

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Richland County

Honorable George M. McFaddin, Jr., Circuit Court Judge

KENYA R. JENKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001739

APPENDIX

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DANIELLE DIXON
Assistant Attorney General
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

BYRON E. GIPSON
Solicitor, Fifth Judicial Circuit
Fifth Circuit Solicitor's Office
1701 Main Street, Third Floor
Columbia, SC 29202
(803) 576-1802

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) GENERAL SESSIONS
)
COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

-----x
STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
vs.) Case No. 2021-GS-40-2477
) 2021-GS-40-2479
KENYA JENKINS,)
)
Defendant.)
-----x

November 9, 2021

PLEA HEARING

B E F O R E:

The Honorable Robert E. Hood, Presiding Judge

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

Bret West, Esq.
Attorney for the State

Richard Marsh, Esq.
Attorney for the Defendant

Recorded by: Court Monitor/DCRP

Transcribed by: Bobbi Fisher
SC Official Court Reporter III

1

I N D E X

2

DESCRIPTION

PAGE

3

Proceedings/Plea

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E X H I B I T S

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(None.)

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1 P R O C E E D I N G S

2 (Whereupon, the following proceedings started at 9:38 a.m.):

3 KENYA JENKINS,

4 after having been duly sworn, was examined and testified
5 to as follows:

6 THE COURT: All right, Ms. West?

7 MS. WEST: Good morning. Before you is Kenya Jenkins,
8 represented by Richard Marsh of the public defender's office.
9 Mr. Jenkins is here this morning to plead guilty to --

10 UNIDENTIFIED SPEAKER: Hold on. Somebody's messing with
11 the mic.

12 (Pause in the proceedings.)

13 MS. WEST: All right. Mr. Jenkins is pleading guilty to
14 one count of armed robbery and one count of possession of a
15 weapon during a violent crime. The recommendation is ten
16 years.

17 THE COURT: All right. And that's not the weapon charge,
18 it has to be consecutive?

19 MR. MARSH: I don't believe so.

20 THE COURT: Okay.

21 MR. MARSH: If that's something I need to be aware of?

22 THE COURT: I thought there was one that had to be
23 consecutive. I couldn't remember.

24 MR. MARSH: I feel like I have pled something similar to
25 this before where it was not consecutive, but...

1 THE COURT: Okay. But your goal is for him to get ten.

2 MS. WEST: Yes.

3 THE COURT: So even if it is, I'm not going to give him
4 the consecutive.

5 MR. MARSH: Thank you, Your Honor.

6 THE COURT: Just as long as we all -- I don't know if
7 it's consecutive or not. I know that there's one that is, but
8 your goal is for him to be done with this and have ten.

9 MS. WEST: Shooting for ten. Correct.

10 THE COURT: Okay. All right. Okay. And I'm -- that's
11 fine with me.

12 MR. MARSH: Thank you, Your Honor.

13 THE COURT: Okay. Let's see. Are you Kenya Jenkins?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And are you under the influence of any
16 alcohol or drugs today?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you ever been treated for any serious
19 mental health issues?

20 THE DEFENDANT: No, sir.

21 THE COURT: And, let's see, do you want to plead guilty
22 to one count of armed robbery?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: That carries ten years up to 30 years. It's
25 also violent. It's also serious. It's not a most serious?

1 MS. WEST: Serious.

2 MR. MARSH: It's serious.

3 MS. WEST: Per the purple book.

4 THE COURT: All right. And, let's see, it's also a
5 no-parole offense. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And when you're released from the Department
8 of Corrections, you'll be released under what is known as the
9 community supervision program. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you can be monitored for up to two years
12 on that. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. They also tell me you want to
15 plead guilty to possession of a weapon during the commission
16 of a violent crime and that carries five years in prison. Do
17 you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And are you on probation or parole right now,
20 Mr. Jenkins?

21 THE DEFENDANT: No, sir.

22 THE COURT: When you plead guilty, sir, you give up
23 certain important rights. The first is your right to remain
24 silent. Do you understand that right?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do you want to give up that right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: The second is your constitutional right to a
4 jury trial. Do you understand what a jury trial is?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you want a jury trial on these
7 charges, or do you want to plead guilty?

8 THE DEFENDANT: Plead guilty.

9 THE COURT: Third is your right to confront the witnesses
10 the State would call against you, to call witnesses on your
11 own behalf, and to present any defense you may have. If you
12 plead guilty, none of those things are going to happen. Does
13 that make sense?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Your first indictment says that,
16 on or about May 30th of 2020, you possessed a weapon during
17 the commission of a violent crime. How do you plead to that
18 charge?

19 THE DEFENDANT: Guilty.

20 THE COURT: And the second indictment says that, on May
21 30th of 2020, you committed an armed robbery against a
22 Mr. Richmond. How do you plead to that charge?

23 THE DEFENDANT: Guilty.

24 THE COURT: All right. And the recommendation is for ten
25 years. Is that right, Ms. West?

1 MS. WEST: Yes, Judge.

2 THE COURT: All right. And besides that, has anybody
3 promised you anything to get you to plead guilty, Mr. Jenkins?

4 THE DEFENDANT: No, sir.

5 THE COURT: Has anybody forced you or threatened you to
6 get you to plea?

7 THE DEFENDANT: No, sir.

8 THE COURT: Are you pleading freely and voluntarily?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you satisfied with the services of your
11 attorney?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And are you pleading guilty because you are,
14 in fact, guilty of these two offenses?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You have ten days to appeal this plea. If
17 you choose to do so, you must do so in writing to this Court.
18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. All right. Ms. West?

21 MS. WEST: On May 30th, 2020, at the Regency Inn at 1335
22 Garner Lane, Richland County deputies made contact with the
23 victim, who stated he was robbed outside of Room 227. The
24 victim stated he was approached by two black males who came up
25 to him. One, who was later identified as Kenya Jenkins,

1 pulled out a handgun and racked the slide, ejecting a round.
2 They then put the gun to the victim's head and went through
3 his pockets, taking his cash and his jewelry.

4 The occupant of Room 227 came outside to see what the
5 commotion was, and the two men fled. The victim then
6 retrieved the ejected bullet, which he provided to law
7 enforcement.

8 On June 1st, the victim told investigators he had heard
9 from others that a man named Kenya or Kenyatta Jenkins, with
10 the Facebook name Jenkins on the Move, had been bragging about
11 robbing him. Investigators found the suspect already in jail
12 for pointing and presenting who matched the Facebook page.

13 A photo lineup was shown to the victim and the witness,
14 who both picked out Kenya Jenkins as the man that put the gun
15 to the victim's head.

16 Surveillance video was collected from the hotel, which
17 shows the defendant and the co-defendant arriving at the hotel
18 in a red car. They get out of the car and walk up to where
19 the victim is staying. You can see the two men and the victim
20 have some sort of interaction, and then you can see
21 Mr. Jenkins put a gun to the victim's head. He knocks his hat
22 off as he's leaning against the balcony railing while the
23 co-defendant searched his pockets. You can then see the
24 witness come out of Room 227, and the two men go back to the
25 car and leave the location.

1 Mr. Jenkins gave the confession in which he stated he did
2 take the money from the victim and that he had a prop gun. He
3 also admitted that the co-defendant had taken the money and
4 jewelry from the victim.

5 THE COURT: Record?

6 MS. WEST: 2004: Petit larceny and burglary, second,
7 nonviolent.

8 2007: UCP.

9 2008: Public drunk and malicious injury to personal
10 property.

11 2010: Financial identity fraud and strong armed robbery.

12 2011: Driving without a license, giving false
13 information, and open container.

14 2012: Malicious injury over 5,000 and a YOA parole rev.

15 2014: False imprisonment; petit larceny; assault and
16 battery, second; and malicious injury.

17 2016: Public disorderly conduct.

18 2017: Unlawful use of 911, public disorderly, malicious
19 injury, and shoplifting.

20 And, 2019, receiving stolen goods and giving false
21 information.

22 THE COURT: Is that all that true?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Does your victim need to be heard
25 from?

1 MS. WEST: The victim could not be here today, but he is
2 in agreement with this. He just wants to see him do prison
3 time.

4 THE COURT: Okay. All right. Mr. Marsh, whenever you're
5 ready.

6 MR. MARSH: Thank you, Your Honor. May it please the
7 Court?

8 Kenya has been in jail for 527 days as of today. He's 35
9 years old. He's a Columbia native. His four-year-old
10 daughter, Kyra, is living with his sister right now. He had
11 previously worked at The Grand, at the bowling alley. He
12 has -- in my representation of him, I found him to be
13 intelligent, nice, friendly.

14 His interview with Investigator Laurita, his confession,
15 he was exceedingly helpful. They thanked him for that. He
16 provided as much information as they asked.

17 I think this was a bad deal gone wrong and a bit of
18 self-help for when things -- you can't call the police to
19 enforce property rights, but he understands that what he did,
20 what he is pleading to, and why the law requires this, and we
21 would just ask that you follow the State's recommendation,
22 Your Honor.

23 THE COURT: Mr. Jenkins, is there anything you want to
24 say?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. The sentence on the armed robbery
2 is ten years. The sentence on the pistol is five years. They
3 are to be run concurrent. He is to be given credit for 527
4 days on both of them, and he's to have no contact with the
5 victim, directly or indirectly. And best of luck to you,
6 Mr. Jenkins.

7 THE DEFENDANT: Thank you, sir.

8 THE COURT: Thank you.

9 MR. MARSH: Thank you, Judge.

10 (The above matter concluded at 11:15 a.m.)

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1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: State v. Kenya Jenkins

3 2021-GS-40-2477, 2479

4 DATE OF HEARING: 11/09/2021

5 COURT REPORTER/MONITOR: DCRP

6
7 I, Bobbi Fisher, do hereby certify that the foregoing
8 transcript is a true and correct record of the recorded
9 proceedings; that said proceedings were transcribed to the
10 best of my ability from the audio recording and supporting
11 information, and that I am neither counsel for, related to,
12 nor employed by any of the parties to this case, and I have no
13 interest, financial or otherwise, in its outcome.
14

15 17 _____
18 Bobbi Fisher, Certified Transcriber19 Date Prepared: July 5, 2022
20
21

22 NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER
23 SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY
24 OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES
25 OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR
NON-PARTIES MUST BE SENT TO THIS REPORTER AT
BFISHER@SCCOURTS.ORG.

