 1414, 1415, 1421 **MEMO IN OPPOSITION OF THE DEFENDANT'S MOTION FOR RECONSIDERATION**

This matter comes before the Court on the Defendant's Motion for Reconsideration of the sentence of the Defendant to twenty (20) years in the South Carolina Department of Corrections following a guilty plea to Armed Robbery, Burglary Second Degree – Violent, two counts of Kidnapping, and Possession of a Weapon on October 15, 2020. A copy of the Motion was received by the State on November 3, 2020. The motion to reconsider is based upon an alleged *Brady* violation accusing the State of prosecutorial misconduct. It is the State's position that sufficient grounds have not been articulated for reconsideration and that there has not been a *Brady* violation. The State would respectfully ask the Court to deny this motion.

The Defendant was charged with eleven (11) warrants in Lexington County, which included the above-referenced charges along with two (2) additional counts of kidnapping, three (3) counts of assault and battery first degree, and criminal conspiracy.

On August 18, 2019, law enforcement responded to a mobile home on Greenwood Drive in West Columbia in Lexington County jurisdiction in reference to a home invasion. One of the victims was able to call 911 after the burglary occurred and informed the dispatcher about what had occurred, that he was covered in blood, and was assaulted by the intruder. Upon arrival, deputies with the Lexington County Sheriff's Department observed

one of the victims with injuries in his head and on his arms. This victim, David Chase, 72 at the time, was actively bleeding from both injury areas. The officer then located James Chase, 73, and noted his injuries to his face and head. He was actively bleeding as well. Two other individuals were present in the home during this home invasion, Kenneth Jeffrey and Ashley Kirchner. Kenneth had a minor injury to his back. One of the victims was able to shoot the intruder. The intruder took his rifle, struggled with one of the victims, and then left the home. Nowinski was later located not too far from the incident location suffering from a gunshot wound. The victim's rifle was located near where he was found along with other evidence of the crime. The co-defendant in this case, Joel Hendrix, drove Nowinski to commit this home invasion and he gave a statement law enforcement implicating Nowinski. He admitted to driving him there and staying outside.

James Chase reported to law enforcement that he heard his dog barking and then a knocking at the door. Kenneth told the person to go around to the other door because they do not use that specific door. He said when he opened the door he was struck in the head and fell to the floor. He heard the intruder go into the living room and yell at Kenneth and Ashley not to move. He heard his brother, David, yelling. James said when he was able to regain his footing, he went to his room and retrieved his Marlin 30-30 rifle. He loaded it prior to walking into the living room. He said next he saw the intruder coming from David Chase's room carrying a shotgun and he then fired at the intruder. The intruder then started wrestling over his rifle, took his rifle, and left the residence. The intruder left the shotgun he came with behind at the scene. James indicated the individual had his faced covered. He did describe the person as approximately 6 ft tall and approximately 200 pounds.

David Chase informed law enforcement that he heard yelling in the living room and that woke him up. He indicated he saw an individual carrying a shotgun that came into his bedroom. The intruder struck David in the head with the shotgun. David reported he tried to grab his walking stick to get up and he was hit again and told to "stay down." He was asked where the safe was. David stated he stayed down until the intruder left his bedroom. By the time he grabbed his walking stick and exited his room he saw the individual was gone.

Kenneth Jeffrey reported that he was sleeping on the couch in the living room when he heard the banging on the door. He saw James get up to open the door and observed the individual forcing his way in striking James. This person was carrying a shotgun. He was forced down on the living room floor He reported staying down until he heard the shot and saw James and the intruder fighting. He got up and exited the home to get help. He also told law enforcement that he saw a small car sitting on the roadside that drove off just as he was starting his truck. He tried to leave to get help, but then realized he had a flat tire on his truck. He then observed that all of the vehicles in the yard had flat tires. He had scratches on his back, but he did not know how he received them.

Ashley Kirchner did not report being hit. She saw the person strike Kenneth. The intruder told her to get her head down. She reported hearing David crying and the individual asking for a safe. She stated the individual was a "decent-sized" person, approximately 6'1" and advised that he had his face covered. She also told law enforcement that when they finally exited the home they noticed that all of the rear tires on all of the vehicles in the yard had been cut.

At the time of sentencing, the State expressed to the Court that the victims were older and that they live a simple life living in their mobile home doing warranty work on appliances. The crime scene photos showed a yard filled with old appliances. The State further expressed that the victims did not deserve what happened to them, that everyone living in this county is entitled to feel safe in their homes, and that going into someone's home with a gun, assaulting them, and restricting their movements is something that we simply cannot tolerate. The Court was also made aware that the victims wanted Nowinski to go to prison and be held accountable for what he did. Their biggest fears are him coming back to their home or him hurting someone else.

At the time of sentencing, the Court was made aware of the plea negotiations in this case. The State expressed to the Court that Defense counsel and the State went back and forth quite a bit and that the only reason why the burglary charge was reduced was solely to facilitate a guilty plea. Defense Counsel and the State were five years apart on mandatory time and the State initially offered fifteen (15) to thirty-five (35) years because the State believed Nowinski deserved a 35-year sentence for his actions. After much negotiation, Nowinski agreed to plead guilty straight up to the charges before the Court facing a potential one hundred and ten (110) years in prison. The State expressed to the Court that Nowinski deserved a significant active prison sentence.

Nowinski pled guilty facing one hundred and ten (110) years in prison. The Court sentenced Nowinski to twenty (20) years for his actions. The Court heard a full presentation from the defense in mitigation. There were no misrepresentations on the part of the State and the Defense was not entitled to the attached letter. Even if the defense had

the letter, it is the State's position that its contents would not have impacted Nowinski's plea and sentencing.

During the plea, the State informed the Court that the victims were in their 70s. During the factual presentation, the State's reference to "my grandfather" was based solely on age. The Defense essentially articulated that this would not have been my grandfather because my grandfather does not deal drugs. Thus, the Court was aware of the allegation that one of the victims was involved with drugs.

Secondly, during victim impact, the Court was made aware that the victims were in fear of Nowinski and that the victims wanted an active prison sentence. The Court was made aware that the victims wanted Nowinski to go to prison and be held accountable for what he did and that their biggest fears are him coming back to their home or him hurting someone else. These are statements that were made to the victim advocate by the victims as it related to Nowinski's case. The State expressed to the Court what an appropriate sentence would be and did not express a numerical sentence to the Court on the victims' behalves. As the Court is aware, victims generally do not dictate or control plea negotiations and their opinions as to how the co-defendant, who remained outside, should be sentenced are immaterial and irrelevant to the sentence that is and was appropriate for Nowinski. Simply put, a letter drafted by the co-defendant's attorney and signed by two of the victims in this case is not *Brady*[1] material.

This letter is not *Brady* nor subject to disclosure under Rule 5, SCRCrimP. *Brady* requires disclosure of evidence that is both favorable to the accused and material to guilt or punishment of the accused. This letter does not fall within the requirements of *Brady*. This letter was signed by two of the victims in this case. If this letter were classified as a

statement made by a witness, then it would be considered information specifically not subject to disclosure under Rule 5.

This letter had no bearing on the State's representation to the Court and placed the State under no ethical duty as it related to Nowinski. Defense Counsel seems to be suggesting that had the Court been aware of this letter that the Court would have been more lenient on Nowinski. As depicted above, the co-defendant did not enter the home. He drove the Defendant to the incident location. These two facts have not been challenged by Nowinski. Two of the victims signed a letter stating they are not afraid of the co-defendant. These two victims did not even know the co-defendant was outside. A third victim went outside and saw the car parked outside that eventually drove off.

Thirdly, the Defense's presentation informed the Court that Nowinski was robbing his drug dealer. The Court even clarified on the record with Nowinski and counsel that they were not contesting that this crime occurred. As it relates to the alleged drug dealing, the States factual presentation included provable facts. During the hearing, the State and the case investigator informed the Court that no drugs were found in the safe. The fact that smoking devices were found in the home was information provided in discovery to Defense Counsel. The presence of smoking devices does not indicate drug dealing and does not change the fact that a home invasion occurred and that multiple people were assaulted.

Fourth, in the factual portion of the attached motion, Defense Counsel referenced that the victim was a sex offender. This was not raised in the argument portion of the motion. The State was not aware of this fact and have not verified the truth of that allegation. However, this in no way changes the facts of this case.

[1] *Brady v. Maryland*, 373 U.S. 83 (1963).

The Court heard a full presentation of the facts and full mitigation from Defense Counsel. To claim that two of the victims' opinions regarding the co-defendant that was prompted by a co-defendant's attorney is *Brady* material and would have impacted your sentence of Nowinski is without merit and serves only as a pretense for Nowinski to ask for a reduction of his sentence. The Defendant displayed dangerous behavior when he was a participating member of society. The Defendant's brief fails to articulate any new facts to the Court supporting a reduction in sentence. After having considered the facts of this case and the arguments of Counsel in the submitted brief, it is the State's position that the Defendant's Motion for Reconsideration should be denied. The State respectfully request that the Defendant's Motion to Reconsider be denied.

Respectfully submitted,

Sutania A. Fuller
Assistant Solicitor
Eleventh Judicial Circuit

February 24, 2021
Lexington, South Carolina

2021 FEB 24 P
LISA M. COMBS
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	
THE STATE,	WARRANT: 2019A3210201556, 60, 62, 63, 66 INDICTMENT: 2020GS3201397, 1411, 1414, 1415, 1421
vs.	**ORDER**
MICHAEL M. NOWINSKI,	
Defendant.	

LISA M. COUNTS
CLERK OF COURT
LEXINGTON SC
2020 OCT 15 PM 3:18

This matter comes before this Court on Defendant's Motion for Reconsideration of Sentence filed on Monday, October 23, 2020. Defendant pled guilty on October 15, 2020 to Armed Robbery, Burglary Second Degree (Violent), two counts of Kidnapping, and Possession of a Weapon During a Violent Crime (PWVC). The sentencing ranges for each offense were 10-30 years, 0-15 years, 0-30 years, and 5 years, respectively. Defendant was sentenced to 20 years on Armed Robbery, 20 years for each Kidnapping charge, 15 years for Burglary Second Degree, and 5 years for PWWC, with all sentences to run concurrently.

On October 23, 2020, Defendant timely filed and served a substantive motion which set forth the basis of his argument which included an alleged Brady violation. Specifically, Defendant's Motion noted that he became aware of a letter from the Victims regarding a Co-Defendant "to the State expressing a request for leniency in regard to the co-defendant". Defendant argues that this letter should have been available for his use during the mitigation phase of his guilty plea. The State filed a formal response in opposition to Defendant's Motion and specifically addressed its contention that no Brady violations occurred.

The letter in question is from the Victims in the case with regards Joel "Tripp" Hendrix, and states that they "are in favor of the bond that was granted Tripp Hendrix. We are not afraid of

him. We believe a guilty plea by him to criminal conspiracy is more than enough." The letter is then signed by David and James Chase.

In criminal cases, post-trial motions must be made within ten days after imposition of the sentence, the sole exception being a motion for new trial based on after-discovered evidence. Rule 29, SCRCrimP. The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge. State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008).

At the guilty plea, the Defendant asked for the minimum sentence of 10 years, while the State noted it believed 35 years would be appropriate under the circumstances. Defendant's prior record included convictions for Assault & Battery Third Degree and Domestic Violence Second Degree. Defendant provided information in support of his request for a 10-year sentence. In reviewing the materials provided by the parties, the Court has sought to evaluate newly provided documents and determine if reconsideration is appropriate and whether such reconsideration would still ensure justice is appropriately rendered.

In light of all the facts and circumstances, and in reviewing the file from the plea, this Court finds the sentence imposed to be appropriate under the circumstances and that the sentence would not have been effected or otherwise altered by presenting the victim letter pertaining to the co-defendant in this matter. In addition, this Court finds that Defendant's Motion for Reconsideration of Sentence is appropriately adjudicated based upon the written submission from each party and without oral argument pursuant to Rule 29(a).

THEREFORE, this court DENIES Defendant's Motion to Reconsider Sentence.

AND IT IS SO ORDERED.

Walton J. McLeod, IV
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

March 5, 2021

FORM 5

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)

IN THE COURT OF COMMON PLEAS

Michael M. Nowinski #384171
Full name and prison number (if any) of Applicant.

2021CP3202926

v.

State of South Carolina

APPLICATION FOR POST-CONVICTION RELIEF

FILED
2021 SEP -3 PM 2:15
LISA M. SOMER
CLERK OF COURT
LEXINGTON SC

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 Evans CI
2. Name and location of Court which imposed sentence Court of General Sessions (11th Circuit)
3. Name(s) of co-defendant(s) (if any) Joel "Trip" Hendrix Lexington, SC
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) Armed Robbery; Burglary 2nd; Kidnapping (2 counts); PWCVC
   (b) 2020GS3201397; 2020GS3201411; 2020GS3201414; 2020GS3201415;
   (c) 2020GS3201421
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) October 15, 2020
   (b) 20 (years) All sentences to run Concurrently.

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Lex. Co. C.C.C.P. G.S. & F.C.

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty. ✓ AFTER A PLEA of GUILTY

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) DID NOT HAVE ANY KNOWledge of my right to appeal.

(b) A Guilty plea.

(c) _____

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

(a) Prosecutorial misconduct

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(b) Involuntary Plea agreement

(c) Ineffective Assistance of Counsel

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

(a) See attachment 3a

(b) See attachment 3b

(c) See attachment 3c

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

(a) any petition in a State Court under South Carolina Law? ____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? ____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? ____

(d) any other petitions, motions or applications in this or any other Court? Yes

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. MOTION FOR RECONSIDERATION OF SENTENCE

ii. ____

iii. ____

iv. ____

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

i. COURT OF GENERAL SESSIONS

ii. ELEVENTH JUDICIAL CIRCUIT

iii. LEXINGTON COUNTY, SC

iv. ____

(c) the disposition thereof:

i. The Court Denied motion to Reconsider

ii. ____

iii. ____

iv. ____

(d) the date of each such disposition:

03/05/2021

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Lee Co. C.C.C.P., G.S. & F.C.

i. _____

ii. _____

iii. _____

iv. _____

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

i. STATES MEMO IN OPPOSITION OF THE MOTION FOR RECONSIDERATION

ii. THE COURTS ORDER DENIES MOTION to RECONSIDER

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?

Yes

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

(a) which grounds have been presented:

i. prosecutorial misconduct (DUE PROCESS)

ii. _____

iii. _____

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

i. MOTION FOR RECONSIDERATION OF SENTENCE

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) _____

(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? Yes

(c) your sentencing? Yes

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Lisa Comer
Clerk, Co. C.C.C.P., G.S. & F.C.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

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. Taylor Bell w/t The Teffcoat Firm

ii. 1333 Main St. Suite 510

iii. Columbia, SC 29201

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

i. GUILTY PLEA

ii. SENTENCING

iii. MOTION TO RECONSIDER

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

Reduction of Sentence imposed / New Trial

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

No

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STATE OF SOUTH CAROLINA)
)
County of) VERIFICATION

I, Michael Nowinski, 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.

s/ Michael N.

SWORN to and subscribed before me this 30th day of August, 2021.

Sascelsa Cuellar (L.S.)
Notary Public

My Commission Expires: 2/17/24

FILED
2021 SEP -3 PM 2:19
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

2021CP3202926

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Lisa Comer
Lex. Co. C.C.C.P., G.S. & F.C.

