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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County

John C. Hayes, III, Circuit Court Judge

NICHOLAS ANTWAN STEVENSON

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-0011289

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR PETITIONER

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

-----x

State,

Plaintiff,

Case No.

-against-

2012-GS-46-3615

Nicholas Stevenson,

Defendant.

-----x

October 17, 2011

York, South Carolina

B E F O R E:

HONORABLE WILLIAM H. SEALS

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

Erin Joyner, Esquire

Assistant Solicitor

Phil Smith, Esquire

Attorney for the Defendant

Aileen Butler

Official Court Reporter

1 MS. JOYNER: Before the Court is Nicholas
2 Antwan Stevenson. He is represented by Phil
3 Smith, from the public defender's office. He is
4 pleading guilty today to two charges, Your Honor.
5 The first is a true bill indictment
6 2011-GS-46-3506, charge of threatening a life of
7 a public official. He is waiving presentment
8 today and pleading guilty to possession of
9 cocaine base, also known as crack cocaine and
10 that is a first drug offense under our new
11 enhancement law. As I said, he is waiving
12 presentment on that charge, Your Honor.

13 This is a plea without any recommendation or
14 negotiation. We do have a position on sentencing
15 at the appropriate time and just to make the
16 record very clear there are two other outstanding
17 charges. This plea does not take care of those
18 charge and we will handle those at later time.

19 THE COURT: Okay. Can we get him to initial
20 where he waived presentment to the Grand Jury.

21 All right, Mr. Stevenson, you are pleading
22 guilty to possession of cocaine base, first
23 offense which carries up to three years in jail;
24 is that correct.

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And you are also pleading guilty
2 to threatening the life of a public official
3 which carries up to five years in jail; is that
4 correct?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: Were you in the courtroom when I
7 went over your rights to a jury trial?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did you understand those
10 rights?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you want to give up your
13 right to a trial and plead guilty today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you satisfied with your
16 lawyer?

17 THE DEFENDANT: Yes, sir. Absolutely am.

18 THE COURT: Anybody promise you any type of
19 reward or gift to get you to plead guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: Anybody coercing you or
22 threatening you in any way to make you plead
23 guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you under the influence of

1 any drugs or alcohol at this time?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you understood all of my
6 questions?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you answered me truthfully?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Please state the facts.

11 MS. JOYNER: Thank you, Your Honor. The
12 facts as to threatening the life of a public
13 official is this, on August 5, 2011 at about 5:40
14 p.m. Officer Ander of the Rock Hill Police
15 Department responded to 668 IZARD Street which is
16 located within the city limits of Rock Hill with
17 York County, South Carolina, and she responded
18 there in response to a call about intoxicated
19 male on the scene being disorderly. Officer
20 Ander arrived and observed a black male wearing a
21 black T-shirt and shorts banging on the front
22 door of a residence. The male was attempting to
23 gain access and yelling profanities at the door.
24 In his hand he had a open 24 ounce red can of
25 Budweiser beer and was actually drinking it in

1 front of the officer.

2 Officer Ander told the male who later
3 was identified as the defendant to lower his
4 voice and stop yelling obscenities and to put his
5 beer down. The male continue to refuse. Officer
6 Cook arrived as backed up on the scene and
7 attempted talk to Mr. Stevenson and get him to
8 calm down.

9 Officer Ander then spoke with the residents
10 of the house who advised them that Mr. Stevenson
11 had recently moved out of the residence, had come
12 back to pick up belongings that he thought was
13 there. The only items that were left there was a
14 bag of shoes but Mr. Stevenson, I assume believed
15 there should be more there and became unruly and
16 disorderly.

17 Officers were attempting to escort Mr.
18 Stevenson to a patrol vehicle which was located
19 about three or four houses down the road when Mr.
20 Stevenson became more agitated. He began to
21 refuse to walk and started to pull away from
22 the officer. He was warned by officers multiple
23 times to comply and walk to the vehicle but he
24 continued to resist. Officer Ander assisted
25 Stevenson to the ground, restrained him from

1 resisting further. While Stevenson was being
2 placed in the patrol vehicle he began a slew of
3 threats of bodily harm to Mr. Officer Ander and
4 Officer Cook. It is very clear on the video,
5 Your Honor that they are directed to both
6 officers. They are -- the threats began once the
7 camera starts running once Officer Cook began to
8 move the car closer over to the defendant and
9 they continue until he is brought in through the
10 sally port into the holding area. And Officer
11 Ander and Officer Cook being officers of the Rock
12 Hill Police Department and would be considered
13 public officials under the case law for that
14 statute.

15 Your Honor, Mr. Stevenson did make bond on
16 that charge. He was subsequently arrested on
17 August 25th of 2011. He was arrested at an area
18 motel with his estranged wife. He was arrested
19 there. They were called out for one reason but
20 he was ultimately arrested for outstanding
21 warrants for criminal domestic violence, 3rd
22 offense. There was a search incident to his
23 arrest by the Rock Hill Police Department where
24 he was found to be in possession of .46 grams of
25 crack cocaine and that drug report does in fact

1 confirm that it is in fact crack cocaine. And I
2 have his record if Your Honor is ready for it?

3 THE COURT: Yes.

4 MS. JOYNER: Mr. Stevenson's record from
5 1996, public disorderly conduct from Lancaster.
6 Public disorderly conduct from Rock Hill. 1998
7 possession of crack cocaine, first and DUI. From
8 1999, possession of crack cocaine, first offense.
9 From 2000 trespass. From 2002 habitual traffic
10 offender. Manufacture of -- I sorry, let me just
11 check this on the computer. I apologize. I
12 have his rap sheet. I beg the Court's
13 indulgence.