FORM 5

STATE OF SOUTH CAROLINA)

County of Richland)Kenya Jenkins 316379)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2022CP4002187

APPLICATION FOR

POST-CONVICTION RELIEF

2022 APR 27 PM 3:00

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 Alvin S. Glenn Detention Center
Put currently in SCDC
2. Name and location of Court which imposed sentence Fifth Judicial Circuit
Richland County, Columbia SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2021GS4002477 Robbery/Armed robbery with a weapon
 - (b) 2021GS4002479 weapons/poss. weapon during deadly crime

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 11/9/21 5 years
- (b) 11/9/21 10 years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Richland County Fifth Judicial Circuit
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. no Return answer left County before answer
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. no Return answer left County Jail before Reply
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) In effect of assistant Counsel
- (b) being held with out presentment of indictment
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to prepare proper defense, failure to investigate, failure to advise
- (b) Violation of ~~of~~ amendment
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

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

- i. _____
- ii. N/A
- 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?

N/A

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

(a) which grounds have been presented:

- i. _____
- ii. N/A
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? _____
 (c) your sentencing? ☒ _____
 (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?

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. Richard marsh SCB 16564

 ii. _____

 iii. _____

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

i. my plea deal

 ii. _____

 iii. _____

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

To vacate, set aside or correct sentence

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

No

STATE OF SOUTH CAROLINA)

County of Lancaster)

VERIFICATION

I, Kenya Jenkins, 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.

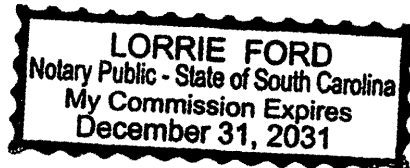
[Signature]

SWORN to and subscribed before me this 17th day of April, 2021.

[Signature]
Notary Public

(L.S.)

My Commission Expires: 12/31/31



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

I, Kay Kenya Jenkins, 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:

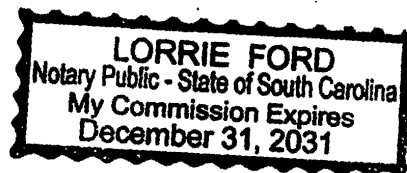
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kay Kenya Jenkins
Applicant

SWORN or affirmed to and subscribed before me this
7th day of April, 2022.

Lorrie Ford
Notary Public

My Commission Expires: 12/31/31



2022 APR 27 PM 3:00

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Kenya R. Jenkins, #316379,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2022-CP-40-02187

) **RETURN AND PARTIAL MOTION TO**
) **DISMISS AND MOTION FOR A MORE**
) **DEFINITE STATEMENT**
) **(Counsel Appointed)**

2022 AUG 17 PM 2:09
JANETTE W. HARRIS
C.C.P., G.S.
RICHLAND COUNTY
FILED

In response to Applicant Kenya R. Jenkin's application for post-conviction relief (PCR) commenced on April 27, 2022,¹ Respondent, the State of South Carolina, makes the following Return and Motion for a More Definite Statement:

I. PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections (SCDC) pursuant to the Richland County Clerk of Court's orders of commitment. During the June 2021 term, the Richland County Grand Jury indicted Applicant for Armed Robbery (2021-GS-40-02477) and Possession of a Weapon During the Commission of a Violent Crime (2021-GS-40-02479). On November 9, 2021, Applicant appeared before the Honorable Robert E. Hood and pled guilty as indicted. Applicant was represented by Fifth Circuit Assistant Public Defender

¹ Respondent's return was due to be filed within sixty days of receipt. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). However, Respondent was unable to timely complete and file this return due to a heavy case load. Respondent respectfully requests that this Court accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

Richard Marsh, and Fifth Circuit Assistant Solicitor Bret West prosecuted the case. Judge Hood sentenced Applicant to concurrent sentences of ten years' imprisonment for Armed Robbery and five years' imprisonment for Possession of a Weapon During the Commission of a Violent Crime.

Applicant did not appeal his convictions and sentences.

II. FACTS²

On May 30th, 2020, at the Regency Inn at 1335 Garner Lane, Richland County deputies made contact with the victim, who stated he was robbed outside of Room 227. The victim stated he was approached by two black males who came up to him. One, who was later identified as Applicant, pulled out a handgun and racked the slide, ejecting a round. They then put the gun to the victim's head and went through his pockets, taking his cash and jewelry. The occupant of Room 227 came outside to see what the commotion was, and the two men fled. The victim then retrieved the ejected bullet, which he provided to law enforcement.

On June 1st, the victim told investigators he had heard from others that a man named Kenya or Kenyatta Jenkins, with the Facebook name Jenkins on the Move, had been bragging about robbing him. Investigators found the suspect already in jail for pointing and presenting who matched the Facebook page. A photo lineup was shown to the victim and the witness, who picked out Applicant as the man who put the gun to the victim's head. Surveillance video was collected from the hotel, which shows the Applicant and the co-defendant arriving at the hotel in a red car. They get out of the car and walk up to where the victim is staying. You can see the two men and the victim interact, and then you can see Applicant put a gun to the victim's head. Applicant knocked the victim's hat off as he leaned against the balcony railing while the co-defendant

² The facts were taken from the Plea Transcript from the recitation of facts provided by the prosecutor. (Plea Tr. pp. 7, l. 21 – 9, l. 4).

searched his pockets. The witness then came out of Room 227, and the two men returned to the car and left the location.

Applicant confessed that he took the money from the victim and he had a prop gun. Applicant also admitted that the co-defendant had stolen the victim's money and jewelry.

III. CURRENT APPLICATION

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

1. Ineffective Assistance of Counsel
 - a. "Failure to prepare proper defense, failure to investigate, failure to advise."
2. "Being held without presentment of indictment"
 - a. "Violation of amendment V"

Applicant requests relief in the form of "vacate, set aside or correct sentence."

Attached to this return and incorporated by reference are the Richland County Clerk of Court records regarding the subject's convictions and sentences; Applicant's records from the SCDC; Applicant's plea transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receiving any relevant materials.

IV. MOTION TO DISMISS ALLEGATION 2

Applicant alleges he is being held unlawfully because he was not presented with his indictments, which violates his 5th amendment rights. 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 v. Alabama, 395 U.S. 238, 243 (1969). Additionally, in order to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. Pittman v. State, 337 S.C. 597, 599, 524

S.E.2d 623, 624 (1999).

Further, a guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses. State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985). The plea admits all elements of the offense charged and "leaves open for review only the sufficiency of the indictment and waives all other defenses." Id. at 314, 338 S.E.2d at 330; cf. United States v. Broce, 488 U.S. 563, 569, 109 S.Ct. 757, 102 L.Ed.2d 927 (1989). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial, by review on motion for a new trial, or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975).

Here, the record of Applicant's plea hearing reflects that Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin and Pittman. Therefore, Respondent submits this allegation is without merit and moves this Court to dismiss this allegation summarily.

V. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. *INEFFECTIVE ASSISTANCE OF PLEA COUNSEL, GENERALLY*

Applicant alleges he is entitled to post-conviction relief based on ineffective assistance of counsel. Specifically, Applicant asserts Plea Counsel failed to prepare, investigate, and advise. Additionally, Applicant asserts he is being held without presentment of the indictments in violation of his fifth amendment rights. However, Applicant fails to provide any specific facts or information to support these general claims, and accordingly, Respondent can only respond generally.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v.

Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). 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 an evidentiary hearing can only determine. 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 insufficient to warrant granting relief. Rule 71.1(e), SCRCPP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably

competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). 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. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires 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. Id. 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 reasonable professional

assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel." Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show counsel's representation fell below the 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 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 decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

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. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The performance and prejudice standards, however, "do not establish mechanical rules;

[t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

As set forth above, it is impossible to discern what specifically Applicant is raising on post-conviction relief based on his generic claims of ineffectiveness without specific allegations or supporting facts. Respondent submits Applicant cannot satisfy either requirement of the Strickland test, as the record establishes, he was represented by competent counsel who diligently represented him. However, without specific allegations of ineffective assistance of counsel, it is impossible to respond to the claim of ineffective assistance of counsel precisely. Accordingly, Respondent requests Applicant, through his appointed counsel, amend his application to include the specificity required to support an allegation of ineffective assistance of counsel.

VI. MOTION FOR A MORE DEFINITE STATEMENT

The State submits Applicant's allegations of ineffective assistance of Plea 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. See S.C. Code Ann. § 17-27-50 (requiring an applicant to "specifically set forth the grounds upon which the application is based"); 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); Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (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"); 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 ensure that all available grounds for relief are included in the application and shall amend the application if necessary.").

Accordingly, the State requests that Applicant, through counsel, provide specific claims and facts to support these vague allegations pursuant to Rule 12(e), SCRCP, and the Post-Conviction Procedure Act.

VII. CONCLUSION AND ACTION REQUESTED

The State submits Applicant cannot satisfy the requirements of Strickland. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of Trial Counsel. Therefore, the State requests an evidentiary hearing to resolve the issues fully after Applicant has filed amendments to his PCR application through Counsel. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (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").

VIII. 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 these allegations or claims. 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 against 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 against the State.

IX. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a partial dismissal as set forth in Section IV and grant its motion for a more definite statement as set forth in Section VI, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

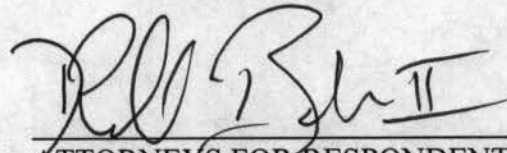
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

D. RUSSELL BARLOW, II
Assistant Attorney General

By:



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

August 4, 2022

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No.: 2022-CP-40-02187

Kenya R. Jenkins,
SCDC # 316379,

Applicant,

v.