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

I, Michael Nowinski, 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.

X Michael N.
Applicant

SWORN or affirmed to and subscribed before me this 30th day of August, 2021

Sandra Outlaw
Notary Public

My Commission Expires: 2/17/24

2021CP3202926

FILED
2021 SEP -3 PM 2:19
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

A TRUE COPY
Lisa Comer
Lex. Co. C.C.C.P., G.S. & F.C.

Attached Letter

David Chase
James Chase
[redacted] Drive
West Columbia, SC 29170

July 29, 2020

Re: Joel "Tripp" Hendrix

2021CP3202926

Dear Solicitor:

We are the victims of an assault and burglary by Michael Nowinski. We are in favor of the bond that was granted Tripp Hendrix. We are not afraid of him. We believe a guilty plea by him to criminal conspiracy is more than enough.

David Chase

James Chase

2021 FEB 24 PM
LISA M. COVER
CLERK OF COURT
LEXINGTON SC

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Lisa Comer
Lex. Co. C.C.C.P., G.S. & FC.

A TRUE COPY

The Court heard a full presentation of the facts and full mitigation from Defense Counsel. To claim that two of the victims' opinions regarding the co-defendant that was prompted by a co-defendant's attorney is *Brady* material and would have impacted your sentence of Nowinski is without merit and serves only as a pretense for Nowinski to ask for a reduction of his sentence. The Defendant displayed dangerous behavior when he was a participating member of society. The Defendant's brief fails to articulate any new facts to the Court supporting a reduction in sentence. After having considered the facts of this case and the arguments of Counsel in the submitted brief, it is the State's position that the Defendant's Motion for Reconsideration should be denied. The State respectfully request that the Defendant's Motion to Reconsider be denied.

Respectfully submitted,

Sutania A. Fuller
Assistant Solicitor
Eleventh Judicial Circuit

February 24, 2021
Lexington, South Carolina

2021 FEB 24 PM 3:44
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

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Lisa Comer
Lex. Co. C.C.C.P., G.S. & F.C.

2021CP3202926

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

a) On October 20, 2020 five days after Mr. Nowinski's guilty plea and sentencing hearing Mr. Nowinski's Counsel was contacted by Counsel for the Co-defendant, Joel "True" Hendrix and informed about a letter written and signed by two victims in this case [See Exhibit A]. This letter was not provided to Mr. Nowinski's Counsel for use at his guilty plea and sentencing hearing. It is the prosecutions duty to disclose evidence favorable to a defendant." Kyles v Whitley, 115 S.Ct. 1555, 1565 (1995). Maryland v. Brady held that the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. Under Brady the prosecution must disclose information or material that is: (1) Material, (a) Relevant to guilt or punishment... Failure of the state to turn over the undisclosed victim letter while framing it's presentation at sentencing as the Victims, whom were not present, Wanting Significant prison time Violated Mr. Nowinski's Due process rights under Brady. The information provided in this letter is significantly different than the way the states portrayal of How the victims felt. This letter [See Exhibit A] was not provided for use during Mr. Nowinski's mitigation and would have been used to undermind the states presentation. The states opening statement was in reference

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Lex. Co. C.C.G.E., G.S. & E.C.

to Mr. Nowinski's juvenile record providing the presiding judge with these records for viewing. The state believed that this was a random act and Mr. Nowinski had no relationships with the victims, There is evidence and witness statements in the discovery providing information that the victims and Mr. Nowinski had a relationship based on drugs. The state mentioned to the court that the Co-defendant did provided a written statment but questioned the integrity of this statement. The difference between Mr. Nowinskis and Co-defendent Sentencing is Significant and unduly harsh. During the states presentation, at one point, the state mentioned that they did not care if the victims are drug dealers. The states tactics and statments were infammatory, and used to impose an unjust and harsh Sentence.

b) A Brady v. Maryland violation arising from the prosecutions failure to disclose material evidence in its possession is "material" in the context of a guilty plea when there is reasonable probability that, but for the states failure to disclose Brady evidence, Mr. Nowinski would have refused the guilty plea and gone to trial. When a defendant lacks knowledge of material evidence in the prosecutions possession, the waiver of constitutional rights cannot be deemed knowing and voluntary." Gibson V state 334 SC 515(1999). The states obligation to make disclosures of material under Brady v. Maryland is pertinent not only to an accused's preparation for trial but also to his determination of whether to plead guilty. The defendent is entitled to

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Lex. Co. C.C.C.P., G.S. & E.C.

2021CP3202926

make that decision with all awareness of favorable material known to the state. The states failure to disclose the undisclosed victim letter violated Mr. Nowinski's Constitutional right when agreeing to plead guilty.

C) "A defendant's Communication with Counsel is critical to the attorney's representation. Geders V. United States, 425 U.S. 80, 91, 96 S.Ct 1330, 47 L.Ed 2d 592 (1976). Denial of this opportunity is Constitutional error requiring reversal. The importance of Communication between attorney and clients is shown by the great lengths the legal System goes in order to protect attorney-client privilege. Swidler & Berlin V. US, 524 U.S. 399, 118 S. Ct 2081 (1998). During Mr. Nowinski's pre trial detention he was deprived the opportunity to have in person visits with counsel in designated legal rooms at Lexington County detention Center. This deprivation of adequate communication between Mr. Nowinski and Counsel was the direct result of the 2020 COVID-19 pandemic. Mr. Nowinski was forced to have recorded virtual visitation with Counsel. During these virtual visits it was difficult hearing and understanding Conversation between Mr. Nowinski and Counsel due too a malfunctioned monitor, ongoing inmate recreation, and poor internet Connection. These virtual visits invaded Mr. Nowinski's privacy with Counsel causing tremendous misunderstandings and decrease in Confidence for Mr. Nowinski in his Counsels representation during plea negotiations. Therefore rendering Ineffective assistance of Counsel.

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Lex. Co. C.C.P., G.S. & F.C.

I reserve my right to amend this application for Post-Conviction Relief.

[redacted] 30th day of August 2021

Notary Public of South Carolina

My Commission Expires 2/17/24

FILED
2021 SEP -3 PM 2:20
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Lexington)

FILED
2021 SEP 13 PM 2:20
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Michael M. Nowinski)
Plaintiff(s))
) CIVIL ACTION COVERSHEET
vs.) ____-CP-____-_____
State of South Carolina)
Defendant(s)) 2021CP3202926

Submitted By: Michael Nowinski
Address: 610 Hwy 9 West
Bennettsville SC, 29512

SC Bar #:
Telephone #:
Fax #:
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. **This form is NOT required to be filed in E-Filed Cases.**

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☐ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199)_____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☑ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

_____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

_____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Incapacitated Adult Settlement (790)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

_____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Interpleader (690)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 08/30/21

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

A TRUE COPY
Lex. Co. C.C.C.P. G.S. & F.C.

SCCA / 234 (02/2018)

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Michael M. Nowinski, SCDC #384171, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2021-CP-32-2926 **RETURN, PARTIAL MOTION TO DISMISS, AND MOTION FOR A MORE DEFINITE STATEMENT** (Counsel Appointed)

In response to the post-conviction relief (PCR) action commenced by Michael M. Nowinski (Applicant) on September 3, 2021, the State makes this return:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on August 19, 2019, following an investigation into a home invasion in West Columbia. During its July 2020 term, the Lexington County Grand Jury indicted Applicant for first-degree burglary (2020-GS-32-1411); armed robbery (2020-GS-32-1397); two counts of kidnapping (2020-GS-32-1414, -1415); and possession of a weapon during the commission of a violent crime (2020-GS-32-1421).

On October 15, 2020, Applicant appeared before the Honorable Walton J. McLeod, IV, and pleaded guilty to the lesser-included offense of second-degree burglary (violent) and as indicted to the remaining charges without formal negotiations or recommendations from the State as to sentencing. However, the State dismissed two additional kidnapping indictments (2020-GS-32-1419, 1420); three indictments for first-degree assault and battery (2020-GS-32-1404, -1409, -

1410); and one indictment for criminal conspiracy (2020-GS-32-1413) in exchange for Applicant's plea. Jacob Taylor Bell, Esquire (Counsel) represented Applicant and Assistant Solicitor Sutania Fuller prosecuted the case. Judge McLeod accepted Applicant's plea and sentenced him to concurrent terms of twenty years' imprisonment for armed robbery, twenty years for each kidnapping charge, fifteen years for burglary, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely motion to reconsider,[1] to which the solicitor filed a response. On March 5, 2021, Judge McLeod issued an order denying Applicant's motion. Applicant did not appeal.

II. FACTS

On August 19, 2019, law enforcement responded to a mobile home on [redacted] Drive in Lexington County in reference to a home invasion. (Plea Tr. 11). The 9-1-1 caller informed the dispatcher that he was covered in blood and was assaulted by an intruder. (Plea Tr. 11). Upon arrival, deputies with the Lexington County Sheriff's Department observed that one of the victims, 72-year-old David Chase, had injuries to his head and his arm that were actively bleeding. (Plea Tr. 11). Officers then located James Chase, who was 73 years old at the time, with injuries to his face and head that were actively bleeding as well. (Plea Tr. 11). Two other individuals, Kenneth Jeffrey and Ashley Kirschner, were also present during the home invasion. (Plea Tr. 11). Kenneth suffered a minor injury to his back. (Plea Tr. 11).

James reported that, at approximately 6:00 in the morning, he heard his dock barking and knocking on the door. (Plea Tr. 13–14). Kenneth stated he told the person to go around to the other

[1] Notably, Applicant's motion to reconsider was based on the issue he raises in the instant action—that the solicitor violated *Brady* by failing to turn over the victims' letter regarding Applicant's co-defendant.

door because that door was not operable. (Plea Tr. 14). As soon as he opened the door, James was immediately struck in the head by the intruder, who was later identified as Applicant, and fell to the floor. (Plea Tr. 14). He then heard the intruder go into the living room and yell at Kenneth and Ashley not to move. (Plea Tr. 14). He also heard his brother, David, yelling. (Plea Tr. 14). David told law enforcement that he also heard yelling coming from the living room. (Plea Tr. 15). By the time he was able to get up and grab his walker, the intruder struck him in the head with a shotgun. (Plea Tr. 15). David reported that he tried to get his walking stick to get back up, but that the intruder hit him again and told him to stay down. (Plea Tr. 15–16). The intruder then asked David where the safe was located. (Plea Tr. 16).

Once James was able to regain his footing, he went into his bedroom, retrieved his Marlin 30-30 rifle, and loaded it. (Plea Tr. 14). Photographs taken by law enforcement show the blood trail from James' injury going into his bedroom and to the side of the bed where he stored the rifle. (Plea Tr. 14).

After loading his rifle, James went back into the hallway, where he saw the individual who attacked him. (Plea Tr. 14). The man was exiting David's room carrying the same shotgun he observed earlier. (Plea Tr. 14–15). James fired the rifle, striking the intruder. (Plea Tr. 15). After a struggle ensued over possession of the rifle, the intruder took the rifle and left the residence. (Plea Tr. 15). He left the shotgun behind. (Plea Tr. 15). According to law enforcement, the way Applicant was holding the shotgun is probably the only reason he is alive today because it slowed the impact of the bullet from the rifle. (Plea Tr. 15).

Kenneth reported that he saw the intruder strike James with the shotgun. (Plea Tr. 16). He was forced down on the living room floor, and stayed there until he heard the shot and saw James and the intruder struggling. (Plea Tr. 16). Kenneth got up and exited the home to get help. (Plea

Tr. 16). Once outside, he saw a small car sitting on the roadside that drove off as Kenneth was starting his truck. (Plea Tr. 16). He tried to leave to get help, but then realized he had a flat tire on his truck. (Plea Tr. 16). He then observed that all the vehicles in the yard had flat tires. (Plea Tr. 16). Law enforcement later located an orange-handled hunting knife they believe was used to slash the tires. (Plea Tr. 17).

Ashley was not injured, but heard David crying from his room and the intruder asking about a safe. (Plea Tr. 17). Ashley described the individual as decent size, face covered, and approximately six-one. (Plea Tr. 17). James also indicated that the intruder's face was covered, but he described the man as approximately six feet tall and weighed approximately two-hundred pounds. (Plea Tr. 15).

Shortly after the original 9-1-1 call, law enforcement was notified of an individual with a gunshot wound to the chest located near the corner of [redacted] Drive and Highway 302. (Plea Tr. 16). James' rifle was located nearby, along with the gloves and black face mask Applicant wore during the home invasion. (Plea Tr. 12). Applicant was taken to the hospital for treatment and later booked into the Lexington County Detention Center. (Plea Tr. 12).

The co-defendant in this case was identified as Joel Hendrix, who was a friend of Applicant's. (Plea Tr. 12). He admitted to driving Applicant to commit the home invasion and gave a statement to law enforcement implicating Applicant in the crime. (Plea Tr. 12). He indicated that Applicant discussed committing a "lick" and asked Hendrix to drive him. (Plea Tr. 20). Hendrix told law enforcement that he did not want to drive Applicant, but he decided to do so to avoid a physical fight. (Plea Tr. 20). He described Applicant as "not letting up," potentially on drugs at the time. (Plea Tr. 20). Hendrix stated he dropped Applicant off and parked outside for no longer than

fifteen minutes. (Plea Tr. 20). He apparently drove off when he heard Applicant yelling. (Plea Tr. 20).

III. CURRENT APPLICATION

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

1. "Prosecutorial misconduct"
    a. "Failure of the State to run over the undisclosed victim letter while framing its presentation at sentencing as the victims, whom were not present, wanting significant prison time violated Mr. Nowinski's due process rights under Brady. The information provided in this letter is significantly different than the way the states[*sic*] portrayal of how the victims felt. This letter was not provided for use during Mr. Nowinski's mitigation and would have been used to undermind[*sic*] the states[*sic*] presentation. The states[*sic*] opening statement was in reference to Mr. Nowinski's juvenile record providing the presiding judge with these records for viewing. The state believed that this was a random act and Mr. Nowinski had no relationship with the victims. There is evidence and witness statements in the discovery providing information that the victims and Mr. Nowinski had a relationship based on drugs. The state mentioned to the court that the co-defendant did provided[*sic*] a written statement but questioned the integrity of this statement. The difference between Mr. Nowinski's and co-defendant[*sic*] sentencing is significant and unduly harsh. During the states[*sic*] presentation, at one point, the state mentioned that they did not care if the victims are drug dealers. The states[*sic*] tactics and statements were inflammatory and used to impose an unjust and harsh sentence."
2. "Involuntary plea agreement"
    a. "A Brady v. Maryland violation arising from the prosecutions[*sic*] failure to disclose material evidence in its possession is 'material' in the context of a guilty

plea when there is reasonable probability that, but for the states[*sic*] failure to disclose Brady evidence Mr. Nowinski would have refused the guilty plea and gone to trial. When a defendant lacks knowledge of material evidence in the prosecutions[*sic*] possession, the waiver of constitutional rights cannot be deemed knowing and voluntary. Gibson v. State 334 SC 515 (1999). The states[*sic*] obligation to make disclosures of material under Brady v. Maryland is pertinent not only to the accused's preparation for trial but also to his determination of whether to plead guilty. The defendant is entitled to make that decision with all awareness of favorable material known to the state. The states[*sic*] failure to disclose the undisclosed victim letter violated Mr. Nowinski's constitutional right when agreeing to plead guilty."