14 I am sorry! On the manufacturing, possession
15 of other scheduled drug, one through three, first
16 offense and criminal domestic violence and
17 aggravated nature, Your Honor, he received ten
18 years and it says on the criminal domestic, high
19 and aggravated and on the manufacturing of drugs.
20 And a concurrent five-year sentence on the
21 habitual traffic offender and that was in 2002.

22 In 2008, Mr. Stevenson was arrested for
23 criminal domestic violence again, a 2nd
24 offense, he completed a 26-week batterers
25 counseling for dismissal. In that same year he

1 was arrested again for CDV 2nd. He received one
2 year suspended to time served and two years
3 probation.

4 In 2009 he was arrested on two separate
5 dates for criminal domestic violence and those
6 charges were plead to criminal domestic
7 violence 2nd offense and he received an identical
8 sentence of one year suspended to time served and
9 two years probation again.

10 In 2009 he was arrested for possession of
11 a stolen pistol and he plead to time served.

12 THE COURT: All right. I will accept the
13 plea. I find it was given freely and made
14 intelligently and he has the advise of competent
15 counsel.

16 Be glad to hear from you..

17 MR. SMITH: Thank you, Your Honor. May it
18 please the.

19 Nicholas stands before you today, Your
20 Honor, in many ways is a broken man and Your
21 Honor has heard a story from the solicitor's
22 presentation just from rap sheet alone you can
23 see a failed relationship and substance abuse
24 issues that has been ongoing and repetitive for
25 some period of time now.

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What you have not gotten to hear is the Nicholas as I met him when I began representing him last yea. Despite his record and all the challenges that would posed to an individual had gotten some funding to go back to school. And he got back enrolled full time. He would bring me updates from his classes and how he was doing in school. I would call and he would tell me when he was in school and what was going on. He was hoping to go in business management classes at point. Trying to start a business of his own, Your Honor. But he continued a relationship with a female who Your Honor has heard sort of reoccurring through this fact pattern as well as some of his priors.

Your Honor, I should point out that she has children that are not Nicholas's, but he has treated them as his own and he has been a father figure for those children and provided support as well. Now, an unlawful neglect for whipping one of those is the basis for the one of the charges that the solicitor spoke about that we are not resolving here today. But he has been involved in the lives of those children for a number of years and taken some responsibility that he was

1 not required to take. There has been a pattern
2 of a lot of calls and CDV charges or complaints
3 of things being brought against him. Some times
4 they are dropped. Some times they are not. But
5 it happened again here, Your Honor. He had
6 gotten out. He was this school and she made
7 another allegation against him. He had this
8 pending charge already and at that point, Your
9 Honor, he was in his view the home that he was
10 paying support for that she was attempting to get
11 him out of that home and take his property as
12 well. He attempted to go back on that evening to
13 get his property. I have been a able to speak
14 with his wife and with her account of another
15 witness, she heard two people tell the officers
16 that he didn't stay there, but he did. And he
17 felt that he was being wronged and that false
18 information was given about him at that point.
19 And it was based upon my investigation into what
20 was going on. But the officers had no way of
21 knowing that. And Nicholas knows that his
22 ultimate actions were not appropriate here, but
23 at that point, Your Honor, he was intoxicated.
24 He was trying to get things that he thought were
25 rightfully his. He wanted to get them and the

1 officers was trying to get him away at that time
2 from that situation and he did eventually just
3 break and made allegations that aren't
4 inappropriate.

5 Now, I would point out to Your Honor, that
6 before he got to me with these charges he
7 attempted to apologize to these officer and
8 Nicholas tells me he has spoken to Officer Cook
9 about this incident and was advised how to
10 write a letter to the other officer. I do not
11 know if that officer received that letter. But
12 he has attempted all along to apologize.

13 Solicitor talked about this being under
14 subsection A. His warrant was subsection B,
15 which Your Honor knows deals with public
16 employees. It is only a 30-day charge, but
17 because they are officers it does count
18 rightfully under subsection A. It has been
19 difficult for him to realize that he can jump
20 from a 30-day offense to potential five-year
21 offense for same conduct. But his actions did
22 not change. The class of the person based on the
23 warrant changed, but his actions didn't change.

24 Your Honor, he has a substance abuse issue
25 that needs to be dealt with and he understands

1 that. He would be candid to the Court and tell
2 you his problem with alcohol is probably worse
3 then the other substances. He does a good job of
4 self-reflection and will want to speak to Your
5 Honor, but as he tells me he shouldn't have been
6 out there. He shouldn't have been drinking. He
7 shouldn't be doing any of this and he knows
8 better.

9 He has some aging parents that if he were to
10 receive a substantial sentence he does not think
11 that he would see them when he gets out.

12 Your Honor, our request would be that he get
13 90 days on one of the charges and that Your Honor
14 consider suspending the other charge for him
15 being held for inpatient treatment allowing him
16 to deal with this problem. To get out with time
17 hanging over his head. If this cycle continues
18 certainly he will be put back because of it. But
19 Your Honor, he was able to get a lot of things
20 going with a record. Get back in school and do
21 these things. And he would just ask Your Honor
22 for that opportunity.

23 THE COURT: All right. In reference to
24 threatening a public official the sentence of the
25 Court is four years. In reference to the

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possession, cocaine base, the sentence of the
Court is one year and I am going to run them
consecutive.

MS: JOYNER: Thank you, Your Honor.

MR. SMITH: Thank you, Your Honor.

* * * *

(END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 17thth day of October, 2011.