State of South Carolina.

**AMENDED POST-CONVICTION
RELIEF APPLICATION**

2022 OCT 27 PM 3:00
FILED
RICHLAND COUNTY

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on April 27, 2022, to add the following allegations:

1. Ineffective assistance of counsel for

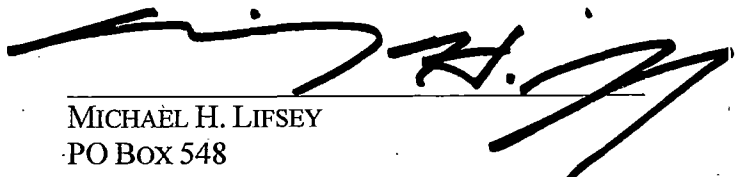
- (a) Applicant's plea counsel did not meet with Applicant a sufficient number of times prior to his plea, did not fully explain the strengths and weaknesses of the State's case, did not fully investigate the state's case, and did not explain the elements of the crimes of which he was charged. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.
- (b) Applicant's plea counsel did not inform Applicant that the charge of Possession of a Weapon During the Commission of a Violent Crime charge carried a maximum of five years in prison. Due to the wording on the face of the indictment, Applicant believed it carried a potential life sentence or the death penalty. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.

(c) Applicant's plea counsel instructed Applicant to answer the Judge's questions during the plea colloquy in such a manner as would result in the Judge accepting the plea or that the Applicant would receive the maximum sentence in the case, which Applicant believed to be either a life sentence or the death penalty. Had plea counsel given effective representation in this regard, Applicant would not have entered a guilty plea and would have insisted on a jury trial.

(d) Applicant's plea counsel did not file an appeal, despite the request of the Applicant that he do so

2. The ineffective assistance of counsel as described above, rendered Applicant's plea involuntary.
3. 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,



MICHAEL H. LIFSEY
PO BOX 548
CHESTER, SC 29706
803-899-5040
MICHAEL.LIFSEY@GMAIL.COM
SC BAR NO. 015154
ATTORNEY FOR APPLICANT

October 25, 2022

STATE OF SOUTH CAROLINA))
COUNTY OF RICHLAND) COURT OF COMMON PLEAS

KENYA JENKINS)
316379)
PETITIONER,)

v.) TRANSCRIPT OF RECORD
22-CP-40-2187

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

January 12, 2023
Columbia, South Carolina

B E F O R E :

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE

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

MICHAEL L. LIFSEY, ESQ.
Attorney for the Petitioner

DANIELLE DIXON, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MS. DIXON: May it please the Court, Danielle
2 Dixon, assistant attorney general for the State of South
3 Carolina. This is the case of Kenya Jenkins, docket No.
4 2022-CP-40-2187. Mr. Jenkins is currently serving a ten
5 year sentence. He was indicted by the Richland County grand
6 jury in June of 2021 for armed robbery, possession of a
7 weapon during a violent crime. Those are indictment numbers
8 2021-GS-40-2477 and 2479. These charges arose from an
9 incident that occurred on May 30th, 2020, involving Dashaen
10 Richmond who was the victim. It happened outside of a hotel
11 room. Police, I guess, first kind of got on investigating
12 this case when someone by the name of Jenkins on the Move
13 was bragging about this on Facebook. He was later
14 identified by the victim and an eyewitness. There was
15 surveillance video footage of the incident, and he did
16 subsequently confess to police.

17 He pled guilty on November 9th, 2021, before the
18 Honorable Robert Hood. He was represented by Richard Marsh
19 and rep-- West represented the State. This was a
20 recommended plea and the judge sentenced him to concurrent
21 sentences of ten years for armed robbery and five years on
22 the weapon charge. He did not file a direct appeal. This
23 PCR application was timely filed March 30th, 2016. He is
24 alleging counsel -- well, he had several claims of
25 ineffective assistance of counsel and it was amended

K. Jenkins - Direct by Mr. Lifsey

1 thereafter. And at this time I would ask Mr. Lifsey to put
2 on the record the allegations he's planning to go forward on
3 today.

4 MR. LIFSEY: Your Honor, we're going to go forward
5 on the counts in the amended application and for the most
6 part, Judge, whatever else my client wants to sort of talk
7 about, Your Honor.

8 MS. DIXON: Can you state them a second?

9 MR. LIFSEY: Your Honor, he's alleging that he --
10 has Your Honor got a copy of the amended application?

11 THE COURT: I'm pretty sure I do.

12 MR. LIFSEY: Well, I'm -- I listed basically a --
13 grounds of concerning the number of sufficient times they
14 met, quality of the investigation, and that also about the
15 weapon during a violent crime charge that my client
16 misunderstood. I'll let him explain that in detail on the
17 stand. Concerns about why he answered questions in the plea
18 colloquy and then whether or not he -- plea counsel filed an
19 appeal. Thank you, Judge.

20 THE COURT: Yes, sir.

21 MR. LIFSEY: I'd call Mr. Jenkins to the stand.

22 THE CLERK: Raise your right hand best you can.

23 WHEREUPON,

24 **KENYA JENKINS,**

25 having been duly sworn by the clerk, testified

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1 as follows:

2 (Attorney confers with defendant.)

3 THE CLERK: Watch your step. State your full name
4 for the record and spell your last name for the clerk.

5 THE WITNESS: Kenya Jenkins, J-E-N-K-I-N-S.

6 **D I R E C T E X A M I N A T I O N**

7 BY MR. LIFSEY:

8 Q. Mr. Jenkins, where are you being held right now?

9 A. Room fif-- I mean, Kershaw Correctional, room 55.

10 Q. All right. And what kind of sentence are you
11 serving there?

12 A. Ten years.

13 Q. All right. What -- do you remember the day you
14 entered your plea?

15 A. In November.

16 Q. I mean, do you remember -- not the specific day.
17 Do you remember entering a plea of guilty to these charges?

18 A. Yes, sir.

19 Q. All right. Who was your lawyer?

20 A. Mr. Marsh.

21 Q. All right. Talk to me about Mr. Marsh's
22 representation. How long had he been your lawyer? He'd
23 been your lawyer from the beginning, did you have another
24 lawyer, tell us about that.

25 A. My first lawyer was Morgan Drapeau and I explained

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1 to her I want to take this to trial, all the way to trial.
2 Then, like, she said, she came to see me and she said that
3 she was leaving and I would get a new lawyer. I received
4 Mr. Marsh. I got a letter from Mr. Marsh in November.

5 Q. Let me stop you just a minute. Were you in jail
6 or were you out of jail then?

7 A. I was in jail.

8 Q. All right. Go ahead.

9 A. I got a letter from Mr. Marsh in November letting
10 me -- informing me that he was my lawyer. I didn't see
11 Mr. Marsh, like, March sometime. He came and talked to me.
12 I told him when he came and talked to me I wanted to get an
13 investigator because I feel like it's a hearsay because the
14 alleged victim was saying that somebody told him my name,
15 gave him my picture on Facebook and said this was me. And
16 plus, the officer -- I didn't get arrested on armed robbery.
17 I got arrested for something that happened at the Waffle
18 House, which the officer in that case was the same officer
19 on the scene of this robbery 'cause he's been fired for
20 unbecoming of a officer.

21 Q. All right. Well, let's talk about those. So from
22 the beginning you're saying you told your lawyer you didn't
23 want to plead guilty?

24 A. From the very beginning. I informed Ms. Drapeau
25 that I want to go to trial, and I informed Mr. Marsh when he

K. Jenkins - Direct by Mr. Lifsey

1 came to Alvin S. Glenn and I talked to him on the computer.

2 Q. Well, tell me why you ended up pleading guilty if
3 you didn't want to plead guilty?

4 A. Because when I first -- when he -- first he told
5 me I was 100-percent sure that if I go to trial I will get
6 convicted.

7 Q. Okay.

8 A. That's off the warrant he told me that.

9 Q. You say from the beginning or when did he tell you
10 that?

11 A. From -- when we was downstairs ---

12 Q. Uh-huh.

13 A And he said, man, he was 100-percent sure that I
14 would get convicted. That the second time he told that.
15 First time he told that when he came to Alvin S. Glenn and
16 we supposed to been getting proper defenses together. He
17 told me he was sure, 100-percent sure that I would get
18 convicted.

19 Q. All right.

20 A. And he said if we go in front of Newman or Hood,
21 only way -- I would definitely get the max. And in my head
22 the max is death because this gun charge says death on the
23 paperwork.

24 Q. All right. We'll, I'm going to stop you just a
25 minute. Let's -- since you brought that up let's talk about

K. Jenkins - Direct by Mr. Lifsey

1 it. One of the charges you have was possession of a weapon
2 during a violent crime; is that right?

3 A. Yes, sir. And I asked him why would I be pleading
4 to a gun charge and they got no gun.

5 Q. All right. Well, what -- I want to ask you what
6 did you think that carried?

7 A. Death. It says it. It says it on the paper. It
8 says life without parole or death.

9 Q. All right. I'm going to hand you, is this a copy
10 of the face of your indictment on 2021-GS-40-02479? Is that
11 the paperwork you are discussing?

12 A. Yes, sir.

13 MR. LIFSEY: And, Judge, I don't know if I need to
14 enter this. Is this in the record, the indictment?

15 MS. DIXON: It should be.

16 THE COURT: Should be.

17 MR. LIFSEY: If it's in the record I'm not going
18 to enter it in to, but just to reflect I -- for the purposes
19 of this record that I'm referring to indictment
20 2021-GS-40-02479.

21 BY MR. LIFSEY:

22 Q. And where do you say on that indictment -- why did
23 you think it carried life or death?

24 A. Because it said weapons possession, weapon during
25 a violent crime if not also sentenced to life without parole

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1 or death. That's it right there.

2 MR. LIFSEY: Okay. Just for the record he's
3 referring to the language at the bottom of the indictment.
4 I have it -- if you don't have it, Judge, I've got it, a
5 copy of it you can look at. That's what he's referring to.