3. "Ineffective assistance of counsel"
    a. "During Mr. Nowinski's pre trial detention he was deprived the opportunity to have in person visits with counsel in designated legal rooms at Lexington County detention center. The deprivation of adequate communication between Mr. Nowinski and counsel was the direct result of the 2020 COVID-19 pandemic. Mr. Nowinski was forced to have recorded virtual visitation with counsel. During these virtual visits, it was difficult hearing and understanding conversation between Mr. Nowinski and counsel due to a malfunctioned monitor, ongoing inmate recreation, and poor internet connection. These virtual visits invaded Mr. Nowinski's privacy with counsel causing tremendous misunderstandings and decrease in confidence for Mr. Nowinski in his counsels[*sic*] representation during plea negotiations."

Applicant requests relief as follows:

"Reduction of sentence imposed/new trial"[2]

[2] The State would note that the Uniform Post-Conviction Procedure Act does not provide a vehicle for sentence reduction. *See Clark v. State*, 259 S.C. 378, 382–83, 192 S.E.2d 209, 210 (1972) (*per*

Attached to this return and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

VI. PARTIAL MOTION TO DISMISS

Applicant's allegation of prosecutorial misconduct and "involuntary plea agreement" based on an alleged *Brady*[3] violation should be summarily dismissed pursuant to section 17-27-70 of the South Carolina Code because there is no genuine issue of material fact which would necessitate an evidentiary hearing on this claim. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); *Sutton v. State*, 361 S.C. 644, 647, 606 S.E.2d 779, 780 (2004) ("A PCR action is a civil action generally subject to rules and statutes that apply in civil proceedings"), *abrogated on other grounds by Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR

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curiam) (holding that an inmate cannot seek a "time cut" in his sentence via post-conviction relief if the sentence was within the statutorily defined limits); John H. Blume, *An Introduction to Post-Conviction Remedies, Practice and Procedure in South Carolina*, 45 S.C. L. Rev. 235, 268 n.103 (1994) (noting that "[t]he lack of jurisdiction to reduce otherwise proper sentences seems not to be widely recognized by many inmates who file pro se applications seeking a reduction in their sentences"). If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on the original indictments. *See generally Singleton v. State*, 313 S.C. 75, 85–86, 437 S.E.2d 53, 59–60 (1993) (discussing section 17-27-20(B) and the appropriate relief in PCR cases); *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating that even under the assumption that all the allegations were true, the relief to be granted on PCR is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) ("We now clarify the proper remedy is a new trial.").

[3] *Brady v. Maryland*, 373 U.S. 83 (1963). "*Brady* requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment." *Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993).

applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing).

The document Applicant claims is *Brady* material is a letter from two of the victims regarding the co-defendant. The letter states:

> We are the victims of an assault and burglary by Michael Nowinski. We are in favor of the bond that was granted Tripp Hendrix. We are not afraid of him. We believe a guilty plea by him to criminal conspiracy was more than enough.

A defendant who pleads guilty usually may not later raise independent claims of constitutional violations. *See Rivers v. Strickland,* 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (stating "[t]he general rule is that a plea of guilty, voluntarily and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea"). However, "a defendant's decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999) (quoting *Sanchez v. United States,* 50 F.3d 1448, 1453 (9th Cir.1995)); *accord Gustine v. State,* 325 S.C. 123, 127–28, 480 S.E.2d 444, 446 (1997) ("waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences").

A *Brady* violation occurs "when the government fails to disclose evidence materially favorable to the accused." *Youngblood v. West Virginia*, 547 U.S. 867, 869 (2006) (per curiam). In the context of a guilty plea, "[a] *Brady* violation is material when there is a reasonable probability that, but for the government's failure to disclose *Brady* evidence, the defendant would have refused to plead guilty and gone to trial." *Gibson*, 334 S.C. at 525, 514 S.E.2d at 325; *Riddle v. Ozmint*, 369 S.C. 39, 44–45, 631 S.E.2d 70, 73 (2006) ("Evidence is material under *Brady* if there is a 'reasonable probability' that the result of the proceeding would have been different had the

information been disclosed."); *see United States v. Agurs*, 427 U.S. 97, 109–10 (1976) ("The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense."); *see also State v. Hutton*, 358 S.C. 622, 632, 595 S.E.2d 876, 882 (Ct. App. 2004) (noting that "exculpatory evidence is evidence which creates a reasonable doubt about the defendant's guilt"). An individual asserting a *Brady* violation in the context of PCR must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. *Id.* (citing *Kyles v. Whitley,* 514 U.S. 419 (1995).

Here, the statement from two of the victims regarding Applicant's co-defendant, whose role in the home invasion was limited to driving the Applicant to the residence, is not *Brady* evidence because it is neither exculpatory nor material to Applicant's guilt. Rather, it relates solely to the co-defendant. Applicant's claim that this letter could have been used in mitigation or to undermine the State's presentation regarding sentencing is patently meritless. Moreover, as far as sentencing, Applicant cannot establish that the result of the proceeding would have been different had the letter been disclosed because Judge McLeod considered the letter and specifically found that "the sentence would not have been effected or otherwise altered by presenting the victim letter pertaining to the co-defendant in this matter."

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch*, 246 S.C. 258, 143 S.E.2d 455. Because the letter does not constitute *Brady* material, there is no genuine issue of material fact which would necessitate a hearing on Applicant's claim of prosecutorial misconduct. Accordingly, this allegation should be summarily dismissed pursuant to section 17-27-70.

V. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Plea Counsel, Generally

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

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

to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

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

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the defendant,' and '[i]t should go without saying that the absence of evidence cannot overcome [i]t.' " *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that *no competent lawyer would have chosen.*" *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24). Representation is constitutionally ineffective only if counsel's conduct "so undermined the

proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding");

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

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, ___, 137 S. Ct. 1958, 1966 (2017). However,

reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Id.* at ____, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.*; *Padilla*, 559 U.S. at 372 (explaining that the applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

B. Involuntary Guilty Plea

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

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624.

The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *see generally Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty

plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him). 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).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

Surmounting *Strickland*'s high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. at ____, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest

in the finality of guilty pleas.' "). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); *see also Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"); *cf. United States v. Broce*, 488 U.S. 563, 569 (1989) ("A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.").

Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings"). "What is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and

putting the State to its proof." *McMann v. Richardson,* 397 U.S. 759, 773 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). "Furthermore, there must be some consequence attached to the decision to plead guilty." *People v. Schneider,* 25 P.3d 755, 761 (Colo. 2001) (*cited with approval in Jamison*, 410 S.C. at 469, 765 S.E.2d at 129) ("A defendant who voluntarily and knowingly enters a plea accepting responsibility for the charges is properly held to a higher burden in demonstrating to the court that newly discovered evidence should allow him to withdraw that plea.").

C. Communication with Counsel during COVID-19 Pandemic

Applicant contends he was "depriv[ed] of adequate communication" with his attorney due to the COVID-19 pandemic but frames this allegation in the context of ineffective assistance of counsel. Specifically, he states that the virtual visits conducted at the jail "invaded [his] privacy with counsel causing tremendous misunderstandings and decrease in confidence . . . in his counsel[']s representation during plea negotiations." However, Applicant does not identify any acts or omissions on the part of trial counsel which "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688.

Moreover, the plea transcript reflects Applicant understood the proceedings, the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty in accordance with the requirements of *Boykin* and *Pittman. 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). Thus, the State submits Applicant's claims of ineffective assistance of counsel based on communication issues due to the COVID-19 pandemic are without merit.

D. Conclusion and Action Requested

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

VI. MOTION FOR A MORE DEFINITE STATEMENT

The State submits Applicant's allegations of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to these claims because Applicant has failed to set forth facts to "support each ground" or to explain with specificity the facts upon which his claims are based. S.C. Code Ann. § 17-27-50 (requiring an applicant to "specifically set forth the grounds upon which the application is based"). For example, Applicant does not specify what "tremendous understandings" resulted due to his inability to adequately communicate with counsel.

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP, and the Post-Conviction Procedure Act. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a prima facie showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCP (requiring

all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRCP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.").

VII. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

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

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

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

advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VIII. GENERAL DENIAL

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

[*Conclusion and signature on following page*]

IX. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion to summarily dismiss the allegations of prosecutorial misconduct as set forth in section IV; grant its motion for a more definite statement as set forth in section III; and thereafter convene an evidentiary hearing on the claims of ineffective assistance of counsel.

Respectfully submitted,

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November 18, 2021

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	FOR THE 11th JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.: 2021-CP-32-2926
Michael M. Nowinski, #384171	)	
	)	
Applicant,	)	**AMENDED POST-CONVICTION RELIEF APPLICATION**
	)	
v.	)	
	)	
State of South Carolina.	)	
	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on September 3, 2021, to add the following allegations:

1. Ineffective Assistance of Counsel of J. Taylor Bell:

   A. Failure to present mitigating evidence during sentencing regarding the Applicant's mental health and background growing up and the issues the Applicant faced which would have ultimately led to a lesser sentence than the one the Applicant received.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See* Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,

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August 19, 2024
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CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Donald J. Zelenka
Deputy Attorney General
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This 19th Day of August, 2024.

ASHLEY A. MCMAHAN
Attorney for Applicant

STATE OF SOUTH CAROLINA **DOCKET NO. 2021-CP-32-02926**

IN THE SOUTH CAROLINA CIRCUIT COURT 14

COUNTY OF LEXINGTON

MICHAEL NOWINSKI,	)
Plaintiff,	)
v.	)
STATE OF SOUTH CAROLINA,	)
Defendant.	)

08/27/2024 Motion Hearing

B E F O R E:

The HONORABLE DAVID P. CARAKER JR.,

Circuit Court Judge

C O U R T:

Lexington County Circuit Court 14

T R A N S C R I B E R:

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Exhibits

None Marked

THE COURT: Sir, whenever you get ready.

MR. ZELENKA: Okay. Your Honor, may it please the Court, I'm Don Zelenka with the South Carolina Attorney General's Office. This is the matter of Michael Nowinski versus State of South Carolina. Civil Action Number 2021-CP-32-2926. Mr. Nowinski filed an Application for Post-Conviction Relief September 3rd, 2021. The application concerns his Lexington County conviction arising from an August 19, 20 -- 2019 -- excuse me, investigation into a home invasion in West Columbia. He was charged and indicted for first degree burglary, armed robbery, two counts of kidnapping, possession of a weapon during the commission of a violent crime.

On October 15th, 2020, he appeared before Judge Walton McLeod and pled guilty to the lesser included offense of second degree burglary - violent, and to the remaining charges, without negotiations or recommendations from the State as to sentencing.

With -- he was represented at that time by Taylor Bell and Sutania Fuller was the prosecutor on the case. Judge McLeod accepted the plea and sentenced him to concurrent terms of twenty years imprisonment for

armed robbery; twenty years for kidnapping; fifteen years for burglary; and five years possession of a weapon with the commission of a violent crime.

He filed a timely Motion to Reconsider based upon a letter that had been received subsequently, and -- to which a Solicitor filed a Response on March 5, 2021. Judge McLeod issued an Order Denying the Motion.

In his Application for Post-Conviction Relief that was done *pro se* initially, he alleged prosecutorial misconduct based upon a failure of the State to turn over that undisclosed victim letter though the victim was requesting that a co-defendant in the case, basically, received favorable treatment and -- on the bond situation that occurred. That individual was Joel Hendrix.

And they asserted an involuntary plea agreement because that alleged violation occurred and a claim of ineffective assistance of counsel based upon issues that he had with communication with his lawyer during COVID. He asked for a reduction of sentence in -- in that particular action.

Subsequently, on August 19th, appointed counsel, who is representing him here today, Ashley McMahan, filed an Amended Application for Post-Conviction Relief in which he alleged ineffective assistance of

counsel based upon a failure to present mitigating evidence during the sentencing regarding his mental health and background growing up in issues the applicant faced which would have ultimately led to a lesser sentence than the one the applicant received.

The State's prepared to go forward in this matter and the burden of proof in Post-Conviction Relief matters is on the applicant to show by a preponderance of the evidence entitlement to relief.

THE COURT: [Inaudible -- muffled/muted].

MS. MCMAHAN: Judge, at this time, I call Ms. Nowinski.

THE COURT: Alright.

CLERK: Do you solemnly swear or affirm the statements you're about to give will be the whole truth and nothing but the truth, so help you God?

MR. NOWINSKI: I do.

CLERK: Thank you. And please state your name for the record.

MR. NOWINSKI: Michael Nowinski.

DIRECT EXAMINATION OF MICHAEL NOWINSKI

BY MS. MCMAHAN

Q. Mr. Nowinski, did you file this PCR Application?

A. I did.

Q. Do you still wish to go forward on it?

A. I do.

Q. Who was your attorney that represented you?

A. Taylor Bell.

Q. And was he appointed or retained?

A. He was appointed.

Q. And were you in the detention center the whole time, were you out on bond?

A. No, I was in the detention center the whole time.

MR. ZELENKA: Your Honor, I'm having difficulty hearing. Could I ask the parties to speak up? I'm sorry.

THE COURT: Speak up just a little bit.

MR. NOWINSKI CONTINUES

A. I was in the detention center the whole time. I was in the detention center the whole time.

Q. And did you have any bond hearings?

A. I had the initial one and another.

Q. How long were you in the detention center before your guilty plea?

A. Fourteen months, I believe.

THE COURT: I think you all still got to speak up. I don't think we can hear you guys.

MR. NOWINSKI CONTINUES

A. Fourteen months.

Q. And how long were you in the detention center before

you pled guilty?

MS. MCMAHAN: The answer was fourteen months.

MR. ZELENKA: Thank you.

MS. MCMAHAN CONTINUES

Q. And how many times did you talk to Mr. Bell?

A. The introductory visit and then once briefly right before Thanksgiving. And then the rest were virtual.

Q. So, in person you saw him twice?

A. Twice.

Q. And then the rest were all virtual?

A. Were all virtual.

Q. And how many virtual times do you think you spoke to him?

A. I know for sure twice, but I think there were maybe one or two others.

Q. And what was going on that you had to meet with him virtually?

A. COVID, Corona Virus, and the upheaval that was the result of it, and the restrictions placed because of it.

Q. Do you feel that that hindered your ability to have a conversation with Mr. Bell?

A. Absolutely. One, as serious as it was. Absolutely it was.

Q. So, what did you and Mr. Bell talk about in regards to

your case?

A. Not much. From the very beginning, he -- he was adamant about not going to trial. And I mean, --

Q. Tell the Court about that -- about not going to -- about why he was adamant about you not going to trial.

A. -- he just kept saying this is not a trial case. He said not a trial case from the very first day that I met him and -- and in my ignorance, I -- I guess I took him at his word.

Q. So, what's different now between the time you pled guilty and now that makes you realize that you should have gone to trial?

A. Just discoveries through my own search the last five years of -- you know, and things that I could have done, different avenues that could have been taken, and frankly, the way our judicial system operates.

Q. What -- what were some of the iss -- different avenues you could have taken?

A. Well, for one, we didn't have to -- I -- I didn't have to accept the second plea and I could have said no to it and went to trial. I only got twenty years -- or five years less than I could have gotten in the -- in a trial.