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

January 2, 2013

Aileen Butler

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA 2012 OCT 11 PM 4:14 IN THE COURT OF COMMON PLEAS

County of York DAVID HAMILTON CLERK OF COURT YORK COUNTY, SC 2012 CP46-3615

Nicholas Andrew Stevenson Full name and prison number (if any) of Applicant

v. State of South Carolina

APPLICATION FOR POST-CONVICTION RELIEF

FILED-RECEIVED 2012 OCT 11 PM 1:26 DAVID HAMILTON C.C.P. & CLERK YORK COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

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

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

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

- 1. Place of detention Rydgeland Correctional Institution
2. Name and location of Court which imposed sentence General Sessions Court of Rock Hill, South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 16-3-1040 (3) Threat to Life of Public
(b) affidavit - 2011 COS 4603506

(c) _____

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

(a) October 17, 2011 - 4 years State Depart-

(b) ment of Corrections

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

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

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

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

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) Because of my involuntary conviction

(b) Then I was informed now - eligibility

(c) To Appeal such A Plea

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

- (a) Involuntary Plea due lack of Better
- (b) Advice from my Attorney
- (c) Ineffective Assistance of Counsel

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

- (a) I inform my Attorney that I didn't
- (b) want to plead guilty. Also the fact
- (c) to represent the office of Justice by failing
to pursue a possible writ

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

W/A

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

(a) which grounds have been presented:

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

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

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

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

I would like to have vacated my present conviction and return my case back to the original Magistrate Court.

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

I had a (1) year sentence for possession of cocaine to show consecutive

STATE OF SOUTH CAROLINA)
County of York)

VERIFICATION

I, Nicholas Andrew Stevenson, 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.

Nicholas A. Stevenson
N.A.S.

SWORN to and subscribed before me this 5 day of October, 2012.

Virginia Rolman (L.S.)
Notary Public

My Commission Expires: May 20, 2021

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

I, Nicholas Andrew Stevenson, 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.

Nicholas A. Stevenson
Applicant

N. Stevenson

SWORN or affirmed to and subscribed before me this
5 day of October, 2012.

Virginia Robinson
Notary Public

My Commission Expires: May 20, 2021

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
)
 Nicholas Antwan Stevenson, #264792,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2012-CP-46-3615

RETURN

In response to the post-conviction relief application filed on October 11, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the October 2011 term of York County Grand Jury for Threatening the life, person, or family of a Public Official (2011-GS-46-3506). He was charged with Possession of Crack Cocaine (2011-GS-46-3538). The Applicant was represented by Phil Smith, Esquire. On October 17, 2011, the Applicant pled guilty Threatening the life of a public official as indicted, and he waived presentment to the grand jury and pled guilty to Possession of Crack Cocaine, 1st offense. The Honorable William H. Seals, Jr. sentenced the Applicant to confinement for four (4) years for Threatening the life of a public official, and one (1) year, consecutive, for Possession of Crack Cocaine. The Applicant did not appeal his conviction or sentence.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Involuntary Plea for lack of better advice from my attorney"
 - a. "I informed my attorney that I didn't want to plead guilty.
2. "Ineffective Assistance of Counsel"
 - a. "Also, he failed to represent the office of Justice by failing to pursue a possible trial"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Cherry, 300 S.C. at 117, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges his guilty plea was not voluntarily made. The Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective

assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

The Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

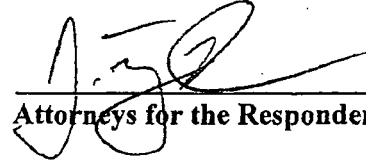
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for the Respondents

Columbia, South Carolina
January 10, 2013

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2012-CP-46-3615

NICHOLAS A. STEVENSON, 264792

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

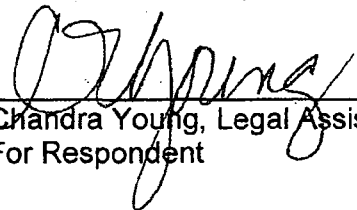
STATE OF SOUTH CAROLINA,

Respondent:

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

Philip W. Jamieson
242 Oakland Avenue
Rock Hill, South Carolina 29730

DATED this 10th day of January, 2013.


 Chandra Young, Legal Assistant
 For Respondent

State of South Carolina.,) In the Common Pleas
) Court of York
)
) Case No.: 2012-CP-46-03615
 County of York.)

Nicholas Antwan Stevenson.,)
)
 Applicant.,)
)
 -vs-) Transcript of Record
)
 State of South Carolina.,)
)
 Respondent.)
 _____)

May 16, 2013
 York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge.

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

Nicholas Stevenson
 Pro Se

ORIGINAL

Mr. J. Rutledge Johnson
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 For the Respondent

Wanda Nelson, CVR-M
 Official Court Reporter
 Sixteenth Judicial Circuit
 To the Honorable John C. Hayes, III

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<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
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I N D E X - C O N ' T

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF NICHOLAS STEVENSON
2 VERSUS STATE OF SOUTH CAROLINA THURSDAY, MAY 16, 2013 AT
3 11:58 A.M..)

4 THE COURT: We will move on to Mr. Stevenson.

5 MR. JOHNSON: Yes, sir. I need to call Phil Smith,
6 Your Honor.

7 THE COURT: Can you call down...

8 (DEFENDANT NICHOLAS STEVENSON ENTERING COURTROOM.)

9 MR. JOHNSON: May it please the court, Your Honor.
10 This is the case of Nicholas Stevenson versus State of
11 South Carolina Case Number 2012-CP-46-3615. Mr. Stevenson
12 was indicted at the October 2011 term of the York County
13 Grand Jury for threatening the life, person, or family of a
14 public official.

15 He was charged with possession of crack cocaine on
16 October 17, 2011. He pled guilty to threatening the life
17 of a public official as indicted. He also waived
18 presentment to the grand jury and pled guilty to possession
19 of crack cocaine, first offense, before the Honorable
20 William H. Seals Jr.

21 He was sentenced consecutively to four years for
22 threatening the life of a public official and one year for
23 possession of crack cocaine. There was no appeal filed,
24 however a timely PCR application filed October 11, 2012.
25 The State filed its return January 10th, 2013. This case

1 was called, I believe it's on the Order where he was
2 represented. It was called on February 6th of this year.
3 He was represented by Philip Jamison. He asked the court
4 for a continuance to hire Cyrus Hinton and he was given
5 until March the 8th 2013 to hire private counsel and if he
6 failed to do so by this date he would proceed pro se
7 according to an order from Judge Alford.