6 THE COURT: Yes, sir.

7 BY MR. LIFSEY:

8 Q. All right. So you thought you could -- you were
9 facing either life in prison without parole or the death
10 penalty?

11 A. Yes, sir.

12 Q. All right. So why'd you plead guilty?

13 A. First of all, when I told him -- I was like, man,
14 can I get a Alford, could I plead Alford. He said there's
15 no ground for that. The sentencing said there's no ground
16 for me to plead Alford plea. I said what if I tell them
17 that, you know, I'm pleading just to get this out the way
18 and things of that nature. He was like, nah, if I say
19 anything other than guilty, then the judge will not def--
20 not accept the plea and then I'll be going to trial and
21 catching the max.

22 Q. All right. Let me just say this, you know now
23 that that gun charge only carries five years, right?

24 A. Yeah, I learned that when I got to Kirkland, said
25 it was mandatory, and then you told me it only carried five

K. Jenkins - Direct by Mr. Lifsey

1 years.

2 Q. Yes, sir. Did -- day-for-day five years, right?

3 A. Yes, sir.

4 Q. So did your lawyer ever explain to you that you
5 were only facing five years on that gun charge?

6 A. He said if I was to plead to it, it will only be
7 five years. He never said that if I went to trial and lost
8 trial then they won't -- they wasn't going to kill me.

9 Q. Okay, all right. Let's sort of start back a
10 little bit, though. You said you didn't meet with him
11 enough. How many times did you meet with him? Do you
12 remember?

13 A. I met with him once in -- on the screen that's the
14 first time I saw him. Then I met with him again -- like a
15 couple of months later he told me he had some trials to go
16 through and I gave him my notes, like the notes, because I
17 was reading my case every day. I gave him my notes. He
18 left. And when he left, he came back again and he didn't
19 even go through them, say they forced him into another
20 trial. Then I didn't see him again a while. I seen him on
21 the screen, went to a prelim. And then from the prelim I
22 didn't see him again. Well, I went to bond court on the
23 screen, and he said he was going to come down to see me.
24 Next time I saw him he came for like a week straight and we
25 were supposed to been talking about discussing go -- could

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1 gave me a trial date for November the 21st. And we were
2 supposed to been going through -- only thing he was
3 concerned about was me taking this plea. I know, I know
4 what he was going for.

5 Q. All right. Do you feel like you met with him
6 enough times to fully know what the charges were and how
7 much they carried?

8 A. No, sir.

9 Q. If you had met with him enough times, would you
10 have pled guilty or would you have had a jury trial?

11 A. I definitely would have a jury trial.

12 Q. All right. You told -- you said a minute ago you
13 believed that the charge, the gun charge, carried up to life
14 without parole or even a death penalty; is that right?

15 A. Yes, sir.

16 Q. If you had known that it only carried five years,
17 would you have pled guilty or would you have gone to trial?

18 A. Still would have went to trial.

19 Q. Okay. Now the judge asked you a whole bunch of
20 questions. Do you remember when you pled guilty?

21 A. Yes, sir.

22 Q. Including things like are you satisfied with your
23 lawyer and all that kind of stuff?

24 A. Yes, sir.

25 Q. Why didn't you complain about any of the things

K. Jenkins - Direct by Mr. Lifsey

1 you're complaining about now when the judge was questioning
2 you?

3 A. Because we talked about -- in that little room
4 downstairs he said that if I was to say these -- certain
5 things like, no, this that and third, then the judge would
6 not accept my plea and I'll be going to trial.

7 Q. And what would happen, did he say, if you went to
8 trial?

9 A. He's 100-percent sure that I would get convicted,
10 that a jury would find me guilty and I would be catching the
11 max.

12 Q. And what did you think was the max?

13 A. Death.

14 Q. All right.

15 A. Death and 30 years.

16 Q. All right. Let me ask you about an appeal. Did
17 you want your lawyer to file an appeal for you?

18 A. Yes, sir, I wrote it to him. Like, the day I got
19 back, when I got back to the dorm, it's right when I got
20 back to the dorm that day I wrote 'cause the judge said I
21 had ten days to write an appeal. If I wanted to recap my --
22 appeal my guilty plea, I got ten days to do it and I did it
23 within a timely manner. Him and the solicitor got a copy.
24 They sent me the copy back. I explained to them reason why
25 I want the appeal and everything.

K. Jenkins - Direct by Mr. Lifsey

1 Q. All right. You got a piece of paper. What is
2 that?

3 A. This is the appeal that I wrote to the clerk of
4 court and it's stamped. It's a little dirty, but it's
5 stamped and dated November 17. That's apparently when they
6 got it, but I wrote it as soon as I got back.

7 Q. All right. As soon as you got back like ---

8 A. That same day I wrote it, but they got on the
9 16th. The cover sheet is over there.

10 (Attorneys confer.)

11 THE WITNESS: The judge explained to me, he said I
12 have ten days to appeal this.

13 MR. LIFSEY: Judge, I'd move this into evidence as
14 Plaintiff's Exhibit 1.

15 MS. DIXON: We're going to object on hearsay. If
16 he wants to testify what his ground would be, I think that
17 would be the proper way to go about it.

18 THE COURT: Let's do that.

19 MR. LIFSEY: Okay. So just to clarify, Judge, you
20 sustained her objection?

21 THE COURT: Yes, sir, sorry. I should have said
22 that.

23 MR. LIFSEY: No, no, it's all right.

24 BY MR. LIFSEY:

25 Q. What is that letter? It's a letter you wrote --

K. Jenkins - Direct by Mr. Lifsey

1 you said -- did you say it was a letter you wrote the clerk?

2 A. Yes, sir, because the judge -- Judge Hood said I
3 had ten days to appeal the guilty plea, and I even appeal my
4 guilty plea based on the facts as -- I wrote it right here.
5 And I told where I'll be going at ---

6 Q. Would you read that letter?

7 A. Yes, sir. I said I am appealing -- I am appealing
8 my guilty plea based on the fact that I was not able to
9 properly prepare for trial due to Covid 19 where I was being
10 housed, which is Alvin S. Glenn Detention Center. The
11 staff -- for the staff to come up the fact that there's no
12 staff, they give us video calls. Secondly, I feel like I
13 was bullied taking a plea by my lawyer saying he can't come
14 up with a proper defense for me against the charge and we
15 had a defense for my statement was not voluntary, the
16 investigator's Miranda right, but never asked was I on
17 drugs. I was on certain medicine, Calozapanzem (sic), which
18 is used for the treatment of anxiety, tension, ---

19 MS. DIXON: Objection.

20 THE WITNESS: --- and psychological charging ---

21 MS. DIXON: Opinion.

22 THE COURT: Sustained.

23 THE WITNESS: I was. I got the paperwork to prove
24 that I was on drugs.

25 THE COURT: Sustained.

K. JENKINS - Cross by Ms. Dixon

1 BY MR. LIFSEY:

2 Q. Thank you. I think they got the gist of it. You
3 say you sent that letter to the clerk?

4 A. Yes, sir.

5 Q. All right.

6 A. It's stamped and clocked by the judge -- by the
7 clerk of court.

8 Q. By the Clerk of Court's Office, okay. All right.
9 Now do you have any other complaints you want to make about
10 your lawyer in this case?

11 A. He didn't give me an investigator when I asked him
12 to, to find these witnesses 'cause it was two people that
13 told this victim my name, and on one -- it was two names
14 called. Then the girlfriend -- initially he said the
15 girlfriend, said his girlfriend set everything up and that
16 she called him and told him she knew who did it but wasn't
17 going to tell him. I asked him numerous times off the top
18 for a private investigator; he never did that. It's just...

19 Q. Got you. Okay. Thank you. If you'd answer any
20 questions the attorney general has for you.

21 THE COURT: Ms. Dixon.

22 **C R O S S - E X A M I N A T I O N**

23 BY MS. DIXON:

24 Q. Okay. How are you doing today?

25 A. How are you doing, ma'am.

K. JENKINS - Cross by Ms. Dixon

1 Q. Good, thank you. Before we get going I want to
2 make sure you do understand the type of relief you could get
3 today which is only a new trial. Do you understand that?

4 A. Yes, ma'am.

5 Q. And do you recall what your charges were?

6 A. Yes, ma'am.

7 Q. And what were they?

8 A. Armed robbery.

9 Q. Okay.

10 A. Possession of a weapon.

11 Q. Uh-huh.

12 A. Kidnapping.

13 Q. Uh-huh.

14 A. I forget the other charges from the Waffle House.

15 Q. Okay.

16 A. And those things right there.

17 Q. Well, let's just talk about those three. So
18 what's the maximum sentence for armed robbery? Do you know?

19 A. Thirty years.

20 Q. Thirty years. And how about the weapon charge?

21 A. Now I know it's not death.

22 Q. It's not death, that is correct. What is it?

23 A. Five years.

24 Q. Five years.

25 A. Mandatory.

K. JENKINS - Cross by Ms. Dixon

1 Q. Mandatory, correct. And then as ---

2 A. Of my knowledge now, I just found that out
3 recently as -- after being locked up this time.

4 Q. Right. Right, right. And then as to the
5 kidnapping charge, what's the maximum for that?

6 A. I have no idea.

7 Q. Thirty years. So total if the judge -- if you
8 were to get convicted of these three crimes and sentenced to
9 the max, do you know what potential sentence you would be
10 facing? Sixty-five years.

11 A. Okay.

12 Q. Sixty-five. And how many did you get?

13 A. Ten. But like I told Mr. Marsh, if we go to trial
14 and lose, I will sleep better knowing that I went to trial
15 and lost.

16 Q. Okay. Even if it means a much larger sentence?

17 A. I told him from the beginning I want to go to
18 trial.

19 Q. Okay. In terms of you complained that he didn't
20 call some witnesses. Are those witnesses here today?

21 A. No.

22 Q. No, okay. And then moving on, you wanted to
23 appeal something. What issue, what meritorious issue do you
24 think should have been raised on appeal?