Q. Did you have some mental health issues that were going on before all of this?

A. I did.

Q. And -- and what were those issues?

A. I suffered from a lot of things. That I coped with drugs and alcohol. I was taken advantage of as a young boy. I held that in for a long time and it -- it ruined me. And I -- I just dealt with it in my own way and it just caused a lot of dysfunction and eventually it caught up with me. And --

Q. Did you tell Mr. Bell about all of this?

A. I did.

Q. Do you feel like Mr. Bell adequately presented those issues to the Court at the time that you were sentenced?

A. -- no, I don't.

Q. What else do you think he could have told the judge about your mental health and your background?

A. A lot more.

Q. For example?

A. I felt like it -- it could have been presented more thoroughly. I felt like it could have been presented in more thoroughly before that.

Q. Well, let's get into some detail about it. Like, have you been into places where you've been treated for mental health?

A. Yes. Yes.

Q. Let's talk about that. Where --

A. Inpatient hospitalizations.

Q. -- where?

A. I've had multiple diagnosis. I've been to Three Rivers Behavioral Health. I've been to Baptist Mental Health. I've been to William S. Hall when I was barely a teenager. I mean, --

Q. So, you've been in and out of some mental health facilities pretty much your whole life?

A. -- yes, ma'am.

Q. And was that presented to the judge during your sentencing?

A. No.

Q. And -- -- and in those times where you were going back and forth between those facilities, were any of them helping you in any way? Were you able to discover anything about yourself when you were there? Do you feel like you had repressed some situations that had happened to you when you were younger?

A. I felt like I had just got taken out of a situation for a couple of weeks and was monitored and then released back into society to the same things that I have been living in all my life.

Q. So, you didn't feel like they were -- they were only helpful for the time that you were in there?

A. Yep. Just monitoring medications, two weeks, I'm out of there. I mean, --

Q. What was your life like at this point, before the incident?

A. -- burdensome. Two kids, a wife.

Q. Were you struggling to make ends meet?

A. Very much so.

Q. What were you doing as a job?

A. At the time, I was unemployed. I had just gotten fired from my job.

Q. What sort of job were you doing?

A. An electrician. I was going renewable energy in Bowman, South Carolina.

Q. And you had just gotten fired?

A. Yes, ma'am. I had just gotten fired.

Q. And what was your wife, or your -- was that your wife that you had your kids with? What was she doing?

A. Nothing. Staying at home.

Q. Were you both using drugs?

A. Yes, we were.

Q. So, when you were getting out of these places, you were going right back into places where drugs were being used?

A. Yes, ma'am.

Q. So, how did you -- what was your state of mind prior

to the incident?

A. Unguided, dysfunctional, lost, stressed.

Q. And was this presented to the Court on your behalf?

A. Briefly.

Q. Did you have discussions with Mr. Bell about all of this?

A. Briefly.

Q. Tell us about the plea offers because you said you took the second plea offer. What was the first one?

A. The first one was -- fifteen to life with a thirty-five year cap. And I said no. And the second one was ten to thirty, in which I also said no at first.

Q. And then what made you change your mind?

A. I had a conversation later that night. I had spoken with my mom and she had told me she had a conversation with Taylor and she was the one that convinced me to take it.

Q. Do you regret that now?

A. I do.

Q. Would you have wanted to go to trial?

A. Knowing what I know now, I think I would have pressed a little harder.

Q. And what you know now is what? Some of the discovery issues that you didn't know before?

A. Some of the discovery issues, the -- j

Q. What were some of those issues specifically?

A. -- well, the letter for one. You know, my relationship with these victims was of multiple years. I knew them well. I knew what they were about and coupling that with that letter, I think it would have voted [*sic*] well with my confidence.

Q. You think the jury would have been possibly swayed to find you not guilty or of a reduced charge?

A. Possibly.

Q. Were there any other discovery issues that you had discovered recently since your guilty plea?

A. What -- what is possible -- what can be presented at trial and how impactful the migiti -- the mitigating circumstances would have been if presented in their full view.

Q. So, is there an example of that that you know off the top of your head? Something that could have been presented that you didn't know about? Because you -- besides, you said mitigating stuff; anything else? Like about -- was there anything else specifically besides just mitigating matters?

A. The letter from the victims.

Q. Were you scheduled to go to trial when you were pleading guilty?

A. No. From -- from the very beginning, the trial was

out of the question for Mr. Taylor. That's what he -- - that's what he made me -- made me feel. That's what he made me believe. There was just -- it was not even a possibility.

Q. Is there anything else you want the Court to know today about your PCR application?

A. No.

Q. Any questions [Inaudible -- muffled/muted]?

CROSS-EXAMINATION OF MICHAEL NOWINSKI

BY MR. ZELENSKA

Q. Mr. Nowinski, why did you plead guilty?

A. Because I felt that it was my only option.

Q. And why did you think it was your only option?

A. Because I knew I was guilty of something; I just didn't know what. And my attorney convinced me from day one that this wasn't a trial case.

Q. Okay. You admit that you were present at the scene at the Chase's home, correct?

A. Correct.

Q. And what was the purpose that you went there?

A. To obtain drugs.

Q. And did you obtain drugs?

A. Did -- the specific time that I was there that you're referring to?

Q. Yeah. The night of the incident that you pled guilty

to.

A. I did not.

Q. Okay. And what did you do to the Chases?

A. I don't understand.

Q. What occurred at the Chase's home?

A. Armed robbery. That's --

Q. Okay. An armed robbery. And what did you take from the Chases' home?

A. -- nothing.

Q. What did you try to take from the Chases' home?

A. Drugs.

Q. And what did you do to the Chases?

A. Bought drugs from them.

Q. On that night?

A. Attempted to take drugs from them.

Q. And what weapon did you have during the armed robbery?

A. There is evidence of a shotgun.

Q. Okay. And what occurred with the shotgun?

A. It was used in the commission of a crime.

Q. And did you strike the victims with the shotgun?

A. No, I did not.

Q. What occurred with the shotgun?

A. It was used to obtain drugs.

Q. Okay. Were the victims injured at the scene?

A. Yes. And the motion says that they denied medical

attention and they ate breakfast.

Q. Okay. Were the victims injured at the scene?

A. I -- I guess. The motion says they had minor injuries.

Q. How did they get injured?

A. They were in -- attacked.

Q. By who?

A. By an intruder.

Q. Pardon me?

A. By an intruder.

Q. And were you the intruder on the home invasion?

A. I knocked on the door, they answered it.

Q. And you went in? Is that true? Did you go in?

A. After they answered the door.

Q. Okay. At the time of the plea, the State went over the evidence in the case. Do you recall that?

A. Yes, sir. I do.

Q. And do you recall what you responded to the Court when they went through a version, a little bit more expansive than you're telling the Court under oath today? Do you have any recollection about that?

A. About -- will -- will you repeat the question, please?

Q. After you heard the State tell a version, more expansive than today, did you agree with the facts that were presented in the courtroom?

A. No.

Q. And did you tell your lawyer that you disagreed with those facts?

A. Yes, sir. I did.

Q. And what did your lawyer do?

A. Proceeded.

Q. Okay. Now, when you met with Mr. Bell, what did you tell him you did for the crime you pled guilty to? What did you tell Mr. Bell that [Inaudible -- muffled/muted] occurred on that night?

A. I told him that me and my co-defendant --

Q. And what was your co-defendant's name?

A. -- Trip Hendrix, Joel Hendrix. I told him we -- we went to David's house and sought drugs.

Q. Okay. And -- and how old was David at the time?

A. He -- he was -- he is an older man.

Q. So, they -- over seventy?

A. I believe so. In his early seventies.

Q. And his brother was also over seventy?

A. James. No, I don't think he was quite seventy. I think he's early sixties and then he got another brother who also stayed there who was in his early forties.

Q. Okay.

A. I knew them very well.

Q. And what did you tell him occurred between you and

them?

A. I told them about who they were and the purposes for going over there to seek drugs.

Q. Okay. And was that it?

A. No.

Q. What else did you tell him?

A. I told him that -- well, we went over there to attempt to take the drugs.

Q. Okay. So, you went over there to take the drugs. You knocked on the door with the intent to go inside and take the drugs. So, you acknowledge that you basically -- inveigled your way into the home with intent to steal something from the Chases, correct?

A. Well, I knocked and he opened the door.

Q. Okay. But you already said what your intent was - to get the drugs.

A. Yes, sir.

Q. Now, where was the shotgun?

A. Joel took it from his closet.

Q. Pardon me?

A. Joel Hendrix --

Q. Yes.

A. -- took it from his closet in his room at his house in Camden and put it in his trunk.

Q. Okay. And who had the shotgun when it went -- when

you went inside?

A. It was leaned up against the house.

Q. Did you take it inside?

A. Yes.

Q. And were the Hendrix's struck with the shotgun?

A. You said the -- the Hendrix?

Q. Excuse me. Were the Chases -- thank you, were the Chases struck with the shotgun?

A. No.

Q. What happened to them?

A. I think they were punched with the brass knuckles.

Q. And who had the brass knuckles?

A. I did.

Q. Okay. Did you stay onsite?

A. No. After I was shot in the chest with the Marlin 30-30, I left.

Q. Okay. And were you ultimately arrested by the police?

A. Yes.

Q. And that was done how soon after the event?

A. I can't recall.

Q. Okay. Let me ask a couple of other questions about Mr. Joel -- Trip Hendrix. Where was he when you went inside the house?

A. Outside the house.

Q. Did he ever go inside the home?

A. I don't know.

Q. Did he ever go inside the house while you were inside the house?

A. I don't know.

Q. Did you ever see him inside the house?

A. I don't remember.

Q. So, you did not see him inside the house because you didn't remember -- ever being in the house, correct?

A. Correct.

Q. Okay. And did you share that information with your lawyer, Taylor Bell?

A. Yes.

Q. Now, with that information shared with Mr. Bell, he indicated to you that this was a [Inaudible -- muffled/muted] probably turn into a plea rather than a trial, is that correct?

A. He maintained that notion from the very beginning.

Q. Okay. And did he receive discovery from the State?

A. Yes.

Q. Okay. Did he share that discovery with you?

A. Yes.

Q. And how did he share it with you? Did he make a copy and give it to you? Did he --

A. Yes.

Q. -- go over it in your virtual meetings? How was that

done?

A. I was mailed in what I was allowed.

Q. Okay.

A. And that was it.

Q. And did you have any issues about the information in the discovery you received?

A. Yes, some.

Q. And what was that?

A. Just the way things -- some of the -- certain -- certain things that were presented and just -- the -- the things that were found or were not found. Certain things that were said that weren't necessarily true.

Q. And what were those?

A. There was something about a safe.

Q. You mean when you asked the Chases to take you to the safe?

A. No. In the motion there was something about a safe that it was found, but it was empty. But, you know, every time I've been over there in the last six years, it was full of prescription narcotics.

Q. In the discovery, there was a letter from the Chases that related to the Chases' position on the lawn for Mr. Hendrix, is that correct?

A. In my discovery there wasn't a letter from the Chases whatsoever.

Q. Okay.

A. Before I took my plea.

Q. And you had already had a bond hearing at some point, correct?

A. Another virtual hearing, yes.

Q. Okay. Did the -- did the Chases make a representation during your bond hearing?

A. They did not.

Q. Okay. Do you know if they took a position different with you than they did with Mr. Hendrix?

A. I don't know. Based on what I do know though, I don't think they cared to have any position in it.

Q. Okay. With respect to your mental health issues, during the plea proceeding, you talked somewhat a lot about your mental health issues, the drugs that you were on, the drugs you were taking actually still on the day of the plea. You gave the judge that information, isn't that correct?

A. I don't know what information the judge had.

Q. What you told him is what I'm asking.

A. There -- there wasn't much said concerning those matters. I was told that we couldn't say much because I'm basically bowing down and accountability was pretty much the only thing to do.

Q. Okay. Do you recall what Mr. Bell told the judge at

the time of your plea?

A. The brevity of it, I do.

Q. Okay. He told him that, talking about your background, that you had been molested by your brother and you suffered under possibly bipolar and schizophrenia and depression. Do you recall him saying that?

A. Subtly.

Q. Pardon me?

A. Subtly.

Q. Subtly. He said those words, didn't he?

A. I --

Q. That was the second thing he told the judge in mitigation for your sentence. Do you remember that?

A. -- somewhat.

Q. Okay. Do you remember he talked about the drug abuse you were suffering and your self-medication which had occurred that led to the drug abuse? Do you recall that?

A. Somewhat.

Q. But that's not the only person who made representations, is it?

A. I don't know what you mean.

Q. [Inaudible -- muffled/muted] there?

A. Yes, she was.

Q. Okay. And Mr. Bell also talked about your surgery

that you had which led to you taking a series of medications and as a result of it, you resorted to heroin use, is that correct?

A. Yes.

Q. Well, that's a lot of detail, isn't it?

A. I guess that depends on how you define a lot and detail.

Q. He also said you were -- had become addicted to meth. Do you recall that?

A. I do.

Q. Then Mr. Bell asked and your wife appeared and she also made representations, again, talking about your drug addiction. And that you had spiraled with that addiction. Do you recall that?

A. I do.

Q. Do you recall your mother appearing before the judge, again, talking about your mental illnesses, your history of bipolar as a result, the drugs that you had took after your surgery. Do you recall that?

A. Somewhat. I don't -- I don't remember it being in such great detail. I know that they spoke, but they -- they didn't speak long and so, --

Q. And then you made a statement to the Court. Do you remember that statement?

A. -- well, first you got to tell me which statement.

Q. Well, do you recall that you made an own plea -- your

own plea for leniency to the Court at the time of the guilty plea?

A. I -- I remember it mentioned.

Q. And do you remember telling the judge that a few days before your arrest your mother had evicted you and your family from her home? Do you remember that?

A. I do.

Q. And do you remember who you moved -- told the Court you moved in with after that?

A. No.

Q. Did you move in with your co-defendant, Joel Hendrix?

A. Yes.

Q. So, if you told the Court that at the time of your guilty plea, that was a correct statement, is that correct?

A. Yes.

Q. And you declare that your dark place that you had gotten into, the tremendous burden that you had, your family suffering from depression based upon -- or your wife suffering from depression based upon essentially the emotional trauma that you had brought to the family with your drug abuse, the use of crystal meth; that you also drank a few beers, caused you to make what you called a terrible decision to go to what you assert was a drug dealer's house in an attempt to rob them of

your -- their drugs. Do you remember telling the judge that?

A. I do.

Q. And you blamed -- and then you said my mental illness, nor drug addictions do not justify my actions nor excuse the fact that I had a choice. Correct?

A. Again, accountability was the goal.

Q. Alright. But about additional family background, do you recall Judge -- excuse me, Mr. Taylor, advising the Court that you had trauma earlier in your life, essentially, being a victim of child abuse. Do you recall that?

A. He -- he mentioned it. But it --

Q. Mentioned it. He said it -- one of the first things he did on his plea in mitigation that you had suffered a traumatic childhood, essentially, correct?

A. -- briefly, correct.

Q. Okay. And with that information that was presented to the judge, what, if anything, additionally did you want your lawyer to do at the time of your guilty plea?