8 It is my - to my knowledge, he has not retained
9 counsel and he did not do so by March the 8th and therefore
10 he is proceeding with his PCR application pro se and I have
11 a copy of that order for you, Your Honor.

12 Here is the original and I will ...

13 THE COURT: Mr. Stevenson, you and Mr. Hinton didn't
14 work something out?

15 MR. STEVENSON: My family had same family difficulties
16 and so I had to do what I had to do.

17 THE COURT: Are you ready to go forward today?

18 MR. STEVENSON: Yes, sir.

19 THE COURT: All right. Do you want to come up and
20 testify or call somebody as a witness or how do you want to
21 proceed?

22 MR. STEVENSON: I just want to tell the truth.

23 THE COURT: All right. Well come up here and put your
24 left hand on the Bible and this lady will get you to swear
25 that this is what you want to do.

NICHOLAS STEVENSON: BY MR. JOHNSON

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1 and some change away from my family for something that was
2 so small and I could have just stood there and just been
3 patient and waited like I was suppose to did in the
4 beginning instead of listening to him and pled guilty that
5 day and I would never been in the position that I'm put in
6 today.

7 THE COURT: The State.

8 CROSS EXAMINATION

9 NICHOLAS STEVENSON BY MR. JOHNSON:

10 Q. Mr. Stevenson, so your testimony here today is that
11 you told Mr. Smith that you didn't want to plead guilty.
12 Correct?

13 A. Yes, sir.

14 Q. But you went in front of the judge and under oath you
15 stated that you wanted to plead guilty because you were
16 guilty. Correct?

17 A. No, sir. I did exactly what he told me to do, which
18 was I told him I didn't want to plead guilty and he told me
19 to trust him. I trusted him. That's what I did and I come
20 in here and I did exactly what he told me to do and that
21 didn't go the way that he told me it was going to go and
22 now I'm still here.

23 Q. But you told the court that you were guilty of these
24 charges. Correct?

25 A. Again, sir, I told you exactly what happened and

1 that's the only thing I can say. I did exactly what he
2 told me to do. He told me to trust him. I trusted him. I
3 told him I didn't want to plead but the way he made it
4 sound, he said trust me, I got you. What am I suppose to
5 - I believe that he had me, so I come in here and I told
6 them that I was happy with my lawyer until he made me
7 unhappy with what the outcome was. I trusted him.

8 Q. So you trusted him as your lawyer until you were
9 unhappy with the outcome?

10 A. I trusted him --

11 Q. Is that what you just said?

12 A. He told me that I was going to end up getting ---

13 Q. Just answer my question, sir.

14 A. --- ninety days. Say that again, sir.

15 Q. You just testified that you were happy with Mr.
16 Smith's representation until you found out the outcome of
17 your case. Correct?

18 A. I trusted him until he showed me there was no need to
19 trust him. Yes, that's correct. I trusted him until it
20 didn't go the way he said period - period.

21 Q. And you testified under oath that you were guilty of
22 these crimes. Correct?

23 A. No, I did not state that I was guilty. I pled guilty
24 because my lawyer told me to plead guilty. Do you
25 understand that? That's simple.

NICHOLAS STEVENSON: BY MR. JOHNSON

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1 Q. I get to ask the questions today, sir.

2 A. I mean -

3 MR. JOHNSON: Your Honor, will you take note on Page
4 4, Line 4, he admits that he is guilty of these crimes.

5 Q. Mr. Stevenson, nobody promised or threatened you to
6 get you to plead guilty did they?

7 A. No, he did not threaten me. No.

8 Q. You said you understood all the court's questions and
9 you answered them truthfully?

10 A. I mean, I understood what he told me to do. Yes, I
11 did.

12 Q. But the court asked you questions; not Mr. Smith.
13 And you answered those questions. Correct?

14 A. Yes. Yes, I did.

15 Q. And Mr. Smith actually during mitigation said that you
16 wanted ninety days and to suspend the other one for
17 invasive treatment. Correct? He argued that to the court?

18 A. I mean, I did remember him say something about the
19 ninety days in court that he told me that I was going to
20 get. Yes, he did. I remember him saying that.

21 Q. But the court has discretion on whether or not to take
22 that recommendation. You understand that?

23 A. Yes, sir. I think I do, sir.

24 Q. And the threatening the life of a public official
25 carries zero to five years in prison.

1 A. No, sir. Not the one that I was charged with. See,
2 that's the whole thing, sir. The charge that I was really
3 charged with which I already had seen the sign that this
4 was going to go bad, I was charged with a thirty day
5 charge. Phil didn't know - I mean, Mr. Phil Smith didn't
6 know that. He came to me, he say, this charge that you
7 have is - has five years. I say, no because I had to get
8 the paper from the officer. I said no, this charge is a
9 thirty day charge.

10 So he said, show it to me. It was on camera. Down in
11 the dorm they had cameras. I showed it to him and he was
12 like, you sure? And I say, yeah. He say he couldn't see
13 it. Then he told me, he say, well don't worry about it
14 that it's a thirty day charge. It's going to get jacked up
15 anyway. I say, how can they do that? He say, well the
16 solicitor is going to do it but now he thought it was a
17 five year charge when it was a thirty day charge but that
18 right there gave me a warning sign that I shouldn't have
19 been - I should have listened to what I was thinking in the
20 first thing.

21 But after that he was like don't worry about. He say,
22 don't worry about it. I'm going to go in here. Just plead
23 - do what he say. He say, just plead to this charge. He
24 said, it's a visiting judge, he's not going to give you
25 that much time. He said the solicitor is not asking for

NICHOLAS STEVENSON: BY MR. JOHNSON

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1 any time. He said I'm going to go in here and get you
2 ninety days.