25 A. Everything. First reason should have got me

K. JENKINS - Cross by Ms. Dixon

1 investigator to fight these -- because it's a hearsay.
2 Somebody told him my name. That could be somebody that
3 don't like me.

4 Q. Okay. Okay. And then moving on ---

5 A. To get -- I'm not finished. To get video. I
6 asked him to get videos of this man ---

7 Q. That sounds like PCR.

8 A. --- putting out a photo lineup. Yeah. I'm
9 asking -- I asked him to get videos, the putting -- that
10 this man putting out a photo lineup because somebody --
11 because he said somebody gave him my name on Facebook. In
12 my head I'm like he could have seen my face on Facebook and
13 pointed me out so. The cops being -- the cop that arrested
14 me, I kicked in the (unintelligible) what I was arrested
15 for, there's the same cop on this armed robbery case and
16 they come to me with it, my name, I mean, and he got fired
17 for unbecoming of officer. I'm asking for all this.

18 Q. Okay. Do you have these witnesses today?

19 A. No, I mean.

20 Q. Okay. And then going back to your plea, you told
21 the court at the time of the plea that you understood
22 certain rights, correct?

23 A. Yes, ma'am.

24 Q. Such as your right to a jury trial?

25 A. Yes, ma'am.

K. JENKINS - Cross by Ms. Dixon

1 Q. And you told the court you wanted to waive your
2 right to a jury trial, correct?

3 A. Because he said if I said anything else, the judge
4 would not accept my plea and I would be going to trial and
5 getting the max. I'm trying to escape death penalty. I'm
6 trying to escape dying at the time.

7 Q. Well, in terms of your understanding or your
8 assertion today that you believe the max was death, do you
9 recall the court telling you that you face that the weapon
10 charge carried five years?

11 A. No. They -- it's on the paper right there. He
12 said if I plead to it, it'll be five years, if I pled to it.
13 And I kept asking him why am I pleading to a gun charge and
14 I don't have a gun. They don't have a gun. Why am I
15 pleading to a gun charge when there's no gun.

16 MS. DIXON: One moment, Your Honor. Sorry.

17 THE COURT: Yes, ma'am.

18 BY MS. DIXON:

19 Q. "They tell me you want to plead guilty to
20 possession of a weapon during the commission of a violent
21 crime and that carries five years in prison. Do you
22 understand that?" What was your response? Do you recall?

23 A. I said yes, ma'am.

24 Q. You said yes ---

25 A. Yes, sir.

K. JENKINS - Cross by Ms. Dixon

1 Q. Yes, sir. If that was not your understanding why
2 didn't you at that time say, Your Honor, wait, I thought I
3 could get death for this?

4 A. I'm not a lawyer.

5 Q. Well, you -- you're telling us today that you ---

6 A. I'm not a lawyer.

7 Q. --- only pled guilty because you believed that
8 that sentence carried death ---

9 A. Because he told me if I pled to it.

10 Q Uh-huh.

11 A --- it only five years. He said if I pled to it,
12 it's only five years. He didn't say if I didn't plead to
13 it, it still five years. He said if I pled to it, it's five
14 years, so of course I'm going to say -- I'm trying to escape
15 the death penalty.

16 Q. Okay. Why didn't you raise that issue with the
17 court at that time and say, Your Honor, wait, I thought this
18 carried -- I thought I could get death for this, you're
19 telling me it's five years, I thought I could get death.

20 A. Because he said if I pled to it, it's five years.

21 Q. So you believe the sentence is different, the
22 maximum sentence changes?

23 A. I'm not a lawyer. Certain words mean certain
24 things in the court of law.

25 Q. Okay. And then, let's see, going on -- now you

K. JENKINS - Cross by Ms. Dixon

1 have said today that you answered in a way to get the judge
2 to accept the plea, correct?

3 A. Yes, ma'am.

4 Q. Now are you saying that some of your answers may
5 not have been truthful?

6 A. Is this for -- he told me if I said anything ---

7 Q. Are you saying that some of the answers ---

8 A. He said ---

9 Q. --- to the Court may not have been ---

10 A. He said if I ---

11 MR. LIFSEY: Objection.

12 THE WITNESS: He said if I were to say anything
13 ---

14 THE COURT: Wait, wait. Wait. Wait.

15 MR. LIFSEY: Stop. Listen to the judge.

16 THE BAILIFF: Sir.

17 THE COURT: When she asks you a question, you can
18 answer that question yes or no and then you can explain, all
19 right?

20 THE WITNESS: Yes, but I was informed to lie.

21 BY MS. DIXON:

22 Q. You were informed to lie. So do you recall ---

23 A. I was told to lie.

24 Q. Do you recall being sworn in at the beginning of
25 your guilty plea?

R. Marsh - Direct by Ms. Dixon

1 A. What -- I'm not understanding the question.

2 Q. Do you recall at the beginning of your guilty plea
3 when they said do you affirm to tell the truth and nothing
4 but the truth?

5 A. No, I don't remember that. I was on medication.

6 Q. Okay. Well, that's on Page 3. Having been duly
7 sworn is in the transcript. And so you were, in fact, sworn
8 prior to the plea. Would you agree with that if that's what
9 the transcript says?

10 A. If that's what that says. I'm not saying I
11 remember that, but if that's what the transcript says, I
12 mean.

13 Q. Okay. And you're telling us today that you lied
14 to the court at the guilty plea?

15 A. I was informed to lie.

16 Q. So you have no problem ---

17 A. I was told to lie.

18 Q. --- lying under oath?

19 A. No, I'm trying -- I have a problem -- I have no
20 problem lying trying to escape the death penalty.

21 Q. Nothing further.

22 A. If I'm not trying to die, I don't have no problem.
23 If my life is on the line, I don't have no problem lying.
24 If I'm trying to stay alive to see my kids and hear from my
25 family, I have no problem with it.

R. Marsh - Direct by Ms. Dixon

1 THE COURT: Mr. Lifsey.

2 MR. LIFSEY: Thank you, Judge. I don't have any
3 further questions.

4 THE COURT: All right. Thank you, sir. You may
5 be seated.

6 MR. LIFSEY: And I don't have any other witnesses,
7 Your Honor.

8 THE COURT: All right.

9 MS. DIXON: We call Rich Marsh.

10 THE CLERK: Raise your right hand to be sworn in.
11 WHEREUPON,

12 **RICHARD MARSH,**
13 having been duly sworn by the clerk, testified
14 as follows:

15 THE CLERK: State your name and spell your last
16 name.

17 THE WITNESS: Rich Marsh, M-A-R-S-H.

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

19 BY MS. DIXON:

20 Q. Mr. Marsh, how are you today?

21 A. I'm well. How are you?

22 Q. Good, thank you. Do you recall when you were
23 appointed to represent Mr. Jenkins?

24 A. I -- not specifically. I can check my notes. But
25 I recall that after Morgan Drapeau had left our office I was

R. Marsh - Direct by Ms. Dixon

1 appointed in, I think, November of 2020.

2 Q. Okay.

3 A. That's what it looks like.

4 Q. And when did you first meet with him?

5 A. So I got the defender data printouts from my old
6 office which indicates that our first jail visit was at the
7 in-person booth on -- that's -- yeah, the in-person jail
8 visit on December 15th of 2020.

9 Q. Gotcha. And do you recall the evidence the State
10 had against him?

11 A. At the time the prior attorney Morgan Drapeau had
12 already -- I had reviewed her notes prior to meeting with
13 him for the first time. And as her notes said that the
14 evidence showed that there's both video ---

15 MR. LIFSEY: I would object to that as hearsay.

16 THE WITNESS: I also personally watched it. My
17 recollection --

18 THE COURT: Hold on.

19 THE WITNESS: Oh, excuse me.

20 THE COURT: If that in the file?

21 MS. DIXON: I think it's part of the file. He can
22 testify to it as the attorney of record.

23 THE COURT: I'm going to allow it, Mr. Lifsey.
24 He's relying on what another expert as I recall it will say.

25 Go ahead. Proceed, sir.

R. Marsh - Direct by Ms. Dixon

1 THE WITNESS: My initial understanding of the
2 evidence was that there was both video surveillance of the
3 armed robbery, as well as video of Mr. Jenkins confessing to
4 Investigator Larita. I have since watched that myself and
5 spoke with Mr. Jenkins about it.

6 BY MS. DIXON:

7 Q. And did you ---

8 A. And watched it with Mr. Jenkins.

9 Q. So you did, in fact, review the evidence?

10 A. I did, including with another attorney in our
11 office who is the second chair for the trial.

12 Q. And you reviewed it with Mr. Jenkins?

13 A. We did.

14 Q. Okay. And let's see, how many times did you meet
15 with him approximately?

16 A. I went through and tallied the visits. It looks
17 like about ten. One of those was two visits in the same day
18 with a second trial attorney, or the second chair Mr. Aaron
19 Harper.

20 Q. And did you explain the elements of the charges
21 and what the State needed to prove?

22 A. I did.

23 Q. Okay. And how about the strengths and weaknesses
24 of the State's case?

25 A. I did explain those.

R. Marsh - Direct by Ms. Dixon

1 Q. And did he have any defenses that you were aware
2 of?

3 A. He did not have any credible defenses. He had a
4 number of defenses that he wanted me to explore and we did
5 explore those.

6 Q. Do you think you had sufficient time to discuss
7 the charges and the State's evidence with him?

8 A. We did.

9 Q. Okay. And is there anything specific that he
10 asked you to investigate?

11 A. He asked me to look into mounting a defense
12 against trying to suppress the confession based on voluntary
13 intoxication. My assessment of both the interview, the
14 video itself, did not support that because we -- I also got
15 his Alvin S. Glenn Detention Center medical records because
16 I think he had been removed from the jail to make that
17 confession and that would have shown me what medications he
18 was on. I don't have access to those at this time; but if
19 there had been anything, it would have been my practice to
20 have included it within my case action sheet. More
21 significantly was that he did not appear to be intoxicated.
22 And then towards the end of the interview was asked to
23 provide a buccal swab but declined to do so stating that he
24 would need to consider speaking with an attorney before
25 making that decision, so I didn't believe that there would

R. Marsh - Direct by Ms. Dixon

1 be any evidence to support voluntary intoxication.