A. Things that he claimed he wasn't allowed to do.

Q. And what was that?

A. Well, it was -- it concerns more the victims and evidence of their operations. Six years of cell phone records, drug activities, and more factual things that

would just base up the brief -- or not base, but back up the brief claims that he made concerning the mitigations -- mitigating circumstances. Just more investigation.

Q. More investigation of what? You admitted to him that you committed a crime. You admitted to the Court that to -- on that day, that you made a terrible decision and went in and tried to rob what you asserted were your drug dealers.

A. Again, from the very beginning, it wasn't a trial case. It was going to end in a plea and during a plea, you just have to be accountable.

Q. Okay. At the time you spoke to the jury, excuse me, to the Judge, at your plea, you were under oath, is that correct?

A. That is correct.

Q. And being under oath, you swore to tell the Judge the truth?

A. That is correct.

Q. Correct?

MR. ZELENKA: I have no further questions. Thank you.

THE COURT: Redirect?

MS. MCMAHAN: Just briefly. Let me get my microphone. I tend to leave this places.

REDIRECT EXAMINATION OF MICHAEL NOWINSKI

BY MS. MCMAHAN

Q. Mr. Nowinski, were you shot that night?

A. I was.

Q. And where were you shot?

A. The center of my chest, my right breast.

Q. Did you have to go to the hospital?

A. I did.

Q. Did you get treated for that?

A. I did.

Q. And then were you back in the detention center once you got treated for that?

A. That's where I went after I left the -- the hospital.

Q. And did you tell Mr. Bell about all of your addiction and mental health issues that you had going on at the time?

A. Not -- not initially, no. But it -- it came out eventually.

Q. And was he able to get some of your mental health records?

A. I don't know.

MS. MCMAHAN: I have nothing further, Your Honor.

THE COURT: Thank you. You may step down sir. Thank you.

MS. MCMAHAN: Applicant rests, Your Honor.

APPLICANT RESTS

THE COURT: Alright. Thank you, ma'am. Mr. Zelenka, anything from you, sir?

MR. ZELENKA: The State calls Taylor Bell.

CLERK: Do you solemnly swear and affirm the statements you are about to give should be the truth, the whole truth, and nothing but the truth, so help you God?

MR. BELL: I do.

CLERK: Thank you. Please be seated. [Inaudible -- muffled/muted]. And once you are seated, please state your name and spell your last name.

MR. BELL: Jacob Taylor Bell. I go by Taylor Bell. It's T-A-Y-L-O-R B-E-L-L.

DIRECT EXAMINATION OF TAYLOR BELL

BY MR. ZELENKA

Q. Mr. Bell, what's your present occupation?

A. I'm a criminal defense attorney and I also represent licensed professionals before the Department of Labor Licensing and Regulations such as pharmacists, doctors, nurses, dentists; anyone in the healthcare industry.

Q. Okay. Basically, what percentage of your practice is

criminal defense work?

A. Seventy-five, eighty-five percent. And typically, a licensed professional has some type of drug diversion, some type of allegations of criminal conduct that go along when I represent them before their respective boards.

Q. Okay. How long have you been practicing criminal law?

A. I was sworn in 2011, so 2024 now; so thirteen years. And prior to that I was a law clerk in the Richland County Public Defender's Office and practiced as an attorney in the Richland County Public Defender's Office for I think approximately six years before I went into private practice.

Q. Thank you. As part of your practice, had you handled major felony cases like murder, armed robbery, burglary; matters of that?

A. I have. I've handled murder, numerous criminal sexual conduct cases, armed robbery. I mean, a plethora of that -- those types of cases. Been to trial on those types of cases and -- and yes.

Q. Okay. At some point you became involved in the case of State versus Michael Nowinski, is that correct?

A. That's correct.

Q. And how did that occur? How did you become involved?

A. At the time I was, I think it was a 608 appointment

list, and this case was appointed to me by, at the time, by the Lexington County Public Defender's Office.

Q. Okay. And as a result of that appointment, what, if anything, did you do concerning getting an understanding of the State's case against your client, Mr. Nowinski?

A. Well, in every case I file a discovery motion. They turn over copies of the evidence and I follow-up with the Solicitor's Office about what I believe I'm missing or anything of that nature. And I re -- obtain the discovery, review the case, met with my clients. Specifically, in this case, Mr. Nowinski, I don't -- I can't recall exactly how many times, but met with him, discussed the case, discussed the evidence.

Q. Okay. When you were initially appointed in the case, was Mr. Nowinski incarcerated?

A. Yeah, he was.

Q. Okay. And how did you meet with Mr. Nowinski, initially, if you recall?

A. Honestly, I don't necessarily recall exactly. I know that I went and saw him at the Detention Center a couple of times, several times. I know that I also had access to Securus, which is a video conferencing because at the time it was COVID, and visitation was

very limited; but we had unlimited access to free visits through Securus. And so, we could scheduling Securus visits on a regular basis.

So, I -- I had -- I -- I don't know how many -- I would approximate -- I tried to, when I was handling cases, if an individual was incarcerated, my goal was to meet with them at least once a month while they were incarcerated. And -- it's not necessarily always attainable.

When I was a public defender, we had a rule, a set rule in the Solicitor's -- in -- in the Public Defender's Office in Richland County, you had to meet with your client at least every ninety days. I tried to do a little bit better than that when I was in private practice. I thought that when you do that, it -- it just leads to, you know, sometimes serious cases take a long time to -- to resolve. And if you can talk with your client, you -- you gain, you know, they understand that you care about their case and you care about them and you gain trust. And -- and that's what it, at the end of the day it matters that you -- it is that the client trusts you at the end of the day.

Q. And in your meetings with him, were you able to -- to share and have a discussion about the State's discovery?

A. I -- I was.

Q. Alright. And what was Mr. Nowinski's reaction to the discovery that were presented to him from the State?

A. Well, from the get-go, I mean, once I got discovery, we talked about the case and -- and we both came to the conclusion this wasn't a trial. I mean, he got shot on scene, inside the residence, that's not his. I -- I mean, for -- that's a surmountable obstacle that I would have to overcome in a case like this, for someone to be shot inside, in the chest, not in their house.

It -- it -- there's no way around that. He -- he had to go to the hospital. He had been shot. He was apprehended shortly thereafter. I -- I -- I don't know what I'd do with that in terms of coming up how an individual was shot inside a residence that's not theirs.

Q. Okay. When did you learn about his mental health history?

A. We discussed that. I typically like to figure out, you know, in -- in cases -- you've got to figure out a reason of why. It doesn't necessarily excuse, but why did something happen if it's terrible? And so, we discussed drug use. We discussed how he got to the residence. And why they were there. And it ultimately

led to drug use and we talked about his past and what brought him to that point of drug use.

That's -- I always find it interesting in my practice as to how people get to where they are. I think I educate myself about things. I can educate my clients in the future about how to avoid, you know, traps of -- of drug use and subst -- such things like that and the dangers of it.

But ultimately, it initially started with his childhood where he disclosed that he had been sexually assaulted by a family member. And then it got disclosed that the drug use really started after a surgery that he had had that -- that had caused issues that wasn't necessarily a surgery that -- that went through properly, or there were some side effects to it. Starting out with opioids and then led to heroin, then led to methamphetamines.

You know, just -- he -- we went down that road as well. We talked about his, you know, being diagnosed as schizophrenic. He talked about the medication; I think Risperdal was one of the medications. Seroquel was another, which, in my experience of having represented numerous individuals with mental health conditions; those are pretty strong medications that are prescribed. I mean, they're strong medications. So,

--

Q. Okay. Did you -- as part of your defense, seek to acquire any mental health records?

A. I believe so. I believe his mother actually provided those to me. I can't recall off the top of my head. It's been a while. But I do -- I do know I had -- I had -- I mentioned it in my plea. In -- in -- in the plea, as I was reading over the transcript the other day when it was sent to me and I think I did mention an exact time in which he was diagnosed with those conditions at a younger age.

I -- I -- I don't know exactly if I -- if I had all of the records, but I do know that I -- I was made aware of the conditions and -- and I think it -- ultimately, it led to non-compliance with medications is -- is what led to the -- to the -- to the drug use.

Q. Okay. And you mentioned the mother. What communications did you have with the defendant's mother, with the defendant's wife, if any?

A. They had my cell phone. I've -- even when I was taking appointed cases, I gave out my cell phone. This was also during COVID. All of my clients had my cell phones and family members too. They can call me any time. I get phone calls at 6:00 a.m. in the morning; I get phone calls at 10:00 p.m. at night.

Q. Okay. And did you have communications with the mother and wife about the defendant's demeanor, matters which could have led to the events that day when the stars lined up and the Chases and the defendant both got injured?

A. Yeah. We -- we discussed the case.

Q. Okay. Let's talk about plea negotiations. You've since communicated that quickly on you realized that this was not going to be a -- a case that would result in a favorable trial verdict. What type of negotiations did you do with Sutania Fuller and with Solicitor's Office?

A. Well, I will say this that Sutania is one of the most difficult Solicitors in Lexington County. So, it by -- by the way, unfortunately, in -- I our practice, the -- the luck of the draw of who you get as your prosecutor, a lot of times, it's unfortunate that that -- that results in -- in plea offers that you get. And essentially, she had offered a cap of thirty-five years, which, you know, I had advised my client that -- not to take that plea.

I -- I didn't think that if we went to trial and -- and we lost at trial, I didn't think he'd get thirty-five years. I think that would be at the -- the max end of what he'd get. I think thirty would

have been what he might have gotten if he went to trial and lost. So, I advised him, you know, I wouldn't accept that plea.

Q. Okay. So, how did it go from there?

A. We went into it and had a bond hearing and essentially rejected the plea by having a bond hearing. We -- we essentially said we're not taking that. We're going to go forward on a bond hearing.

Q. Okay. Well, do you know, or do you recall whether -- obviously, the State opposed the bond; but whether the victims' position were revealed at the time of the bond hearing with respect to your client, Mr. Nowinski?

A. I don't remember. I don't think they appeared honestly. I -- I don't. I don't believe that they appeared at the -- the bond hearing. I -- I honestly don't recall, but if -- if I do, I think the only time I heard about the victims in the case, besides from my client about them, you know, what the illegal activity was going on at the residence, was when -- after the plea I had had a conversation with Jack Duncan who was the attorney for -- well, Jack had called -- Jack Duncan had called me about my case after my plea.

He represented the co-defendant and I was then made aware of a letter that had been -- that had been sent to him, or sent to the State -- yeah, had been

sent to the State by the -- the victims in the case.

Q. Alright. And that was related to Jacob Hendrix, correct?

A. It was.

Q. And who was related to the position with the -- do you have that letter --

A. It's in the materials. I saw it. I don't -- I don't have it right in front of me. We switched over from what used to be Needles software case management to now Litify. So, it -- when we did the conversion it kind of messed up a little bit of my time line and database of my -- of my notes. It's been a little bit of time.

So, but I've looked at it and -- and I got that and I -- I actually filed what -- what I had requested for a Motion to Reconsider the Sentence based on failure to turn over discovery that I believed was *Brady* material in this case. I filed that motion on behalf of my client because I believed that it should have been turned over because it went into the credibility of the victims in the case as to whether or not they were truly injured if they were not opposed to somebody getting a misdemeanor offense in the case.

I believe that that goes to overall credibility of the victims in the case if -- if one is saying oh,

we got home, we -- we got invaded in a home invasion by some random strangers - well, they're saying to this person oh, well, we -- you know, we're not opposed to this guy pleading to some kind of misdemeanor criminal conspiracy charge.

To me, overall, that -- I am going to be less tend -- less to believe that individual's credibility and -- and I think that should have been disclosed. So, I filed a motion to -- to reopen the case -- to reconsider based on failure of the State to turn over discovery.

Q. And do you -- do you recall the result of that --

A. It was denied.

Q. -- it was denied by Judge McLeod?

A. It was.

Q. After the State opposed it?

A. That's correct.

Q. Okay. And -- and those materials are already part of this record?

A. Yes, you're -- it is.

Q. And with respect to --

MR. ZELENKA: Court's indulgence. Sorry.

MR. ZELENKA CONTINUES

Q. -- with respect to your plea and mitigation that you

made in which you called the wife, the -- the Applicant's mother, and the Applicant to testify, were there other matters, in hindsight, that you wish you would have further presented to the Judge? Or -- or was that consistent with the manner that you normally present pleas and mitigation to the courts in South Carolina?

A. I think I did a pretty good job at presenting the case. You've got to walk a thin line, you know, when you're in a case that -- the victim's not clean, right? I knew that from the get-go. You've got to walk a clean line in -- in a case like that, that you've got to explain what happened; but you also don't want to, what I call victim bash.

You can't victim bash because that gets you nowhere, but you have to explain that, you know, this series of events that aligned wasn't some -- because the Solicitor tried to make it out like my client, Mr. Nowinski, broke into her grandfather's house. That's what she said. And that's not the case, okay? And I told the Judge that. I said her judge is -- I -- I said the prosecutor over here wants to make this personal and bring out her grandfather. This is -- it's not her grandfather; her grandfather is not a drug dealer.

And we had ample evidence that there was -- that -- that they were drug dealers. But you don't want to get too much into that because then, it -- it appears from the perspective from the bench, I believe, is to hey, it's okay to rob somebody, or it's okay to harm somebody if they're also -- you -- you don't want to. You have to walk a very, very thin line. And so, that's what I had to do.

You know, they're over there asking for thirty-five years. I'm asking for ten years. How can I do that? You've got to maintain responsibility and accountability in a plea, and -- but you also want to bring that out so that it's not the whole so-called stranger danger that the entire world and newspapers write about, right? And -- and that's what this case wasn't. And -- but the prosecutor tried to make it out to be that way. I think I did a pretty good job at bringing that.

You know, I -- I will say this, one of the victims was on the sex offender registry. I thought that was going a little too far, so I did not mention that because I wasn't sure. I -- I didn't want to get personal there, right, that wasn't related to the drugs. And -- and so, I didn't go there. I don't think it would have gotten me anywhere further either

though.

Q. Okay. And -- and you did that as a matter of strategy, understanding the way the court system generally works and sees how expansive the role of the lawyer in mitigation, is that correct?

A. Correct.

Q. Now, when -- when you talked about the -- plea negotiations with your client, what did he ultimately agree to, and how did that agreement occur?

A. We had burg --

Q. From the rejection before.

A. -- yeah. We had a -- we rejected the initial offer because it included the burglary first which carried the fifteen -- mandatory minimum of fifteen. I'm -- yeah. Mandatory minimum of fifteen. Eventually, she came off of that and gave burg second - violent, which came off the mandatory fifteen, which allowed me to ask for ten.

And at the end of the day, you know, if I'm trying to get a number that I -- I think was -- was adequate, in my eyes, and I'm not the one that makes that decision at the end of the day. But having handled a lot of cases, you know, like this, I -- I kind of have a, you know, a compass guide/sliding scale of where I think things might land based on, you know, having

handled things before.

You know, I've handled armed robberies in this county where, you know, I've gotten ten mandatory minimum. I've gotten armed robberies where there were five to seven knocked up gas stations with a shotgun where I've gotten ten years, right? So, that's what I was shooting for here.

I mean, it -- you know, I think I said it in mitigation. What's thirty years going to teach somebody that ten won't when they've never been to prison? Right? I mean, it -- ultimately, that's a significant amount of time and I think it was sufficient in this case.