3 So when he said that, I said but I don't want to plead
4 to a five year charge when it was a thirty day charge. He
5 say, Nick, trust me. And that's when I had to make the
6 decision to trust him or don't trust him and I decided to
7 trust him and I came in here and did what he told me and
8 got this and this is the outcome.

9 Q. And at the guilty plea, the judge asked you are you
10 pleading guilty to threatening the life of a public
11 official which carries up to five years in prison or in
12 jail. Is that correct, and to which you responded, yes,
13 sir, your Honor?

14 A. Yes, sir. That's exactly the charge that he advise me
15 to plead to, the five year charge. Yes, sir, that's
16 correct.

17 Q. And you have prior CDV offenses, which are violent
18 offenses?

19 A. Yeah. I have CDV offenses but I never in my life had
20 a offense dealing with a police officer or me and the
21 police arguing and cussing and fighting. Never. So that's
22 two different arenas me and my wife fussing in the house,
23 that's a normal thing to fight with your spouse. Maybe not
24 to the degree it was. Police get involved, but disputes
25 and arguments in the household with family, that happens,

1 but with authority figure on the street, that never has
2 happened with me and the police arguing like that. But I
3 was at home and the officer -

4 Thank you, thank you, God.

5 The officer told me and I told Phil that if I was to
6 not plead, the officer was going to come here and tell the
7 people that it was a thirty day charge, two officers. And
8 I told Phil that but he said don't worry about it. He said
9 that it was the solicitor's job to get the police to come
10 up here to do that but it's not the solicitor's job. It
11 was his job to be my lawyer and to tell me the things I
12 suppose to do and he didn't do that. He didn't do that.

13 Q. It was your decision to plead guilty; was it not?

14 A. It was my decision to believe him. That was my
15 decision.

16 Q. And it's you going to prison, not Mr. Smith; isn't
17 that correct?

18 A. But he has the knowledge. I don't. I don't know. I
19 don't know, man.

20 Q. You've been through the criminal justice system before
21 have you not, sir?

22 A. Have I ever passed the board state of being a lawyer
23 brother? I don't know about the law bro. I just know that
24 if you break the law, you're going to suffer for the
25 consequence. The law that I broke was a thirty day charge.

NICHOLAS STEVENSON: BY MR. JOHNSON

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1 I didn't suppose to get five years. I told him I didn't
2 want to plead to the charge. He told me to plead to it and
3 trust him. I did it anyway and I got five years for
4 something I did not do in that extent. That's simple.
5 That's it. That's it.

6 Q. It's your decision wasn't it? It's a yes or no
7 question, sir.

8 A. It was my decision to believe Phil Smith. Yes, it was

9 Q. And plead guilty in this case?

10 A. Well, I was advised --

11 Q. Yes or not?

12 A. I was advised to plead guilty so no, no, so no.

13 Q. So you made a decision based on his advise to plead
14 guilty?

15 A. No. No. No, it was not my decision because I told
16 him my decision was to not plead guilty. I was advised by
17 him to plead guilty and he told me to trust him so I went
18 against what I believed and what I wanted to do because I
19 believed that Phil was the person who knew better than me
20 because I'm not the lawyer. I don't know the law so I
21 believed in Phil's capability greater than mine because I
22 don't know this stuff. Just like anything else in life.
23 If you got a plumber and you don't know how to plumb, you
24 call a plumber.

25 Q. It was your decision.

PHIL SMITH: BY MR. JOHNSON

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1 MR. JOHNSON: Your Honor --

2 THE COURT: I think the record speaks for itself.

3 MR. JOHNSON: Thank you.

4 THE COURT: Anything else, Mr. Stevenson?

5 MR. STEVENSON: No, sir.

6 THE COURT: All right. You can step down and have a
7 seat there at the table.

8 MR. STEVENSON: Thank you, sir.

9 THE COURT: Do you have any other witnesses?

10 MR. STEVENSON: The officers but that's it.

11 THE COURT: All right. The State?

12 MR. JOHNSON: Yes, sir. We call Phil Smith to the
13 stand.

14 (WITNESS LEAVING WITNESS STAND.)

15 (WHEREUPON: PHILIP SMITH,
16 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 DIRECT EXAMINATION

18 PHIL SMITH BY SOLICITOR JOHNSON:

19 Q. Mr. Smith, good afternoon.

20 A. Good afternoon.

21 Q. Do you remember becoming involved in Mr. Stevenson's
22 case?

23 A. I do.

24 Q. Can you tell the Court a little bit about that.

25 A. I actually represented him on a different charge

PHIL SMITH: BY MR. JOHNSON

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1 first. It involved a neglect/cruelty charge concerning a
2 child in the household. Not his biological children but
3 Mr. Stevenson had taken on the role of being a parent and
4 really providing a lot of support for them. It involved a
5 spanking or whipping of that child. He and I had always
6 discussed going to trial on that issue.

7 Unfortunately he picked up this other set of charges
8 that sort of in part came out of that and so these charges
9 the solicitor was attempting to have a bond revocation on
10 his prior bond because of these charges, and that's how he
11 actually ended up in a holding cell on the day that he
12 ultimately pled guilty.

13 Q. And how many times did you meet with Mr. Stevenson
14 about these particular charges?

15 A. It would have been numerous times.

16 Q. What would your discussions have entailed?

17 A. What could happen, the basis of the charge. A lot of
18 his frustrations that it shouldn't have been this big. As
19 he relayed to the court here today, he would explain that
20 he was really only charged with Subsection B, which should
21 only carry a small amount of time and that he was
22 frustrated that the solicitor potentially would go with
23 Subsection A.