2 Q. Gotcha. So is it your opinion as a lawyer that if
3 you had challenged this confession that it would have been
4 admitted based on ---

5 A. Absolutely.

6 Q. --- both determined to be voluntary?

7 A. Yes.

8 Q. And if y'all had gone to trial would you have
9 raised any issues with this?

10 A. I don't think I could have credibly raised any
11 issues.

12 Q. Okay. In terms of, let's see, going back to
13 failure to investigate. Did you see any reason to hire a
14 private investigator?

15 A. No, I did not.

16 Q. Okay. And did you engage in plea negotiations
17 with the State?

18 A. Extensively.

19 Q. Okay. Did you discuss all the offers with Mr.
20 Jenkins?

21 A. I did.

22 Q. And ultimately, whose decision was it to plead
23 guilty?

24 A. It was Mr. Jenkins'.

25 Q. And did you explain to him the constitutional

R. Marsh - Direct by Ms. Dixon

1 rights he was waiving?

2 A. I did.

3 Q. And the sentence he faced?

4 A. I did.

5 Q. And in terms of the possession of a weapon charge,
6 did you explain to him the maximum sentence -- well, it is
7 only a sentence, but the sentence for that?

8 A. I would have probably left it at this carries up
9 to five years. I was unaware of the nuances of that law and
10 have misunderstood it in prior times so today's hearing was
11 also elucidating for me as well.

12 Q. Was there anything that -- any reason that you had
13 to believe he thought it carried death penalty for the
14 weapon charge?

15 A. Not that was ever expressed to me. I would have
16 said it carries up to five years. I wouldn't have
17 explicitly stated that it does not carry death because
18 that's not something I would have assumed that anyone would
19 believe, but that is -- I did not tell him it did not carry
20 death, or that it one way or the other.

21 Q. And then in terms of prior to the plea, what was
22 your advice to him in terms of answering the plea judge?

23 A. My answers or my advice to everyone is about the
24 same, is that when the judge asks you a question you have to
25 answer it honestly. If you do not answer it honestly, the

R. Marsh - Cross by Mr. Lifsey

1 judge is not going to take your plea; or if it's something
2 that where they've already accepted your plea, it will not
3 go well for you if you have not answered it honestly. In
4 terms of if this plea is going to happen, you have to accept
5 responsibility. If that's not what happened, trial is your
6 choice, but at the end of the day, that's your decision and
7 I don't -- you know, I'm not the one who bears the
8 consequences of that decision.

9 Q. Okay. And do you believe he understood your
10 conversations?

11 A. I do.

12 Q. And did he ask you to file a direct appeal?

13 A. I have no recollection of that either in-person or
14 subsequently by mail; but I did leave the Public Defender's
15 Office in Richland County around that time.

16 Q. Okay. And if he had asked you to file a direct
17 appeal, what would you have done?

18 A. I would have done so.

19 Q. Okay. And then are there any issues, meritorious
20 issues you're aware of, that could have been raised on that
21 direct appeal?

22 A. None that I'm aware of.

23 Q. Okay. Nothing further.

24 THE COURT: Mr. Lifsey.

25 C R O S S - E X A M I N A T I O N

R. Marsh - Cross by Mr. Lifsey

1 BY MR. LIFSEY:

2 Q. Just briefly. What is our client's educational
3 background, do you know?

4 A. I would -- I don't recall directly but if I -- see
5 if I have my notes. These also wouldn't be the entirety of
6 my notes. We don't send paper files.

7 Q. I mean, you would have asked that as part of your
8 interview process I assume?

9 A. I would have.

10 Q. I'm sorry, do you know? Do you know the answer?

11 A. I -- I would only be speculating and I don't --
12 generally wouldn't do that.

13 Q. How about his mental health situation? What do
14 you know about that?

15 A. My notes indicate that it says unspecified simple
16 schizophrenia acute and epilepsy, not otherwise specified
17 chronic. I also have notes indicating that I got 55 pages
18 of medical records from Alvin S. Glenn, but I don't have
19 those physically with me. They would be in the -- in my
20 former office still. I believe at one point he had also
21 told me he'd had a brain injury involving maybe an accident,
22 but I'm not 100-percent sure.

23 Q. And well, let's take these issues one at a time.
24 So we're not sure of his educational background. He's
25 certainly got mental health issues diagnosed with

R. Marsh - Cross by Mr. Lifsey

1 schizophrenia and you recall him having traumatic brain
2 injury, correct?

3 A. I believe that's my recollection, but I haven't
4 seen it yet in my notes somewhere.

5 Q. Have you represented folks with similar issues?

6 A. I have.

7 Q. Would you agree that with folks like that special
8 care need to be -- needs to be taken to make sure they
9 understand our conversations in a way that, for example,
10 between two lawyers, you and I, might not be the same?

11 A. Absolutely. Sometimes I also need it explained
12 twice to me.

13 Q. Got you. So would you agree that
14 misunderstandings about the law are not uncommon?

15 A. Absolutely.

16 Q. Misunderstandings about what offenses carry are
17 not uncommon?

18 A. Completely agree.

19 Q. Now are you aware of what medications he was
20 taking or -- wasn't he on psychiatric medications?

21 A. I don't have a specific recollection, but it would
22 have been in the medical records I received.

23 Q. Okay. I'm going to show ---

24 A. I may have other notes somewhere.

25 Q. I'm going to show you -- excuse me one second.

R. Marsh - Cross by Mr. Lifsey

1 (Attorneys confer.)

2 BY MR. LIFSEY:

3 Q. I'm going to show you a document that looks to be,
4 at least in my mind, you tell me if I'm right, a medical
5 record from June of 2022 from the Alvin S. Glenn Detention
6 Center concerning my client, for our client.

7 A. That's what it looks like.

8 Q. And does it indicate -- I'll direct your attention
9 down there to the bottom. Does it indicate he's taking some
10 medicines, some psychiatric medicines?

11 A. It does indicate that he's taking some
12 medications.

13 Q. Did you -- you would have -- and that was, of
14 course, June of 2020 is the date of the confession, correct?

15 A. Correct.

16 Q. So did you explore what the medicines were and
17 what their effect might be on his competency?

18 A. Beyond Google, no, and I did review these in by
19 Googling the names of the medications with my second chair
20 when we were exploring whether there's any possibility
21 whatsoever we could mount a defense. We didn't come up with
22 anything that I believed was particularly strong, especially
23 in light of his responses to questioning during the
24 confession and understanding that; and then also
25 self-limiting based on his understanding of his legal rights

R. Marsh - Cross by Mr. Lifsey

1 during the confession.

2 Q. I want to ask you a question about something you
3 told the solicitor about, your instructions regarding how to
4 answer questions from the judge. Did you tell -- I think
5 I've heard you right, that you told the solicitor you advise
6 clients to answer honestly or the court will not tell the
7 plea. Is that ---

8 A. With respect and in that context it's to answer
9 honestly -- when the judge says are you guilty or are you
10 not guilty, you have to answer guilty, but that's only if
11 you are guilty. You can't answer the judge dishonestly.
12 If, you know, if -- I've been in situations before where
13 someone has wanted to tell the judge in addition to things
14 but it wasn't really like that. And the case -- this case
15 was an armed robbery where someone -- it's my understanding
16 of what Mr. Jenkins told me and what he said during the
17 confession is, because I don't want to speak for him but, in
18 the confession it states that he was sold fake drugs by
19 somebody and that they went back and basically did self-help
20 to return that. And they didn't -- he -- they -- the victim
21 is alleged to have lied and told the police that they stole
22 like 200 or \$300, but it was really just \$13 what was in his
23 pockets. And that's -- and as I -- under South Carolina law
24 using -- even if it's a prop gun to take, to do, to
25 effectuate that self-help, that is an armed robbery. But in

R. Marsh - Cross by Mr. Lifsey

1 a moral sense, I could see where he was coming from, that
2 that is unfair, that that was someone trying to cheat him
3 and then him -- his only recourse being able to do that.

4 Q. I'm trying to get to what exactly --

5 A Oh.

6 Q --- you told him.

7 A. Sorry.

8 Q. That's all right. Him or clients in general about
9 how they should answer the judge's questions.

10 A. Honestly.

11 Q. Well, okay. So is it either a mischaracterization
12 of my memory or what you said to the solicitor that -- did
13 you tell them that if they -- the judge will not accept the
14 plea if they don't answer honestly?

15 A. I may have stated it like that, but I think I
16 tried to explain it more fully right now that you can't say
17 I'm pleading guilty but I'm not morally wrong or, you know,
18 I shouldn't really be guilty, it's just South Carolina law
19 that says I'm guilty.

20 Q. Correct. So obviously someone can answer if
21 someone was not guilty to a crime answer to that question
22 honestly, the judge would not accept the plea, correct?

23 A. Say that -- sorry.

24 Q. If someone is not guilty of a crime ---

25 A. Yes.

R. Marsh - Cross by Mr. Lifsey

1 Q. --- if the judge asks are you guilty and you say,
2 no, I'm not guilty, that person is not going to be able to
3 plead guilty, the judge is not going to accept the plea?

4 A. That -- I -- yes, sir.

5 Q. Did you instruct him as to how to answer the
6 questions in order to get the judge to accept the plea? Did
7 you tell him what was necessary for him to do it?

8 A. I think I would have said -- if -- I would have
9 said you have to answer honestly, the judge is not going to
10 take the plea unless you answer guilty, but that has to be
11 your honest answer.

12 Q. And what did you tell him would happen if the
13 judge did not accept the plea?

14 A. That we would have trial. The day of the plea was
15 the opportunity. The solicitor had already noticed us for a
16 trial, and we were either going to plea that day or reject
17 the offer on the record. I think they had wanted to do that
18 over video, but I asked that it be done in-person so that I
19 could continue to have the opportunity to speak with
20 Mr. Jenkins.

21 Q. So you say -- you're testifying that you told him
22 that if he had not -- did not answer -- if the judge did not
23 accept the plea, his case would go to trial; is that right?