And so, we were able to get the -- I think Sutania ultimately realized I was going to go to trial on the case if she didn't come off that because I realized hey, I'm not going to get thirty-five -- my client's not going to get thirty-five years if he goes to trial. And I -- at the end of the day, after trial, Your Honor, this was a plea because she didn't make a reasonable plea offer -- or this was a trial because she didn't make a reasonable plea offer. You know, I would have just told the Judge that. And I think he would have gotten somewhere between twenty-five to thirty at -- at a trial in -- in what I -- I look at.

Once I was able to get off the mandatory fifteen, I said look, we've got a shot at getting ten here. I've done it before in a case, you know, so, you know, I -- I tried. I tried. I believe it -- I believed -- I told him look, if you want a shot at getting less than fifteen, this is your opportunity. Otherwise, you know, that fifteen is -- if we go to trial you're getting convicted of burglary first degree, and you're getting at least fifteen years.

Q. And what was the role of the mother, if any, in that negotiations?

A. I discussed it with her and I -- I believe that she had discussions with Mr. Nowinski.

MR. ZELENKA: I don't believe that I have any further questions at this time, Your Honor.

THE COURT: Okay. Cross-examination?

CROSS-EXAMINATION OF TAYLOR BELL

BY MS. MCMAHAN

Q. Do you remember Mr. Nowinski telling you no at first to that second offer?

A. I really don't recall.

Q. And why, in your opinion, was this not a trial and more of a guilty plea situation?

A. He got shot inside the residence of the house that he wasn't supposed to be in. I mean, if someone came

into my house, I have firearms, I'm -- that there -- there's a stand-your-ground law. I have a family. I am probably going to pull out a firearm and I explained that to him.

We have stand-your-ground in South Carolina, Castle Doctrine. It's very hard to overcome that you're acting in self-defense in somebody's house and he had a firearm in his hand, a shotgun, and you -- you go into someone else's residence with a firearm, pretty sure if you came into a residence anywhere in Lexington County, any Lexington County juror is going to say that you can -- you're free to shoot that person that's in your house, unlawfully carrying a firearm.

Just having lived here, knowing this community, running for state senate, talking to people in this community here about the -- what they believe their property rights are of their home.

Q. Well, did you ever get Mr. Nowinski's mental health records, or some of them?

A. Again, I -- I don't, a hundred percent, recall that. It's been a while. I may or may not have. I -- I think I did. I -- I --

Q. Would you have given Mr. Nowinski a copy of the discovery, or just gone over it with him?

A. I gave him a copy of discovery, I believe. I had my

office, I believe, mail it to him. I think at the time I couldn't hand things to inmates at the detention center because of COVID. Typically, I used to slide it.

They've now gone to a process in which you have to send it through, so it has to be scanned because of contraband these days. But I believe at the time it was mailed to him.

Q. So, the issue related to the letter, what did the letter say, that you recall?

A. I don't remember exactly. There is a copy that I looked over. But it -- it talked about culpability of the co-defendant in saying that the co-defendant, they didn't -- they thought a plea to like criminal conspiracy was -- was appropriate, which is a misde -- I -- I believe a common law misdemeanor. I can't recall off the top of my head right now though.

MS. MCMAHAN: The Court's indulgence. Nothing further, Your Honor.

THE COURT: Alright. Redirect, Mr. Zelenka?

MR. ZELENKA: Nothing on redirect.

THE COURT: You may step down.

MR. ZELENKA: Thank you, Your Honor.

MR. BELL: Thank you.

MR. ZELENKA: Anything further, Mr. Zelenka?

MR. ZELENKA: Your Honor, the only other matters that I would assert should be also considered. In addition -- I apologize for sitting. In addition to the guilty plea that it before this Court, we had attached to the Return a -- a number of items, which include the motions that we had discussed related to the particular letter. Those are before the Court and they should be in the Judge's packet, which was the motion made by Mr. Bell, the Response given by Sutania Fuller on behalf of the Solicitor's Office, and the denial of that motion by Judge McLeod.

And with that, essentially, taking judicial notice over those matters, the State would rest, Your Honor.

STATE RESTS

THE COURT: Anything in closing?

MS. MCMAHAN: I would just ask that you review the record as a whole before you make a decision.

THE COURT: Mr. Zelenka, anything else -- else in closing?

STATE'S CLOSING ARGUMENT

MR. ZELENKA: Your Honor, respectfully, this was a -- a very violent crime which occurred. The assessment made by defense counsel in the -- the way that

the case should looked at [*sic*] as a plea versus a trial, and his communications with his client, I suggest that he fell within the standards of competence demanded of individuals practicing criminal law in the State of South Carolina. That that -- they have failed to show the burden of proof that he was deficient, and more clearly, that he failed to show the Sixth Amendment prejudice that by counsel's action, there's a -- or omissions, that there is a reasonable probability that the result would have been that the defendant would have gone to trial, as opposed to taking a plea.

I think they've failed in the burden of proof on both of those. Essentially, I would cite two cases, *Strickland versus Washington*, out of the United States Supreme Court, and *Hill versus Lockhart*, also out of the United State Supreme Court, which addressed the way reviewing courts should look at a post-conviction setting, challenges to the effective assistance of counsel in a criminal trial, and particularly in *Hill v. Lockart*, in a guilty plea situation.

So, I would assert they failed in their burden of proof. The evidence before this Court, and particularly the guilty plea, reveals that there is essentially no issue in this case because counsel's

competent presentation in mitigation and the Applicant's admission that he did commit, essentially, the crime of burglary in the first degree at that particular time, as it is in South Carolina that he act -- went in there armed, with intent to commit a particular crime.

So, I would submit that this matter should be dismissed. I understand Your Honor has a need to review the records, and I don't expect a decision to come from you at this moment.

THE COURT: Thank you, sir. I'll take that under advisement and I'll have you guys an answer. Thank you very much.

MS. MCMAHAN: I'll keep you posted.

(End of Proceeding)

CERTIFICATE

I, Tina M. Steinmetz, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in Circuit Court 14 for Lexington County, South Carolina, on the 27th day of August 2024.

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

July 15, 2025

Tina M. Steinmetz

Tina M. Steinmetz, Transcriber

FILED
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LISA M. COVER
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Michael M. Nowinski, SCDC #384171; Applicant, v. State of South Carolina, Respondent.	Case No. 2021-CP-32-2926 ORDER OF DISMISSAL

This matter comes before this Court by a pro se application for post-conviction relief (PCR) action commenced by Michael M. Nowinski (Applicant) on September 3, 2021. On October 26, 2021, the Applicant was appointed Ashley A. McMahan to assist. On November 18, 2021, the State made a Return Partial Motion to Dismiss and Motion for More Definite Statement. On August 19, 2024, the Applicant through counsel McMahan made an Amended Application.

On August 27, 2024, this matter was heard before this Court. The Applicant was present and represented by court appointed counsel McMahan. The Respondent was represented by Deputy Attorney General Donald J. Zelenka. Testimony was received from the Applicant, and counsel J. Taylor Bell. At the conclusion of the hearing, this Court took the matter under advisement. This Court subsequently requested a proposed order from the State with consideration by opposing counsel. This Order of Dismissal follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on

August 19, 2019, following an investigation into a home invasion in West Columbia. During its July 2020 term, the Lexington County Grand Jury indicted Applicant for first-degree burglary (2020-GS-32-1411); armed robbery (2020-GS-32-1397); two counts of kidnapping (2020-GS-32-1414, -1415); and possession of a weapon during the commission of a violent crime (2020-GS-32-1421).

On October 15, 2020, Applicant appeared before the Honorable Walton J. McLeod, IV, and pleaded guilty to the lesser-included offense of second-degree burglary (violent) and as indicted to the remaining charges without formal negotiations or recommendations from the State as to sentencing. However, the State dismissed two additional kidnapping indictments (2020-GS-32-1419, 1420); three indictments for first-degree assault and battery (2020-GS-32-1404, -1409, -1410); and one indictment for criminal conspiracy (2020-GS-32-1413) in exchange for Applicant's plea. Jacob Taylor Bell, Esquire (Counsel) represented Applicant and Assistant Solicitor Sutania Fuller prosecuted the case. Judge McLeod accepted Applicant's plea and sentenced him to concurrent terms of twenty years' imprisonment for armed robbery, twenty years for each kidnapping charge, fifteen years for burglary, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely motion to reconsider,[1] to which the solicitor filed a response. On March 5, 2021, Judge McLeod issued an order denying Applicant's motion. Applicant did not appeal.

II. Factual Basis of the Guilty Plea

[1] Notably, Applicant's motion to reconsider was based on the issue he raises in the instant action—that the solicitor violated *Brady* by failing to turn over the victims' letter regarding Applicant's co-defendant.

On August 19, 2019, law enforcement responded to a mobile home on Greenwood Drive in Lexington County in reference to a home invasion. (Plea Tr. 11). The 9-1-1 caller informed the dispatcher that he was covered in blood and was assaulted by an intruder. (Plea Tr. 11). Upon arrival, deputies with the Lexington County Sheriff's Department observed that one of the victims, 72-year-old David Chase, had injuries to his head and his arm that were actively bleeding. (Plea Tr. 11). Officers then located James Chase, who was 73 years old at the time, with injuries to his face and head that were actively bleeding as well. (Plea Tr. 11). Two other individuals, Kenneth Jeffrey and Ashley Kirschner, were also present during the home invasion. (Plea Tr. 11). Kenneth suffered a minor injury to his back. (Plea Tr. 11).

James reported that, at approximately 6:00 in the morning, he heard his dock barking and knocking on the door. (Plea Tr. 13–14). Kenneth stated he told the person to go around to the other door because that door was not operable. (Plea Tr. 14). As soon as he opened the door, James was immediately struck in the head by the intruder, who was later identified as Applicant, and fell to the floor. (Plea Tr. 14). He then heard the intruder go into the living room and yell at Kenneth and Ashley not to move. (Plea Tr. 14). He also heard his brother, David, yelling. (Plea Tr. 14). David told law enforcement that he also heard yelling coming from the living room. (Plea Tr. 15). By the time he was able to get up and grab his walker, the intruder struck him in the head with a shotgun. (Plea Tr. 15). David reported that he tried to get his walking stick to get back up, but that the intruder hit him again and told him to stay down. (Plea Tr. 15–16). The intruder then asked David where the safe was located. (Plea Tr. 16).

Once James was able to regain his footing, he went into his bedroom, retrieved his Marlin 30-30 rifle, and loaded it. (Plea Tr. 14). Photographs taken by law enforcement show the blood

trail from James' injury going into his bedroom and to the side of the bed where he stored the rifle. (Plea Tr. 14).

After loading his rifle, James went back into the hallway, where he saw the individual who attacked him. (Plea Tr. 14). The man was exiting David's room carrying the same shotgun he observed earlier. (Plea Tr. 14–15). James fired the rifle, striking the intruder. (Plea Tr. 15). After a struggle ensued over possession of the rifle, the intruder took the rifle and left the residence. (Plea Tr. 15). He left the shotgun behind. (Plea Tr. 15). According to law enforcement, the way Applicant was holding the shotgun is probably the only reason he is alive today because it slowed the impact of the bullet from the rifle. (Plea Tr. 15).

Kenneth reported that he saw the intruder strike James with the shotgun. (Plea Tr. 16). He was forced down on the living room floor, and stayed there until he heard the shot and saw James and the intruder struggling. (Plea Tr. 16). Kenneth got up and exited the home to get help. (Plea Tr. 16). Once outside, he saw a small car sitting on the roadside that drove off as Kenneth was starting his truck. (Plea Tr. 16). He tried to leave to get help, but then realized he had a flat tire on his truck. (Plea Tr. 16). He then observed that all the vehicles in the yard had flat tires. (Plea Tr. 16). Law enforcement later located an orange-handled hunting knife they believe was used to slash the tires. (Plea Tr. 17).

Ashley was not injured, but heard David crying from his room and the intruder asking about a safe. (Plea Tr. 17). Ashley described the individual as decent size, face covered, and approximately six-one. (Plea Tr. 17). James also indicated that the intruder's face was covered, but he described the man as approximately six feet tall and weighed approximately two-hundred pounds. (Plea Tr. 15).

Shortly after the original 9-1-1 call, law enforcement was notified of an individual with a gunshot wound to the chest located near the corner of Greenwood Drive and Highway 302. (Plea Tr. 16). James' rifle was located nearby, along with the gloves and black face mask Applicant wore during the home invasion. (Plea Tr. 12). Applicant was taken to the hospital for treatment and later booked into the Lexington County Detention Center. (Plea Tr. 12).

The co-defendant in this case was identified as Joel Hendrix, who was a friend of Applicant's. (Plea Tr. 12). He admitted to driving Applicant to commit the home invasion and gave a statement to law enforcement implicating Applicant in the crime. (Plea Tr. 12). He indicated that Applicant discussed committing a "lick" and asked Hendrix to drive him. (Plea Tr. 20). Hendrix told law enforcement that he did not want to drive Applicant, but he decided to do so to avoid a physical fight. (Plea Tr. 20). He described Applicant as "not letting up," potentially on drugs at the time. (Plea Tr. 20). Hendrix stated he dropped Applicant off and parked outside for no longer than fifteen minutes. (Plea Tr. 20). He apparently drove off when he heard Applicant yelling. (Plea Tr. 20).

III. ALLEGATIONS BEFORE THIS COURT

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

1. "Prosecutorial misconduct"
    a. "Failure of the State to run over the undisclosed victim letter while framing its presentation at sentencing as the victims, whom were not present, wanting significant prison time violated Mr. Nowinski's due process rights under Brady. The information provided in this letter is significantly different than the way the states[*sic*] portrayal of how the victims felt. This letter was not provided for use during Mr. Nowinski's mitigation and would have been used to undermind[*sic*] the states[*sic*] presentation. The

states[*sic*] opening statement was in reference to Mr. Nowinski's juvenile record providing the presiding judge with these records for viewing. The state believed that this was a random act and Mr. Nowinski had no relationship with the victims. There is evidence and witness statements in the discovery providing information that the victims and Mr. Nowinski had a relationship based on drugs. The state mentioned to the court that the co-defendant did provided[*sic*] a written statement but questioned the integrity of this statement. The difference between Mr. Nowinski's and co-defendant[*sic*] sentencing is significant and unduly harsh. During the states[*sic*] presentation, at one point, the state mentioned that they did not care if the victims are drug dealers. The states[*sic*] tactics and statements were inflammatory and used to impose an unjust and harsh sentence."