24 He was frustrated and didn't understand that and had
25 sort of gotten frustrated with what had begun as him doing

1 an act that he thought of disciplining a child and caring
2 for had lead to this sort of spiral of events that cost him
3 the schooling that he was going in at the time as well as
4 adding up to this potential exposure that he was getting so
5 he was expressing frustration that he was charged with
6 these charges.

7 Q. And did you explain what the charges he was actually
8 charged with in this case to him?

9 A. I did and he was - didn't understand how that could be
10 much as he explained to the court today. He didn't think
11 that that was right.

12 Q. And what advice did you give him based on those
13 charges?

14 A. I thought that we were going to be going to trial.

15 But Judge Seals does the advice of rights for his
16 afternoon and morning pleas a little bit different. He
17 brings them all out of the holding cell and reads them to a
18 group. While I was going back towards the back to meet
19 with Mr Stevenson to talk about the bond issue, he was
20 apparently brought out into the court and told his rights
21 with the other group of inmates or detainees who were
22 waiting that morning.

23 When Mr. Stevenson came back in and spoke to me, he
24 was telling me that he had been brought out and read his
25 rights and I said yeah I guess they just did that because

PHIL SMITH: BY MR. JOHNSON

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1 they did the whole holding cell and he said, Phil, I really
2 don't think that judge is trying to send me to prison for a
3 whole lot of time. And I said no, I don't see why he would
4 either and it was at that point that Mr. Stevenson decided
5 that he wanted to enter a plea to the charge rather than
6 deal with the bond revocation issue.

7 Q. So in fact it was Mr. Stevenson's decision to plead
8 guilty in this case?

9 A. It was.

10 Q. Did you ever threaten or promise anything to get him
11 to plead guilty?

12 A. No. And I should point out it was only to the two
13 charges in which he pled. He was still not wanting to
14 plead to the other pending charges.

15 Q. And what happened to those other charges?

16 A. Ultimately they were dismissed by the prosecutor when
17 he received as much time as he did on these charges, which
18 candidly it was a surprise to me and I think to the
19 solicitor as well.

20 Q. So that would explain Mr. Stevenson's unhappiness with
21 his sentence?

22 A. I believe so. I don't think anyone expected this
23 sentence to be that long.

24 Q. But would you also agree with me that the judge has
25 discretion anywhere in that statutory limit to sentence him

PHIL SMITH: BY MR. JOHNSON
BY MR. STEVENSON

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1 consequently and concurrently up to the max?

2 A. That's true. He could have got more than he even did.

3 Q. Did you ever tell Mr. Stevenson to trust you, that
4 everything was going to be okay?

5 A. I told him that I would come out and ask for the
6 ninety days that he referenced and some drug treatment, but
7 no I wouldn't tell him that I could tell him what a judge's
8 sentence was going to be.

9 Q. And you did in fact ask the court for the ninety days
10 and inpatient drug treatment?

11 A. Oh, yes, sir.

12 MR. JOHNSON: That's all I have at this time, Your
13 Honor.

14 THE COURT: Mr. Stevenson?

15 Yeah, you've got the right to ask him questions.

16 CROSS EXAMINATION

17 PHIL SMITH BY MR. STEVENSON:

18 Q. Phil Smith, you never told me to trust you?

19 A. I may have said trust you or trust me at some point,
20 but I didn't tell you that I could tell you what a judge's
21 sentence would be. Yes, sir.

22 Q. Do you remember that I tried to fire you that same
23 day?

24 A. I do.

25 Q. You just told this man here that I called you and told

PHIL SMITH: BY MR. STEVENSON

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1 you I wanted to plead but the same day I tried to fire you.
2 You just said that I tried to fire you and I told you to
3 plead at the same time. How? How is that possible?

4 A. You didn't call me. You spoke to me in the cell once
5 you talked with the judge and didn't want to have me
6 relieved.

7 Q. So I called you that day and said, Phil, I want to
8 plead. Then at the same time I said Phil, no I want to
9 fire you at the same time?

10 A. No, sir. Our discussion was in the holding cell.

11 Q. Did you say trust me at the same time in the same day
12 and the same hour? All this happened in one hour?

13 A. I don't remember all of which you're referring to but
14 our discussion occurred in a holding cell.

15 Q. Isn't it right to say that you're telling a story,
16 Phil? That you came out here, told me to plead and I said,
17 Phil, I don't want to trust you. I don't want to plead to
18 this. I'm going to get a lawyer. I'm waiting on some of
19 my family to get this lawyer, the same lawyer that I could
20 not get today.

21 That's why I'm representing myself. And you said,
22 Nick, trust me. And I plead because you told me to plead.
23 That's sounds more in line than the one hour event where I
24 tried to fire you because I wanted to do something
25 different and you convinced me to believe in you.

PHIL SMITH: BY MR. STEVENSON

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1 MR. JOHNSON: Your Honor, that's a statement. That's
2 not a question.

3 MR. STEVENSON: I mean, he just said, he just said on
4 record that I tried to fire him. I did plead and he did
5 say trust me. He just said that, all in one sentence.

6 THE COURT: All right. You need to ask him questions.

7 MR. STEVENSON: I don't know what else to ask him. I
8 can't ask him because he is not going to tell the truth,
9 Your Honor. He's not going to tell the truth. He just
10 said three things and they all conflict. I'm not the
11 smartest man but I'm not the most ignorant man too.
12 That doesn't sound right. I ask you to trust me. You say
13 trust me; I trust you. You tell me I tried to fire you and
14 then I plead. That's just don't sound right. I tried to
15 fire you because I didn't trust you but I believed in you
16 because you told me to believe in you.

17 MR. JOHNSON: Your Honor, he's had his chance to
18 testify.

19 THE COURT: Yeah, you've already testified.

20 MR. STEVENSON: I don't know what else to say, Your
21 Honor, but the truth is the truth. Thank you.

22 THE COURT: Any thing further from the state?

23 SOLICITOR JOHNSON: Nothing from the state, your
24 Honor.

25 THE COURT: You can step down and be excused.

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MR. SMITH: Thank you, Your Honor.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: I'll take this one under advisement.

That looks like that's it for the day. We'll start
back at 9:30....

(COURT RECESSED AT 12:15 P.M..)

(END OF TRANSCRIPT OF RECORD.)

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 16th day of May, 2013.

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

Wanda Nelson
Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 8-12 1 2013

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Nicholas Antwan Stevenson, #264792,

C.A. No.: 2012-CP-46-3615

Applicant,

RECEIVED

v.

JUN 13 2013 ORDER

State of South Carolina;

Respondent.

S.C. SUPREME COURT

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

FILED-RECEIVED
2013 MAY 23 PM 4:02

Applicant filed his application for Post-Conviction Relief on October 11, 2012. The Court heard the motion May 16, 2013. Applicant appeared pro se. The State was represented by J. Rutledge Johnson, Esquire.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the October 2011 term of York County Grand Jury for Threatening the life, person, or family of a Public official (2011-GS-46-3506). He was charged with Possession of Crack Cocaine (2011-GS-46-3538). The Applicant was represented by Phil Smith, Esquire. On October 17, 2011, the Applicant pled guilty to Threatening the Life of a Public Official as

indicted, and he waived presentment to the grand jury and pled guilty to Possession of Crack Cocaine, 1st Offense. The Honorable William H. Seals, Jr. sentenced the Applicant to confinement for four (4) years for Threatening the Life of a Public Official, and one (1) year, consecutive, for Possession of Crack Cocaine. The Applicant did not appeal his conviction or sentence.

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

1. "Involuntary Plea for lack of better advice from my attorney"
 - a. "I informed my attorney that I didn't want to plead guilty."
2. "Ineffective Assistance of Counsel"
 - a. "Also, he failed to represent the office of Justice by failing to pursue a possible trial"

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland v. Washington. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Cherry, 300 S.C. at 117, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Applicant further alleges his guilty plea was not voluntarily made. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Applicant testified that he did not want to plead and based his proceeding to plea on his trusting Phil Smith's assurance that he would receive only a ninety day sentence. Applicant repeatedly testified that trial counsel told Applicant to "trust me." However, trial counsel denied telling Applicant to trust him, but that he did think the trial judge would not have imposed the length of sentence he did.

Trial counsel testified he was aware of the fact that Applicant had been arrested on a warrant charging him with a violation that carried a maximum sentence of thirty days. (Warrant J-133406, charging a violation of Section 16-3-1040 (B), South Carolina Code of Laws, (1976).

J. H. 7

Applicant has not raised as an issue in his application any issue regarding the indictment for Threatening the Life of a Public Official.

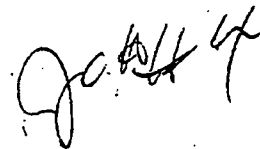
A review of the Trial Transcript reveals that Applicant was indicted for Threatening the Life of a Public Official (TR p. 2, LL 507), and that Applicant knew as indicted he was facing up to a five year sentence. (TR p. 3, LL 1-5). Additionally, in spite of his present concerns about trial counsel, he advised the plea judge that he was satisfied with trial counsel, "absolutely." (TR p. 3, LL 15-17). The difference in the charge set forth in the warrant for Applicant's arrest and that set forth in the Indictment to which he was pleading, was called to the attention of the plea judge in Applicant's presence. (TR p. 11, LL 13-23). The record reflects Applicant did not express concerns about the charge at that time nor at any time during his plea.

While the Court can fully understand Applicant's frustration and concerns about how his case concluded, he has not established to the Court's satisfaction that trial counsel was in any way ineffective, under the standards set by Strickland, supra; Butler, supra; or Cherry, supra.

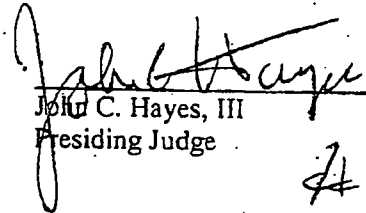
Finding that Applicant has failed to carry his burden of proof as to his claim of ineffective assistance of counsel, the second prong, the prejudice prong, of Cherry, supra is not implicated.

Wherefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rule 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.



IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge

AT

May 21st, 2013
York, South Carolina

NICHOLS A. STEVENSON 204192
RCF, 5MU-112
P.O. BOX 2039
RIDGELAND, S.C. 29936

SCDC Legal MAIL

JUL 02 2013

MAILROOM

29211+1330

199211

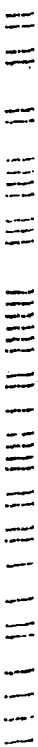
HONORABLE DANIEL E. SHEAROUSE
CLERK, SOUTH CAROLINA SUPREME COURT
POST OFFICE BOX 1330
COLUMBIA, SOUTH CAROLINA



UNITED STATES POSTAGE
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THE DEPARTMENT OF CORRECTIONS HAS NOT ASSUMED
THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS CONTENTS.

LEVERN COHEN, WARDEN
RIDGELAND CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS



WITNESSES

RHPD/Ruth

DOCKET NO. 2011-GS-46-03506

The State of South Carolina

County of York

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

Defendant

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

October 13, Term 2011

COURT OF GENERAL SESSIONS

THE STATE

vs.

NICHOLAS ANTWAN STEVENSON

Nicholas A. Stevenson
Defendant

Witness:
Reginald W. ...
C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

J133406

ACTION OF GRAND JURY

TRUE BILL

James M. ...
Foreperson of Grand Jury

Date: 10/13/11

VERDICT

Indictment for

THREATENING LIFE, PERSON OR FAMILY OF A PUBLIC OFFICIAL

Foreperson of Petit Jury

Date:

SC Code: 16-3-1040

CDR Code: 0541

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2012 OCT 12 AM 9:11

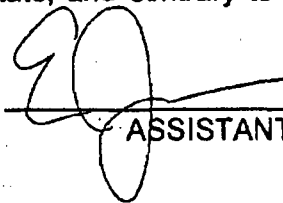
At a Court of General Sessions convened on October 13, 2011, the Grand Jurors of York County present upon their oath,

CLERK OF COURT
YORK COUNTY, SC

THREATENING LIFE, PERSON OR FAMILY OF A PUBLIC OFFICIAL

The Defendant, Nicholas Antwan Stevenson, did on or about August 5, 2011, knowingly and wilfully deliver or convey to a public official or officials, by way of a verbal communication, a threat to take the life of or inflict bodily harm upon a public official and/or his family, to wit: the Defendant did threaten to take the life of and/or threaten to inflict bodily harm upon Officer Robin Gander and/ or Officer Justin Cook, officers with the Rock Hill Police Department. Said incident having occurred in York County, South Carolina. All in violation of Section 16-3-1040 (A), of the Code of Laws of South Carolina, (1976, as amended).

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



ASSISTANT SOLICITOR

WITNESSES

RHPD \ Bailey

DOCKET NO. 2011-GS-46-03538

The State of South Carolina

County of York

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

Nicholas A Stevenson
Defendant

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

November 10, Term 2011

COURT OF GENERAL SESSIONS

JWG

ARREST WARRANT NUMBER

J133651

THE STATE

VS.

ACTION OF GRAND JURY

NICHOLAS ANTIWAN STEVENSON

Witness: *Cindy Milk* Clerk
Deputy Clerk
C.C.C. PLS. AND GS.

Foreperson of Grand Jury

VERDICT

Indictment for

POSSESSION OF CRACK COCAINE

Foreperson of Petit Jury

SC Code: § 44-53-375
CDR Code: 3009

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

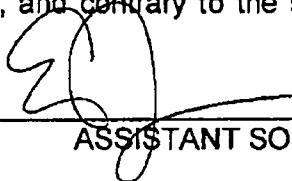
CERTIFIED TRUE COPY
2012 OCT 12 AM 9:12

At a Court of General Sessions convened on November 10, 2011, the Grand Jurors of York County present upon the oath of COURT
YORK COUNTY, SC

POSSESSION OF CRACK COCAINE

That on or about August 25, 2011, in York County, South Carolina, the Defendant, Nicholas Antwan Stevenson, did knowingly or intentionally possess or otherwise aid, abet, attempt, or conspire to possess a quantity of cocaine base (crack cocaine) a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law, all in violation of Section 44-53-375, Code of Laws of South Carolina (1976), as amended.

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



ASSISTANT SOLICITOR

AFFIDAVIT

STATE OF SOUTH CAROLINA)
County/ Municipality of)
ROCK HILL)

Personally appeared before me the affiant) who
being duly sworn deposes and says that defendant STEVENSON, NICHOLAS ANTWAN)
did within this county and state on 08/05/2011) violate the criminal laws of the
State of South Carolina (or ordinance of) County/ Municipality of)
in the following particulars:) ROCK HILL)

DESCRIPTION OF OFFENSE:

THREATEN LIFE OF PUBLIC OFFICIAL - 16-3-1040 (B) 0541
I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
The defendant did willfully and unlawfully violate SC Code of Laws 16-3-1040 by threatening the lives of Officer Gander and Officer Cook of the Rock Hill Police Department. The defendant stated that he would assault and cause bodily harm to Officer Gander and Officer Cook when he sees them again in the city. The defendant made these threats multiple times to Officers. The defendant made these threats in the presence of Officer Cook while in his Patrol Vehicle and in front of multiple Officers while in the Jail. This incident occurred at the 600 Blk of Izzard St and 120 E. Black St, which is within the City Limits of Rock Hill SC.

***Police Investigation
***Video Evidence

1108050223

CERTIFIED TRUE COPY
2012 OCT 12 8 59 AM
DAVID H. CLERK
CLERK OF COURT
ROCK HILL, SOUTH CAROLINA

Signature of Affiant
[Signature]

STATE OF SOUTH CAROLINA)
County/ Municipality of)
ROCK HILL)

Affiant's Address 120 E. BLACK STREET
ROCK HILL SC 29730
Affiant's Telephone - - -

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that defendant STEVENSON, NICHOLAS ANTWAN
on 08/05/2011)
did violate the criminal laws of the State of South Carolina (or ordinance of)
County/ Municipality of) ROCK HILL)

as set forth below:

DESCRIPTION OF OFFENSE:

THREATEN LIFE OF PUBLIC OFFICIAL - 16-3-1040 (B)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on August 6, 2011)
Judge's Address 120 E. BLACK STREET)
ROCK HILL SC 29730)

Signature of Issuing Judge *[Signature]*)
Judge Code: 6 478)
Issuing Court: Magistrate Municipal Circuit)

ARREST WARRANT
J-133406

STATE OF SOUTH CAROLINA)
County/ Municipality of)
ROCK HILL)

THE STATE
against

STEVENSON, NICHOLAS ANTWAN
Address:

Phone: SSN: Agency ORI #: 460300
Sex: M Race: B Height: 601 Weight: 175
DL State: SC DL#:

Prosecuting Agency: RHPD
Prosecuting Officer: ROBIN GANDER

Offense: THREATEN LIFE OF PUBLIC OFFICIAL
Code/Ordinance Sec. 16-3-1040 (B)
Offense Code: 16-3-1040

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of

The Accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Nicholas Antwan Stevenson
on *[Signature]*

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ISSUING JUDGE
E. BLACK STREET
ROCK HILL SC 29730

ORIGINAL