24 A. Correct.

25 Q. Did you tell -- what did you tell him would likely

R. Marsh - Cross by Mr. Lifsey

1 happen if the case went to trial?

2 A. I told him that my assessment of the evidence I
3 believed he'd likely be convicted.

4 Q. What did you tell him with regards to sentence?

5 A. I said that -- this is what I tell most of my
6 clients is, you know, no one wants to believe that there is
7 such a thing as a trial tax I don't nec-- that's a hard
8 thing to subjectively identify in the mind of another human
9 being and tell and say that a judge is going to give you a
10 trial tax; but, you know, I generally believe that the
11 reason that the recommendations and the pleas, that that's
12 what resolve cases because if you go to trial the outcome
13 will be worse. In this case I did believe that he would
14 have a -- would get convicted. I don't think I would have
15 said 100-percent because I don't ever generally say
16 something like that. I try to shy away from being -- from
17 giving absolutes. But in this case I think what I, at
18 least, you know, if he had asked me specifically what do you
19 think is going to happen I would have said, if we go to
20 trial we are likely to be convicted.

21 Q. Okay. And I think I understand what you're
22 saying. I perfectly understand what you're saying with
23 regards to the trial tax issue. But how do you think that
24 is interpreted by someone of my client's background with
25 mental health problems and with a traumatic brain injury?

R. Marsh - Cross by Mr. Lifsey

1 A. He seemed to understand it based on -- I liked
2 Mr. Jenkins. We always had great conversations. He wanted
3 me to look into strong arm often. He did initially ask for
4 armed robbery; but on the eve when we were trying to make
5 that decision, his focus was trying to see if we could get
6 under the ten year minimum.

7 Q. But just to go back to my question, let me phrase
8 it another way. Is it fair to say that he would have
9 interpreted your discussion, if I understand perfectly,
10 regarding a trial tax as telling him that he was going to
11 get the max if he went to trial?

12 MS. DIXON: Object to speculation.

13 THE WITNESS: I don't have any specific ---

14 MS. DIXON: Object to speculation.

15 THE COURT: Hold on. Hold on. Hold on. Ask the
16 question again, sir.

17 BY MR. LIFSEY:

18 Q. How do you -- let me just rephrase it this way.
19 Maybe this will make it better. How do you believe your
20 message was interpreted in regards to the trial tax issue?

21 MS. DIXON: Object to speculation.

22 THE COURT: That's sustained.

23 BY MR. LIFSEY:

24 Q. Just to reiterate my earlier question, you would
25 agree that his understanding of the law and the court

R. Marsh - Redirect by Ms. Dixon

1 procedures are certainly not the same as the two of us who
2 presumably are licensed to practice law and don't -- are not
3 suffering from any mental illness hopefully or traumatic
4 brain injury, correct?

5 A. Correct.

6 MR. LIFSEY: I beg the Court's indulgence just one
7 moment.

8 (Attorney confers with defendant.)

9 BY MR. LIFSEY:

10 Q. When did you -- what -- when did you leave the
11 Public Defender's Office, do you remember?

12 A. It was -- I had made plans to do that towards the
13 end of 2021.

14 Q. Uh-huh.

15 A. And think I moved up there in early January to
16 Greenville.

17 Q. Okay. So were you still at the Public Defender --
18 this plea, what's the date of this plea?

19 A. I think it was November 9th.

20 Q. So you were certainly there the ten days ---

21 A. Oh, sure, yeah.

22 Q. --- in which appeal could have been filed?

23 A. Yes.

24 Q. All right. And the solicitor asked -- excuse me,
25 I keep ---

R. Marsh - Redirect by Ms. Dixon

1 MS. DIXON: That's okay.

2 MR. LIFSEY: This is after we try cases too.

3 BY MR. LIFSEY:

4 Q. The attorney general asked you did you -- the
5 attorney general asked you did you see any meritorious issue
6 to appeal. Do you remember her asking that?

7 A. I did.

8 Q. But you know as a defense lawyer that doesn't
9 matter, does it?

10 A. If a client asks you to appeal, you've got to
11 figure out how to get it out there.

12 Q. When you file an appeal ---

13 A. Yeah.

14 Q. In fact, there is a in re anonymous member of the
15 bar opinion of the court that says you got to file the
16 appeal?

17 A. Exactly.

18 Q. Okay.

19 MR. LIFSEY: Thank you, Your Honor.

20 THE COURT: Ms. Dixon.

21 MS. DIXON: Real briefly.

22 **R E D I R E C T E X A M I N A T I O N**

23 BY MS. DIXON:

24 Q. During cross-examination you agreed that special
25 care needs to be taken to help certain people understand.

1 Did you take that special care and try to explain and help
2 him understand?

3 A. I did.

4 Q. And do you believe he understood?

5 A. I do.

6 Q. And do you have any reason to think that he lacked
7 the competency to understand your questions or to enter a
8 guilty plea?

9 A. No.

10 Q. Okay. And then going back to how you generally
11 ended this specific case, direct your clients to answer
12 questions, do you ever tell them to lie to the court?

13 A. I would never do that.

14 Q. Nothing further.

15 THE COURT: Mr. Lifsey.

16 MR. LIFSEY: I don't have any further questions,
17 Judge. Thank you.

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

19 Ms. Dixon.

20 MS. DIXON: Nothing further other than I would
21 like to point out that the law for appealing a guilty plea
22 is different than appealing from a trial. There is no duty
23 to advise your client of appeal from a guilty plea absent
24 extraordinary circumstances. I believe the name of that
25 case is Turner v. State. I'd be happy to provide a cite to

1 that if you would like to see it.

2 THE COURT: If you would.

3 MS. DIXON: Yes, sir.

4 MR. LIFSEY: And I don't necessarily disagree with
5 that interpretation of the law. The only thing I would
6 point out is, at least as I understand the law, is a bright
7 line rule if your client asks you to file. It says asks you
8 to file an appeal whether it's a guilty plea or whatever you
9 have to do it. That's In Re anonymous member of the bar. I
10 don't recall the cite for it, but there is an ethical
11 opinion. At least that's always the way I operated in the
12 many years I was a public defender.

13 THE COURT: Yes, sir.

14 MR. LIFSEY: I don't quibble at all with the AG's
15 assessment of the law.

16 THE COURT: I understand what you're saying.
17 Folks, I will give you a ruling just as soon as I can get to
18 it. I am in Georgetown County next week, we are, and hoping
19 for a light week to get back to some of these things. By
20 default, apparently I have become something of a PCR judge
21 in the last few months. Anyway, there we are. Thank y'all
22 for your patience with us.

23

24 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA))
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), retired court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this
12th day of July, 2025.

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Kenya R. Jenkins, #316379,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2022-CP-40-02187

ORDER OF DISMISSAL

This matter is before the Court by way of an application for post-conviction relief filed by Kenya R. Jenkins (Applicant) on April 27, 2022. Respondent made its return, moved to dismiss an allegation related to Applicant allegedly being held without an indictment, and moved for a more definite statement. Thereafter, Applicant—through counsel—served an amended application. On January 12, 2023, a hearing convened before the Honorable George E. McFaddin, Jr. Applicant was present and represented by Michael Lifsey, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant testified on his behalf. Respondent called as a witness plea counsel Richard Marsh, Esquire. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate ten-year sentence. In June 2021, the Richland County Grand Jury indicted Applicant for Armed Robbery (2021-GS-40-02477) and Possession of a Weapon During the Commission of a Violent Crime (2021-GS-40-02479). These charges arose from an armed robbery outside a

Regency Inn Hotel; the victim later picked Applicant from a lineup, and police obtained surveillance footage showing Applicant and a co-defendant committing the robbery. Additionally, Applicant provided a statement to police confessing to robbing the victim with a prop gun.

On November 9, 2021, Applicant appeared before the Honorable Robert E. Hood and pled guilty as indicted. Public Defender Richard Marsh represented Applicant, and Assistant Solicitor Bret West represented the State. Judge Hood sentenced Applicant to concurrent terms of ten years for armed robbery and five years for the weapon charge. Applicant did not appeal.

CURRENT APPLICATION

On April 27, 2022, Applicant timely filed this application alleging:

1. Ineffective Assistance of Counsel
 - a. "Failure to prepare proper defense, failure to investigate, failure to advise."
2. "Being held without presentment of indictment"
 - a. "Violation of amendment V"

Applicant requests relief in the form of "vacate, set aside or correct sentence." Thereafter, Applicant—through counsel—amended his application to allege:

Ineffective assistance of counsel / Involuntary Guilty Plea:

- a. Counsel did not meet with Applicant a sufficient number of times, fully explain the strengths and weaknesses of the State's case, fully investigate, or explain the elements of the offenses;
- b. Counsel did not inform Applicant that the weapon charge carried a maximum of five years. Due to the wording on the indictment, Applicant believed it carried a potential life sentence or the death penalty.
- c. Counsel instructed Applicant to answer the Judge's questions during the plea colloquy in such a manner as would result in the Judge accepting the plea or that Applicant would receive the maximum sentence, which he believed to be either a life sentence or the death penalty.
- d. Counsel did not file an appeal despite Applicant's request he do so.

Applicant alleges he would have proceeded to trial but for the foregoing alleged deficiencies, which rendered his plea involuntary. At the hearing, Applicant proceeded on the allegations of his amended application.

MOTION TO DISMISS

Respondent moved for summary dismissal of allegation two of Applicant's initial application, wherein Applicant alleged he is being held unlawfully because he was not presented with his indictments, in violation of his Fifth Amendment rights. Specifically, Respondent asserted the record of Applicant's plea hearing reflects that Applicant knew the nature of the charges against him. This Court agrees and finds Applicant was in fact indicted for this offense on June 16, 2021. He is thus not being held unlawfully. This Court further finds Applicant waived any challenge to the indictment by pleading guilty. This claim is thus dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Richland County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records from this PCR action. This Court also had the opportunity to observe witnesses at the hearing, pass upon their credibility, and weigh their testimony accordingly. After a careful review based upon the Strickland standard, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17 27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel / Involuntary Plea

A PCR applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To establish ineffective assistance of counsel, Applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) Applicant was

prejudiced by counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Under the first prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," and the applicant must overcome this presumption to receive relief. Id. at 117-18, 386 S.E.2d at 625. Second, Applicant must show prejudice by demonstrating "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id.

When reviewing a guilty plea, the Strickland deficiency prong remains unchanged—Applicant must show counsel's representation fell below an objective standard of reasonableness. Hill, 474 U.S. at 58–59. To show prejudice, Applicant must show a reasonable probability "that, but for counsel's [alleged] errors, he would not have pled guilty and would have insisted on going to trial." Id. at 59. 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 v. Alabama, 395 U.S. 238, 243 (1969). Additionally, to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived. Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses. State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985).

Failure to adequately meet / explain State's case / fully investigate

Applicant asserts counsel was ineffective for failing to meet with Applicant a sufficient

number of times, fully explain the strengths and weaknesses of the State's case, fully investigate, or explain the elements of the offenses. Applicant did not prove this ground.

At the PCR hearing, Applicant testified he had another attorney before Marsh, and he received a letter in November from Marsh indicating Marsh would be his attorney. After that, Marsh met with him at the detention center in March; at that time Applicant told Marsh he wanted an investigator because "I feel like it's a hearsay because the alleged victim was saying that somebody told him my name, gave him my picture on Facebook and he said this was me." He explained he was initially arrested on an unrelated incident from the Waffle House, and the officer in that case and this case was fired for conduct unbecoming of an officer. Applicant explained he wanted an investigator to locate "two people that told this victim my name."

Applicant recalled meeting with counsel once on a screen, again a couple months later, once more at jail after that, and at the preliminary hearing and bond hearing. He testified thereafter, Marsh "came for like a week straight" and they were supposed to discuss trial, but Marsh was only concerned with Applicant accepting the plea. Applicant maintained he would have proceeded to trial if Marsh met with him more. Applicant testified he pled guilty because Marsh was certain Applicant would be convicted if he proceeded to trial, and Marsh believed the judges in the Fifth Circuit would impose the maximum sentence. Applicant claimed that based on the indictment for the weapon charge, he believed he was facing either life in prison or the death penalty for the weapon charge.

Marsh testified he was appointed in November 2020, after another attorney left the Public Defender's Office. He stated he first met with Applicant at jail on December 15, 2020. Marsh testified he reviewed the discovery with Applicant, which included a surveillance video of the armed robbery as well as a video of Applicant confessing to Investigator Larita. Marsh testified

his notes indicated he met with Applicant about ten times, and two of those visits occurred on the same day. He stated he explained the elements of the charges, what the State needed to prove, and the strengths and weaknesses of the State's case. Marsh testified he explored a number of defenses at Applicant's request, but Applicant did not have any credible defenses. Specifically, Applicant asked counsel to move to suppress his statement based on intoxication, but Marsh averred the video and jail records showing Applicant's medication did not support suppression based on intoxication. Ultimately, Marsh believed the confession would have been admitted at trial. Marsh testified he did not see any reason to hire an investigator.

This Court finds counsel's foregoing testimony credible. Based on this credible testimony, counsel met with Applicant a sufficient number of times, and his investigation and communication with Applicant was reasonable under prevailing professional norms and not deficient. Likewise, this Court finds Applicant's testimony that he pled guilty because he feared a life sentence to be not credible—especially here where the plea court advised him the weapon charge carried five years. (Tr. 5). This Court further finds Applicant did not present any credible evidence of what counsel would have uncovered upon further investigation. Ultimately, counsel's advice was reasonable under prevailing professional norms, and Applicant pled guilty knowingly and voluntarily. Applicant did not prove deficiency or prejudice, and this claim is denied.

Sentence for weapon charge

Applicant next contends counsel was ineffective for not informing Applicant the weapon charge carried a maximum of five years. He asserts that due to the wording on the indictment, he believed it carried a potential life sentence or the death penalty Applicant did not prove this ground.

At the PCR hearing, Applicant claimed that based on the indictment for the weapon charged, he believed he was facing either life in prison or the death penalty for the weapon charge.



He stated he would have proceeded to trial on that charge if he knew it only carried five years. Applicant stated counsel told him that if he pled guilty to the gun charge, he would get five years on that sentence. However, he testified counsel never told him “that if he went to trial and lost trial then they won’t—they wasn’t going to kill me.” Marsh testified Applicant never expressed to him that he believed the weapon charge carried the death penalty. Marsh explained, “I wouldn’t have explicitly stated that it does not carry death because that’s not something I would have assumed that anyone would believe, but that is—I did not tell him it did not carry death, or that it one way or the other.” This Court finds Applicant’s foregoing testimony that he thought the weapon charge carried either a life sentence or the death penalty NOT credible, especially here where the plea court advised Applicant the weapon charge carried five years, and Applicant relayed that he understood. (Tr. 5). This Court further finds Marsh’s foregoing testimony credible. Based on the foregoing, counsel’s advice regarding the sentence was reasonable under prevailing professional norms. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Instructing Applicant how to answer plea court

Applicant asserts counsel told him to answer the plea court’s questions in such a manner as would result in the court accepting the plea or that Applicant would receive the maximum sentence. Applicant did not prove this ground. At the PCR hearing, Applicant stated Marsh told him that if he said anything other than he was guilty at the plea hearing, he’d receive the maximum sentence, whereas if he pled guilty, he would only receive five years. He likewise testified he was told to lie to the plea court. In contrast, Marsh testified he told Applicant to answer the court’s questions honestly. He explained that he informed Applicant the Court may not accept the plea if Applicant did not express he was guilty, but he reiterated that he told Applicant to answer honestly. This Court finds Applicant’s testimony that he was told to lie NOT credible, whereas this Court



finds counsel's foregoing testimony credible. Based on the foregoing, counsel's advice was reasonable under prevailing professional norms. Applicant did not prove deficiency or prejudice, and this claim is denied.

Late appeal

Applicant testified that after his plea, he wrote Marsh and requested an appeal, but Marsh never filed an appeal. Marsh testified he did not recall Applicant requesting an appeal in-person or by mail, although he left the Public Defender's Office shortly after the representation. However, he clarified he left at the end of 2021—more than ten days after this plea. He further averred he was not aware of any meritorious issues from this guilty plea. However, Marsh stated he would have filed an appeal if Applicant had requested one. This Court finds credible Marsh's foregoing testimony that Applicant did not ask him to appeal and he did not receive a letter requesting an appeal prior to leaving the Public Defender's Office. Thus, Marsh was not deficient for not filing an appeal. See Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) ("Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea."). This Court further finds Applicant did not demonstrate extraordinary circumstances for an appeal from a guilty plea. Thus, this claim is denied.

CONCLUSION

Based on the foregoing, Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty

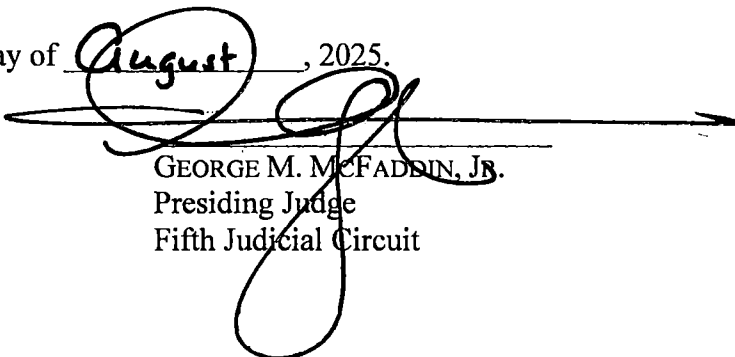


days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 15th day of August, 2025.


 GEORGE M. MCFADDIN, JR.
 Presiding Judge
 Fifth Judicial Circuit

Sumter, South Carolina

WITNESSES

(S) Michael V Laurita
- Richland County Sheriff Dept

ARREST WARRANT NUMBER

2020A4010202921

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 16 2021

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2021GS4002477

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

57 June TERM 2021

THE STATE

VS.

Kenya Rydell Jenkins

**Indictment for
ROBBERY / ARMED ROBBERY, ROBBERY
WHILE ARMED OR ALLEGEDLY ARMED
WITH A DEADLY WEAPON**

SC Code: 16-11-0330(A)

CDR Code: 0139

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

Defendant

X *Kenya Rydell Jenkins*
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

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

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 15, 2021, the
 Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Kenya Rydell Jenkins did in Richland County on or about May 30, 2020, commit robbery by feloniously taking from the person or presence of Deshon Richmond, by means of force or intimidation, goods or monies of Deshon Richmond, such goods or monies being described as cash and/or jewelry, with the intent to deprive the owner permanently of such property, while armed with a pistol, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC Code of Laws (1976, as amended).

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

**CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
Janette W. McBride
 C.C.C.P.&Q.S.
 RICHLAND COUNTY
 SOUTH CAROLINA**

Byron E. Gipson

 BYRON E. GIPSON, SOLICITOR

WITNESSES

(S) Michael V Laurita
- Richland County Sheriff Dept

ARREST WARRANT NUMBER

2020A4010202923

ACTION OF GRAND JURY
TRUE BILL

[Signature]
Foreperson of Grand Jury

Date:

JUN 16 2021

VERDICT

∞
∞

Foreperson of Petit Jury

Date:

DOCKET NO. 2021GS4002479

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

57 June TERM 2021

THE STATE
vs.

Kenya Rydell Jenkins

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

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

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

Defendant

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

[Signature]
Defendant

Witness:

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 15, 2021, the
Grand Jurors of Richland County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Kenya Rydell Jenkins did in Richland County, on or about May 30,
2020, possess a firearm, or visibly display what appeared to be a firearm,
or visibly displayed a knife, during the commission or attempted
commission of a violent crime, in violation of Section 16-23-0490, S. C.
Code of Laws, 1976, as amended.

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



BYRON E. GIPSON, SOLICITOR