2. "Involuntary plea agreement"
    a. "A Brady v. Maryland violation arising from the prosecutions[*sic*] failure to disclose material evidence in its possession is 'material' in the context of a guilty plea when there is reasonable probability that, but for the states[*sic*] failure to disclose Brady evidence Mr. Nowinski would have refused the guilty plea and gone to trial. When a defendant lacks knowledge of material evidence in the prosecutions[*sic*] possession, the waiver of constitutional rights cannot be deemed knowing and voluntary. Gibson v. State 334 SC 515 (1999). The states[*sic*] obligation to make disclosures of material under Brady v. Maryland is pertinent not only to the accused's preparation for trial but also to his determination of whether to plead guilty. The defendant is entitled to make that decision with all awareness of favorable material known to the state. The states[*sic*] failure to disclose the undisclosed victim letter violated Mr. Nowinski's constitutional right when agreeing to plead guilty."
3. "Ineffective assistance of counsel"
    a. "During Mr. Nowinski's pre trial detention he was deprived the opportunity to have in person visits with

> counsel in designated legal rooms at Lexington County detention center. The deprivation of adequate communication between Mr. Nowinski and counsel was the direct result of the 2020 COVID-19 pandemic. Mr. Nowinski was forced to have recorded virtual visitation with counsel. During these virtual visits, it was difficult hearing and understanding conversation between Mr. Nowinski and counsel due to a malfunctioned monitor, ongoing inmate recreation, and poor internet connection. These virtual visits invaded Mr. Nowinski's privacy with counsel causing tremendous misunderstandings and decrease in confidence for Mr. Nowinski in his counsels[*sic*] representation during plea negotiations."

On August 19, 2024, the Applicant filed an amended application raising the following ground:

1. Ineffective Assistance of Counsel of J. Taylor Bell.

A. Failure to present mitigating evidence during sentencing regarding the Applicant's mental health and background growing up and the issues the Applicant faced which would have ultimately led to a lesser sentence than the one the Applicant received.

MATTERS BEFORE THE COURT

This Court has the Lexington County Clerk of Court records regarding the subject convictions, Applicant's pertinent records from the South Carolina Department of Corrections, the plea transcript, pleadings related to the motion for reconsideration of the sentence and order denying reconsideration dated March 5, 2021, and the records of the current PCR action

FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATED TO ALLEGATIONS OF PROSECUTORIAL MISCONDUCT AND INEFFECTIVE ASSISTANCE OF 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 failed to meet the high burden required for a grant of post-conviction relief pursuant to Rule 71.1, SCRCP, and the Uniform Post-Conviction Procedure Act (the Act). For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

BRADY VIOLATION CLAIM AND THE VICTIMS' LETTER ABOUT THE CO-DEFENDANT

This Court finds that Applicant's allegation of prosecutorial misconduct and "involuntary plea agreement" based on an alleged *Brady*[2] violation should be dismissed. The document Applicant claims is *Brady* material is a letter from two of the victims regarding the co-defendant. The letter states:

> We are the victims of an assault and burglary by Michael Nowinski. We are in favor of the bond that was granted Tripp Hendrix. We are not afraid of him. We believe a guilty plea by him to criminal conspiracy was more than enough.

A defendant who pleads guilty usually may not later raise independent claims of constitutional violations. *See Rivers v. Strickland*, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (stating "[t]he general rule is that a plea of guilty, voluntarily and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea"). However, "a defendant's decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999) (quoting *Sanchez v. United States*, 50 F.3d 1448, 1453 (9th Cir.1995)); *accord Gustine v. State*, 325 S.C. 123, 127–28, 480 S.E.2d 444, 446 (1997)

[2] *Brady v. Maryland*, 373 U.S. 83 (1963). "*Brady* requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment." *Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993).

("waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences").

A *Brady* violation occurs "when the government fails to disclose evidence materially favorable to the accused." *Youngblood v. West Virginia*, 547 U.S. 867, 869 (2006) (per curiam). In the context of a guilty plea, "[a] *Brady* violation is material when there is a reasonable probability that, but for the government's failure to disclose *Brady* evidence, the defendant would have refused to plead guilty and gone to trial." *Gibson*, 334 S.C. at 525, 514 S.E.2d at 325; *Riddle v. Ozmint*, 369 S.C. 39, 44–45, 631 S.E.2d 70, 73 (2006) ("Evidence is material under *Brady* if there is a 'reasonable probability' that the result of the proceeding would have been different had the information been disclosed."); *see United States v. Agurs*, 427 U.S. 97, 109–10 (1976) ("The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense."); *see also State v. Hutton*, 358 S.C. 622, 632, 595 S.E.2d 876, 882 (Ct. App. 2004) (noting that "exculpatory evidence is evidence which creates a reasonable doubt about the defendant's guilt"). An individual asserting a *Brady* violation in the context of PCR must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. *Id.* (citing *Kyles v. Whitley,* 514 U.S. 419 (1995).

Here, the letter from two of the victims regarding Applicant's co-defendant, Tripp (Joel Hendrix), whose role in the home invasion was limited to driving the Applicant to the residence and his shotgun was used in the assault by the Applicant, is not *Brady* evidence because it is neither exculpatory nor material to Applicant's own guilt. Rather, it relates solely to the co-defendant. Applicant's claim that this letter could have been used in mitigation or to undermine the State's

presentation regarding sentencing is patently meritless. Moreover, as far as sentencing, Applicant cannot establish that the result of the proceeding would have been different had the letter been disclosed because Judge McLeod considered the letter and specifically found that "the sentence would not have been effected or otherwise altered by presenting the victim letter pertaining to the co-defendant in this matter" in his Order Denying Reconsideration of Sentence.

This Court finds, as did Judge McLeod in his March 5, 2021 Order, that the letter from the victims related solely to the co-defendant in this case. It referenced the victims' feeling as to the co-defendant, and what they believed may be appropriate charging decision and punishment for him. The letter never referenced Applicant or suggested any leniency for Applicant in any manner for his action against the victims. The victims never expressed anything as to punishment for Applicant. The defense attorney testified that he believed the letter to be *Brady* material and moved for a sentence reconsideration based upon that opinion. This was denied by the sentencing court. Applicant was not able to establish how the information in that letter would have helped him in either mitigation for his actions or in deciding whether or not to go to trial in the case.

This Court finds the letter did not meet the standard for a *Brady* violation. No evidence supports that the letter was exculpatory. See *Gibson*, 334 S.C. at 524, 514 S.E.2d at 324 (providing "the evidence [must be] favorable to the accused" for its nondisclosure to constitute a Brady violation). For purposes of the plea and sentencing, the Applicant failed to credibly show that he would have to a reasonable probability rejected the plea offer and gone to trial based upon the victims apparent satisfaction that they thought the lesser role of the co-defendant was deserving of a lesser offer than the Applicant's plea offer. For this reason, the ground must be dismissed.

Further, a review of the records of the motion for reconsideration after the guilty plea before Judge McLeod shows that this same issue was fully litigated there with a determination related no

change in the sentence. Issues which were litigated in those proceedings cannot be raised in a PCR action. Under the doctrine enunciated in *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975), errors which can be reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings. S. C. Code Ann. § 17-27-20(b) (1985) of the Uniform Post-Conviction Procedure Act provides that post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." The *Simmons* rule gives effect to the Legislature's clear intent that the post-conviction relief procedure is not a substitute for a trial or appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal. *Peeler v. State*, 277 S.C. 70, 283 S.E.2d 826 (1981); *see also Cummings v. State*, 274 S.C. 26, 260 S.E.2d 187 (1979); *Ashley v. State*, 260 S.C. 436, 196 S.E.2d 501 (1973); *Sellers v. Boone*, 261 S.C. 462, 200 S.E.2d 686 (1973). Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel. *Hyman v. State*, 278 S.C. 501, 299 S.E.2d 330 (1983). *Drayton v. Evatt*, 312 S.C. 4, 8–9, 430 S.E.2d 517, 519–20 (1993). Since this *Brady* issue by the initial non-disclosure of the victims letter related to Tripp Hendrix, the ground must be denied for this additional reason.

A. Ineffective Assistance of Plea Counsel, Generally

This Court finds that Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See*

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

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

The PCR applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of "were outside the wide range of competence" demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the

applicant must establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Id.* However, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696.

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

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

of counsel's performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56. The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 137 S. Ct. 1958, 1966 (2017). However, reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Id.* 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.*; *Padilla*, 559 U.S. at 372 (explaining that the applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

B. Involuntary Guilty Plea

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

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624.

The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *see generally Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty

plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

An applicant who enters a plea on the advice of counsel may "only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the [applicant] would not have pled guilty, but would have insisted on going to trial." *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him). 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).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment." *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

Surmounting *Strickland*'s high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.' "). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); *see also Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"); *cf. United States v. Broce*, 488 U.S. 563, 569 (1989) ("A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a

guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.").

Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings"). "What is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof." *McMann v. Richardson,* 397 U.S. 759, 773 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). "Furthermore, there must be some consequence attached to the decision to plead guilty." *People v. Schneider,* 25 P.3d 755, 761 (Colo. 2001) (*cited with approval in Jamison*, 410 S.C. at 469, 765 S.E.2d at 129) ("A defendant who voluntarily and knowingly enters a plea accepting responsibility for the charges is properly held to a higher burden in demonstrating to the court that newly discovered evidence should allow him to withdraw that plea.").

Testimony from the PCR Proceeding

Michael Nowinski, the Applicant

During the PCR hearing, the Applicant testified that he was in detention from his arrest until the plea 14 months later. He claimed he spoke with counsel only twice in person and possibly four (4) times virtually due to COVID restrictions. He felt this hindered the counseling he received in the matter because he felt that they did not talk much. Nowinski claimed that counsel Bell was adamant about not going to trial in this matter because he felt this was not a trial type of case. However, in hindsight, Nowinski felt that he should have gone to trial based upon evidence he discovered on his own accord over the past five years.

The Applicant testified that he had mental issues at the time because of his use of drugs and alcohol which he thought should have been presented better at his plea. He stated that he was "self-medicating." He stated he informed counsel of this matter. Nowinski stated that he had been hospitalized multiple times for his mental issues his entire life, although he did not fell the treatment was helpful because he just would go back to the same situation and people when he was released. He stated that he had received mental health treatment at Three Rivers, Baptist and William S. Hall hospitals. He felt this was inadequately presented at his sentencing by counsel Bell.

The Applicant testified that his life was burdensome because he was struggling to make ends meet and had recently been fired from his job as an electrician. He stated that he had two children and a wife, who also used drugs, to support. He felt that at that time his mind was unguided and dysfunctional, which he claimed was only briefly presented to the court.

Nowinski stated that first plea offer that he rejected was 15 to life with a 35 year cap which he rejected. He stated that the second offer was for 10 to 30 years which he initially rejected. However, after he discussed the offer with his mother, the Applicant claims that he accepted the plea offer after she convinced him to take it.

The Applicant claimed that there were issues with discovery, which involved the letter from the victims. Nowinski stated that he had a year's long relationship with the victims and felt that introducing the letter would have made a difference and felt mitigating circumstances should have been presented in full view. He regretted that he did not take the case to trial, but counsel Bell felt it was not a possibility. He noted that this case was not ever scheduled for trial.

On cross-examination, the Applicant stated that he pled because it was the only option and he knew he was guilty of something, but did not know what. He confirmed that he was present at the scene to purchase drugs, but did not purchase any, but tried to take the drugs. He admitted that he had a shotgun at the scene which was used to commit the crime to obtain drugs. He confirmed that the victims were attacked "by an intruder" and he confirmed that he knocked on the door and entered. He also confirmed that the victims had "minor injuries". The Applicant recalled that at the plea, the State went over the evidence that he claimed he did not agree with and told counsel, but he proceeded with the plea. He stated that they knew the Chases well and told counsel that they went to get drugs and entered the house with the intent to take the drugs. He claimed his co-defendant took the shotgun with him and leaned it against the house and Applicant took it inside. He disagreed that the victims were struck with the shotgun, instead claiming that they were struck with "brass knuckles" which Applicant stated that he had. Nowinski stated that he left after he was shot in the chest. He confirmed that his codefendant was outside when Applicant entered the house and he told counsel that he had no recollection if the codefendant entered the house.

Nowinski claimed that his counsel always maintained after he told him this version that he kept suggesting a plea. He claimed that he had an issue with the way matters were presented and the discovery. He noted that the safe was usually full of narcotic drugs, but this time it was

empty. He stated that the Chases did not make any representations at his bond hearing and they did not care to take a position on his case.

He complained that not much was said about his mental health issues at sentencing. He stated that he and counsel spoke a lot about it up to the sentencing date, but did not discuss it at the sentencing asserting that claiming it was because he was not allowed. He only recalled that counsel subtly made comments about his mental health and drug abuse issues. He recalled a discussion about his surgery leading to his drug abuse of heroin and meth. He stated that there was information about bipolar, depression, and schizophrenia that was available. He also testified that he had been molested during his childhood.

Nowinski acknowledged that his wife testified and spoke about his addiction and his mother spoke about his drug use and mental issues. He stated that he made a plea for leniency at his plea.

Nowinski stated that he had been evicted from his home by his mother and was living with his codefendant and was in a "dark place" at the time of the crime. He recalled telling the court that he took accountability for his actions, but blamed it on his addiction and mental health issues. He complained that counsel mentioned his abuse as a child issue only briefly. The Applicant complained that counsel did not do want he wanted him to do and put in evidence about the victims. He wanted more evidence to support his mitigating circumstances presented.

On re-direct, Nowinski admitted that he was shot in the center of his chest and was put in the detention center after his hospitalization. He also acknowledged that he did not tell his counsel initially about his mental issues.

Counsel Taylor Bell

Counsel Bell testified that 75-85% of his cases are criminal cases. He stated that he was sworn in as a lawyer in 2011 with 13 years of criminal experience. He admitted that he had handled a number of felonies. He was appointed on Nowinski's case by the Lexington County Public Defender's Office through Rule 608. He testified that he went and saw multiple times. He acknowledged the COVID resulted in limited meetings. Bell stated the he tried to meet with him monthly or every 90 days because you need to have a client trust you.

Bell stated that he shared the State's discovery with the Applicant. The most damaging fact he concluded was that the Applicant was shot in the chest inside the residence that was not his own and apprehended shortly thereafter in the hospital which was hard to defend before a jury. Counsel opined that they fully discussed his drug use and past traumas and mental history to help determine how and why this happened. He believed that he got the mental health history and records from the Applicant's mother and was aware of the conditions that led to the drug use after surgery . Counsel stated Nowinski's use started with opioids, then heroin, and then meth. He learned that the Applicant was taking strong medication. Counsel felt that the Applicant's non-compliance with prescriptions led to the illegal drug use.

Counsel Bell described the plea negotiations with the state prosecutor, Sutania Fuller, as difficult.. Counsel Bell stated that his goal was to try to get the State to agree to around 10 years rather than a trial which would have resulted in a minimum of 15 years. He stated the first offer had been a 35 year cap during the bond hearing. Counsel stated he advised his client not to accept that offer. He did not recall that the Chases were present at the bond hearing.

Counsel felt he did a pretty good job at mitigation during the plea. He felt that he had to explain what happened, but strategically tried to not victim-bash so he did not get into the Chases being drug dealers or that one of the victims was on the sex offender registry, although he was

aware and considered it. Counsel believed this would not have aided the Applicant in sentencing. He stated that they were going to trial if the first plea offer did not change, Counsel believed he would have gotten 20-30 years if he went to trial.

Counsel testified that he later learned that the State had a letter from the Chases related to codefendant Hendrix. He filed a motion to reconsider the sentence based upon the letter. This was denied by Judge McLeod, after the State objected.

Counsel stated that he did not recall if he got all the mental heath records. He stated that his office mailed the discovery to the Applicant.

Communication with Counsel during COVID-19 Pandemic

This Court finds that the Applicant has failed to prove counsel was ineffective in failing to adequately meet with his client prior to the guilty plea. Applicant contended in his initial *pro se* application that he was "depriv[ed] of adequate communication" with his attorney due to the COVID-19 pandemic but framed this allegation in the context of ineffective assistance of counsel. Specifically, he stated that the virtual visits conducted at the jail "invaded [his] privacy with counsel causing tremendous misunderstandings and decrease in confidence . . . in his counsel[']s representation during plea negotiations."

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. *Campbell v. Polk*, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); *United States v. Olson*, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." *Easter v. Estelle*, 609

F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing *Easter*) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.") Mere speculation and conjecture is insufficient to substantiate allegation that counsel's deficient performance was prejudicial. See *Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

During the PCR hearing, Nowinski testified that he only met with him twice in person and possibly four (4) times virtually. To the contrary, counsel Bell credibly testified that he met with the Applicant multiple times over the 14 month he was in the detention center. As importantly, the Applicant at the plea stated under oath that he met with his attorney prior to the plea who answered all of his questions and that he was satisfied with his services. Tr.p. 8, l. 4-11. These statements in open court and under oath carry a presumption of verity, absent a cogent reason to the contrary. *Blackledge v. Allison*, 431 U.S. 63, 74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977).

The Applicant has failed to indicate anything that counsel was unaware of due to the meeting they had or failed to acquire to aid in his decision to plead guilty or to present in mitigation. This court finds that counsel was fully aware of the facts of the case and the lack of an available defense to the charges against counsel. Further, as noted below, counsel was reasonably

aware of mitigating factors that he used to mitigate the potential sentence with the prosecutor as well as the judge. He has failed to show deficient performance.

Moreover, the plea transcript reflects Applicant understood the proceedings, the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty in accordance with the requirements of *Boykin* and *Pittman*. *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). Thus, the Court finds that Applicant's claims of ineffective assistance of counsel based on communication issues due to the COVID-19 pandemic are without merit. The Applicant failed to show deficient performance or prejudice under *Hill v. Lockart*.

Failure to Present Mitigating Evidence During Sentencing

In his remaining claim, Nowinski contends that the Applicant failed to present information regarding the Applicant's mental health and background during the sentencing proceeding which he contends would have led to a lesser sentence. During the PCR proceeding, the Applicant testified that his counsel should have presented more thoroughly about his progression of drug use after his surgery, that he had received treatment at a number of mental heath treatment hospitals over his entire life and had been molested as a child.

The Applicant ignores the standard upon which this case was heard

> Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. **A fair assessment of attorney performance requires that every effort be made 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.**

> Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.

Strickland v. Washington, 446 U.S. at 689, 104 S.Ct. at 2065, 80 L.Ed.2d at 694-95 (emphasis added).

Here, the plea was entered with a negotiated range of a mandatory minimum of 10 years to 30 years. Tr.p. 23-24. Further, the Sheriff's Department asked for the maximum sentence. Tr.p. 26-27. Counsel Bell asked for a ten year sentence. Tr.p. 37. This was a case in which the Applicant admitted that he had committed the crime both at the plea and during this proceeding.

During the guilty plea counsel Bell argued in favor of a lesser sentence. He stated that his client was 27 years and an electrician. He presented that he had two children. He presented to the sentencing judge information that between age 9 and 10 he was molested by his brother. Tr.p. 28. He had been diagnosed with schizophrenia, bipolar and depression. As treatment for his schizophrenia, Nowinski had been treated with the powerful drugs of lithium and Risperdal.

Counsel Bell urged the court in mitigation that poverty, drug abuse and mental health come hand in hand with individuals with self-medicating and drug abuse to put away the voices in their head. Tr.p.28-29. He con tended that his client was not a bad human being, but a person with mental health conditions that exacerbated his drug use.

Counsel urged the court that his clint from day one admitted the crimes and that this was not a trial case, but contested how the crime happened., always admitted thar he went over there and that it was an armed robbery.

Counsel pointed out the crime scene was over an hour from the Applicant's home and the

reason they went over there was that this was a drug dealer's house. He stated though: "I'm not saying his actions are excused by that" and that he was admitting that he committed an armed robbery that carried ten years. Counsel qualified that this house, though, was not an old grandfather's house , but it all "surrounds drugs. It's Michael fault that he used drugs; that he went over there and robbed a drug dealer" but counsel put in context that it was not a random house that was broken into. Tr.p. 30.

Counsel also informed the sentencing court that Applicant's wife had given a statement to law enforcement that he had been kicked out of the family's house that night and was living with his codefendant with drug use going on the night of the incident. She had indicated that on that evening they were trying to figure out what they were going to do to pay the overdue bills, had no place to live, and the family was living on the codefendant's couch. Counsel stated that this was the context to what led to this crime. Counsel urged the context of the crime had to include his client's knowledge about the drugs and the safe and Applicant's knowledge of it and contested the innocent bystander assertion by the government to be a mischaracterization.

In the mitigation, counsel also apprised the court that in support in the courtroom were his mother, his wife, his stepfather, his aunt and his sister.

Counsel also developed the Applicant's evolution into his drug use. He advised the sentencer that in 2014 Applicant had a hip injury that resulted in surgery. As a result he was placed on numerous narcotic medications. Subsequently, the Applicant resorted to heroin, then to methamphetamine. Counsel asserted that this does not excuse his conduct, but puts it in context. Tr.p. 31.

Counsel next presented in mitigation that Applicant's wife. She stated that she and the Applicant both suffered from drug addiction. However, they had two children. She stated that "we

bought our drugs from David and his brother" but what happened that night was inexcusable, noting that they had been there several time . Tr.p. 32 -33 .She declared that Applicant was a good man and good father. She declared that she had been clean for a year now. She stated their addiction began with the Applicant's surgery, but that is no excuse for what occurred. She asked for mercy.

Counsel also presented the Applicant's mother who confirmed that the Applicant suffered mental illness which was diagnosed at 7 years old as "non-specific mood disorder and intermittent rage disorder which progressed to a diagnosis of cyclothymia, which she described as a is a rapid cycling bipolar disorder. His mother stated he had hip replacement surgery in 2014 with prescriptions for OxyContin and Percocet. She contended this led to his addiction to hardcore drugs. His mother noted that this led to his son's marital issues and a record of criminal domestic violence between his son and wife while they were high. His mother acknowledged that what occurred was not right, but it would not have happened if he was not high and made a bad choice. His mother stated that she knew the victims and had been to their home. She stated that she had told the detective and had predicted the home was the location of the robbery. She stated she had been to the home before and begged the victims to stop poisoning the community. She denied that this was a random act of violence. Tr.p. 34. She asked for mercy for her son who had changed since incarcerated and found God and studied theology. Tr.p. 35.

Counsel then had the Applicant make a personal plea in mitigation. He noted that a few days before his arrest his mother evicted his family from her home because of the drug use and dysfunction it caused. He stated it brought his to his codefendant's home in Camden. He admitted that he was "in a dark place emotionally, mentally, financially and had a tremendous burden that he did not know how to manage. He felt his wife was in depression and no longer wanted to live. However, he handled these issues with impulsivity and drug use. He stated on that day he got high

on crystal meth, drank a few beers and made a terrible decision to go to the drug dealer's house and attempt to rob them of his drugs and then getting shot. He declared his mental illness and drug addiction did not justify or excuse his actions. He opined that getting shot was a divine intervention. He stated he had never been to prison and found the prospect to be away from his family at this time to be scary. He expressed a desire to return from it as a law-abiding, contributing citizen and asked for mercy. Tr.p. 36.

Counsel Bell then returned to his own mitigation urging the minimum ten year sentence as appropriate. Counsel pointed out the lack of a prior record for a felony. Counsel opined that ten years was enough to teach a man who had never been to prison before. He renewed his client's admission to him at the outset of his representation. Counsel again noted the family and the fact that he was shot. Tr.p. 37-38.[3]

Judge McLeod, prior to his aggregate twenty year sentence, recognized this as a tragic case due to the drugs and mental illness as factors that led up to this day. It is surprising that no one is dead from the incident. He felt that if the case went to trial, the Applicant would be facing on burglary first degree, the Applicant could well have ended up with a life sentence. He stated that he will order drug treatment and mental health counseling and hope that Applicant will continue in his studies. Judge McLeod noted he did not find anything minimal about his conduct in light of all the consequences. Tr.p. 41-42.

Further, subsequent to the sentence, the Applicant, through counsel Bell sought reconsideration of the sentence, challenging the State's assertions at the plea that the victims were law abiding which evidence in discovery about locating two glass smoking devices in the residence and the fact that one was a registered sex offender. *Motion for Reconsideration of*

[3] The solicitor had also told the judge about the Applicant's drug issues and criminal record. Tr.p. 22-24.

Sentence, p. 2. In addition, counsel urged that the previously undisclosed victims letter related codefendant as challenging the State's presentation that the victims wanted significant time for the Applicant. *Motion for Reconsideration of Sentence*, p. 2. In rejected the motion, Judge McLeod stated : " in reviewing the materials provided by the parties, the Court has sought to evaluate newly provided documents and determine if reconsideration is appropriate and whether such reconsideration would still ensure that justice is appropriately rendered." *Order,* March 5, 202, p. 2.The sentencing court concluded that he found the original sentence appropriate "and that the sentence would not have been effected or altered by presenting the victim letter pertaining to the co-defendant in this matter." Order, p. 2.

The Applicant has wholly failed to show that counsel was deficient related to the presentation in mitigation of sentence. This Court also finds that prejudice has not been shown.

In *Glover v. United States*, 531 U.S. 198, 202–04, 121 S.Ct. 696, 148 L.Ed.2d 604 (2001), the United States Supreme Court applied *Strickland* to a noncapital sentencing proceeding. Glover presented the question whether "a showing of prejudice, in the context of a claim for ineffective assistance of counsel, requires a significant increase in a term of imprisonment." *Id.* at 204, 121 S.Ct. 696. The claim in *Glover* arose from noncapital sentencing proceedings governed by federal guidelines. Id. at 200, 121 S.Ct. 696. The Supreme Court reversed the Seventh Circuit for "supplant[ing] the *Strickland* analysis" in such a context. Id. at 203, 121 S.Ct. 696. In closing, *Glover* noted that "the ultimate merits of [petitioner's] claim" would turn on *Strickland*'s elements: "the question of deficient performance" and "prejudice flow[ing] from the asserted error in sentencing." Id. at 204, 121 S.Ct. 696.

To the extent that there was any doubt that *Glover* "clearly established" that *Strickland* applied to noncapital sentencing proceedings, that doubt was erased in *Lafler v. Cooper*, 132 S.Ct.

1376, 182 L.Ed.2d 398 (2012). In *Lafler*, the Supreme Court stated that Glover:

> establish[ed] that there exists a right to counsel during sentencing in ... noncapital ... cases. Even though sentencing does not concern the defendant's guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in *Strickland* prejudice because "any amount of [additional] jail time has Sixth Amendment significance."

Lafler, 132 S.Ct. at 1385–86 (second alteration in original) (citations omitted) (quoting *Glover*, 531 U.S. at 203, 121 S.Ct. 696).

Given *Glover* and *Lafler*, the Supreme Court has clearly established that *Strickland* governs claims for ineffective assistance of counsel in noncapital sentencing proceedings.1 *See also Premo v. Moore*, 562 U.S. 115, 126, 131 S.Ct. 733, 178 L.Ed.2d 649 (2011) ("Whether before, during, or after trial, when the Sixth Amendment applies, the formulation of the standard [for deficient performance, as an element of ineffective assistance of counsel] is the same: reasonable competence in representing the accused.") (quoting *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052).

In his testimony before this Court, the Applicant presented examples of matters that he wished his mental issues, his hospitalization, his drug use, his molestation as a child, and his family background would have been presented more thoroughly. However, counsel presented through his mitigation presentation the same information that Applicant sought to present related to the each of the factors Applicant cited above.

How to present evidence and argument in noncapital mitigation is a matter of strategy. Decisions regarding the presentation of evidence are inherently matters of trial strategy. The United States Supreme Court has cautioned courts not to assess counsel's decisions concerning strategy through the distorting lens of hindsight; rather, courts are to employ a strong presumption that counsel's conduct falls within a wide range of reasonable assistance and, under the circumstances, might be considered sound trial strategy. *Strickland*, 466 U.S. at 689.

Counsel Bell credibly testified that that he thought he did a good job in mitigation, but chose not to victim bash in sentencing. This decision was credible because counsel Bell was an experienced criminal defense lawyer since 2011 with 85% of his practice dedicated to making these sentencing decisions. The only area he did not include at the plea mitigation for the Applicant was the fact that one of the victims was on the sex offender registry, suggesting additionally a prior criminal record whereas the state was contending the victims were law abiding citizens. He stated that he was aware of it at the time. Clearly this matter was one of reasonable and sound strategy. Counsel had already declared that the victims were drug dealers, which was relevant to the particular reason that they chose the victims to rob on that date. For counsel to have further brought out the fact that one of the victims was on the sex offender registry was not relevant to the incident and only portrayed that victim in a poorer light, unrelated to the incident. Based upon his experience Counsel reasonably believed that this could have backfired with the court, with whom he was seeking the minimum sentence. Further, counsel declared that he was aware and did consider the sex offender registry matter, so his decision was not the product of either neglect or ignorance. After the initial sentence was received, counsel did chose to present the information with the sentencing court in his reconsideration motion, to again undermine the state's portrayal of the victims. However, this Court finds that that later presentation does not suggest the initial strategy was not reasonable trial strategy. It only suggests that he was zealous in continuing to litigate on his client's behalf for a lesser sentence.

This Court find that counsel's sentencing presentation was thorough and properly addressed the items in mitigation in a persuasive fashion. The Applicant has failed to prove deficient performance. The Applicant has only implied that counsel could have presented the mitigation in a more thorough matter, suggesting in passing, with the use of records to support his

mental health and hospitalization records. However, the manner of the presentation was sound strategy that the Applicant has failed to prove otherwise.

This Court also finds that the Applicant has failed to prove prejudice under *Strickland* in the strategic decisions counsel made in sentencing. *See Jones v. State*, 332 S.C. 329, 339, 504 S.E.2d 822, 827 (1998) (finding that the absence of "fancier" mitigation evidence does not render the prior mitigation case constitutionally inadequate where such evidence would not have had any effect on the outcome of the trial). As noted above, it appears that all matters of suggested mitigation were presented, either in the initial plea proceeding or in the motion for reconsideration, to the sentencing court.

The test for prejudice in the sentencing is from *Strickland*, the defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. This Court concludes that the Applicant has failed to satisfy that burden. He has failed to present any item in mitigation of sentence that undermines confidence in Judge McLeod's sentencing decisions. Judge McLeod all the items in his rejection of the motion for reconsideration, At most, though not actually presented here, his argument is that he wanted the counsel to present the same facts, but speculated only more persuasively. He ignores the fact that the sheriff's department was seeking 35 years, the state was pursuing its 30 cap and the trial judge was of the opinion that if the Applicant went to trial, he would likely been subject of a life sentence under the facts of the case presented to him. He further fails to recognize that he received a significant reduction by Judge McLeod in sentencing him to the mid-range of armed robbery for 20 years. This Court conclusively determines that he has not presented a reasonable probability that he would have received a lesser sentence under the circumstances he has suggested. The allegation must be dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application and vacate his conviction. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 22nd **day of** April **, 2025.**

DAVID P. CARAKER, JR.
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina