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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Abbeville County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

LAMARCUS A. STEWART, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000777

APPENDIX

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STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

COUNTY OF ABBEVILLE) CASE NO. 2021-GS-01-00392,
2021-GS-01-00393, -00394

November 30, 2021

BEFORE: The Honorable Frank R. Addy, Jr.

State of South Carolina,

Plaintiff,

vs.

Lemarcus A. Stewart, Jr.,

Defendant.

APPEARANCES:

David M. Stumbo, Esq.
Solicitor for the State.

Steven M. Hisker, Esq.
Attorney for the Defendant.

Official Court Reporter/Transcriber
Cynthia D. Weaver

(COURT REPORTER'S NOTE: Due to remote platform interruption and audio interference throughout the hearing, those instances are denoted with (inaudible) in the transcript.)

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

MR. STUMBO: Judge, you ready?

THE COURT: Yes, sir.

MR. STUMBO: Judge, before you is Lemarcus Alexander Stewart. These are Abbeville indictments that he's pleading to. This was on a trial docket for this month in Abbeville on three accounts of attempted murder and various other indictments. It's Indictments 2021-GS-01-392 through 394. And he's going to plead to assault and battery of a high and aggravated nature, three counts of that, it's a lesser included on the three of those.

We've agreed to do a recommended cap of 15 years active on these charges, Judge (inaudible coughing) issues in this case. And in exchange for the plea, we were going to do a waiver to a Greenwood failure to stop for a blue light. We actually had it signed up, but Mr. Hisker reminded me that -- actually, Mr. Geoli was retained on that charge. I forgotten that, I thought Mr. Hisker was on that one as well. We're going to be dismissing the failure to stop for a blue light and the associated charges which were in Greenwood in exchange for the plea today. I believe

that's the extent of the plea agreement, Judge.

THE COURT: Okay. So a cap of 15 years and you said the fail to stop will be dismissed?

MR. STUMBO: We are.

THE COURT: Okay.

MR. STUMBO: And the other -- there was three other warrants with the failure to stop and there's five other indictments with this attempted murder incident that he's pleading to.

THE COURT: Okay.

MR. STUMBO: We'll just dismiss the other pending charges.

THE COURT: All right.

MR. STUMBO: In exchange for the plea today, Judge.

THE COURT: Mr. Hisker, you're representing Mr. Stewart on these charges. The ABHAN charges would each carry up to 20 years, but I'm hearing that there's a cap of 15 years and I'm assuming that it's understood that all sentences would run concurrent; is all that correct?

MR. HISKER: Yes, Your Honor.

THE COURT: All right. You've reviewed with Mr. Stewart then the ramifications of these pleas, the elements of these offenses and all his Constitutional rights?

MR. HISKER: Yes, Your Honor, I have.

THE COURT: And you agree with his decision to plead guilty?

MR. HISKER: Yes, I do.

THE COURT: I believe that these are 85 percent offenses, they're also classified, I think, as violent and serious. You've gone over those ramifications, as well?

MR. HISKER: Yes, Your Honor, I have.

THE COURT: Mr. Stewart, if you could, just raise your right hand, please. Do you swear or affirm the testimony you're about to give is the truth?

THE DEFENDANT: Yes, sir.

THE COURT: And are you Lemarcus Stewart, II?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Stewart, I'm told that you want to plead guilty to three counts of assault and battery of a high and aggravated nature. You understand that that charge carries up to 20 years but in this case the State is recommending a cap of 15 years. The way I take this recommendation is essentially I will not exceed a 15-year active sentence. I can be anywhere from zero to 15, but your exposure is capped at 15. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: So 15 years is the most that you would be looking at in return for this plea. Now, Mr. Stewart, in

the last 24 hours have you taken any medication or any substance that affects your thinking?

THE DEFENDANT: No, sir.

THE COURT: And have you ever been treated for any mental illness-type issues?

THE DEFENDANT: No, sir.

THE COURT: Were you in any kind of special education classes when you were in school?

THE DEFENDANT: No, sir.

THE COURT: Now, Mr. Stewart, you understand that these crimes are classified as 85 percent offenses, meaning, that whatever time I give you, for example, if I gave you ten years, you'd have to do eight and a half years, 85 percent of ten years before you could hope to be released from prison. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: They're also classified as violent and serious offenses. Being a violent offense means that you'll be prohibited from possessing a firearm going forward. Additionally, you'll be limited in terms of the rehabilitative programs that you're eligible for in SCDC. Being a serious offense means that if you get two additional serious offenses against your record, third time around, third strike and you're out, basically the State can seek life without the possibility of parole against you, that

would be binding on the Court. The Court would have no -- no option other than a life sentence for you if you were convicted in the future of two additional serious offenses.

Do you understand, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Stewart, knowing all of that how do you wish to plead?

THE DEFENDANT: Guilty.

THE COURT: All right. Mr. Stumbo is going to give me the facts. I need you to listen closely to what he alleges took place, after he's done speaking, I'll then ask if that's what happened. Okay, sir? Solicitor.

MR. STUMBO: Thank you, Judge.

This occurred September the 6th of 2020. Ware Shoals Police Department responds to reported gun shots fired into a vehicle in the roadway at up around West Summit Drive intersection with Greenwood Avenue, which, of course, is the main thoroughfare going through Ware Shoals.

Judge, in the Jeep that was being shot at, and there's an independent witness that reports it, this was in the middle of the day, the victims who were in the Jeep were, Talefero (ph) Cunningham and Brooke Durban, who are here in the courtroom behind me, and their infant -- infant child who was less than one-year old at the time -- or excuse me, I believe he was just turned one, that's correct.

And Brooke was actually nine months pregnant, as well.

Judge, essentially, what Mr. Cunningham tells law enforcement is that he's at the Dollar General, there's an altercation with Mr. Stewart that basically stems, from my understanding, is they just bump into each other. And Mr. Stewart exchanges some words with Mr. Cunningham and takes a swing at him. And Cunningham ducks, Mr. Cunningham ducks, misses, and throws a punch at Mr. Stewart that connects. Mr. Stewart, ultimately, tells him he's strapped and he'll see him in a few minutes.

Very shortly after this, Judge, Mr. Stewart follows them in their vehicle, gets out of the car and shoots three times into the vehicle. There's three 40 caliber shell casings in the road that law enforcement finds to corroborate that. They ultimately get surveillance cameras from the Dollar General, Judge, which corroborates Mr. Cunningham's version of this altercation that Mr. Stewart basically starts the fight. But it takes a fistfight and takes it ultimately to the next level, Judge.

The independent witness that called it in witnessed the whole thing. He indicated that -- described Mr. Cunningham -- or, excuse me, Mr. Stewart, the defendant as shooting. And when he comes back up the street he actually threatens the witness. The witness tries to tell him to stop. He kind of raises the gun, doesn't point it at

him, but raised the gun up and says come on, man and basically just blows him off and leaves. Judge, victims both picked Mr. Stewart out of a photo lineup, as well.

Judge, warrants are issued in this case and it takes a while. There's a manhunt for Mr. Stewart, with this being a violent offense and with his criminal history, which I'll tell you about in a moment. But ultimately they get a tip that he's at his mother's house. They had a helicopter out there in the woods behind his mother's house off Indian Mound Road in Ware Shoals looking for him, and he fled, being apprehended that day. And, ultimately, they are able to take him into custody in Greenwood on these warrants in December. So about three months later he's picked up on these -- these charges, Judge.

He was also out on bond for the failure to stop for a blue light incident from 2019 that I discussed with Your Honor earlier. That was a Greenwood -- essentially that was a drug DEU case where they were running surveillance on him, they blue-lighted him when they believe they see a drug transaction and he runs from them then.

So, Judge, based on his record he -- he does run from law enforcement a good bit. There's resisting arrest, there's other offenses on his record that are consistent with that.

Judge, his prior record is as follows, there's a

2006 possession of a controlled substance and a simple assault and battery. There's an open container and malicious injury, to personal property in '06. There's a domestic violence in '07. There's a domestic violence in 2011. There's a giving false info to law enforcement in '12. 2012, there's an assault and battery, first degree and a possession with intent to distribute narcotics and he got an active YOA on that sentence. There's a resisting arrest in 2014. 2016, Judge, he was convicted of distribution of meth, two counts, and received an eight year active sentence on those charges in 2016.

Judge, I believe just tracking this, it's not long after he gets out that he's arrested again on a failure to stop for a blue light which results from what apparently was some drug transactions. And then we have this shooting incident in Ware Shoals, Judge, that he's pleading to today.

So he has a significant prior record. I believe there's some holds out of Georgia, I need to check on that, for some charges, as well. I believe we discussed that, Mr. Hisker, and I did, at his bond hearing that are showing up on his -- on the rap sheet the holds out of Franklin County, Georgia.

But, Judge, as you can see, Mr. Stewart has an extensive prior record. I've been hearing his name for many years in terms of his drug dealing activities up around

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Hodges and Ware Shoals around the Nation Road and Riley Road Area. Shannon Riley, who's a member of the legislature for several years here and family, obviously, for years in law enforcement told me that he was the guy that's selling a lot of drugs back then, which led to his 2016 distribution of meth convictions.

All of that to say, Judge, we agreed to cap this at 15, we were going to try this case, Micah and I were going to try it. I believe it's a good case, Judge, based on the independent witness and our victim's willingness to do the right thing and testify here. It's the grace of God that this one-year old was not struck by a bullet or Ms. Durban who was pregnant at the time. Then we would have even a greater tragedy on our hands, Judge. But we believe that the recommendation is appropriate here. We trust, Your Honor, with the sentencing.

THE COURT: Okay. That was going to be my next question. None of the individuals in the car were actually struck then they luckily - okay.

MR. STUMBO: They were able to pull the bullets out that were struck into the car. But it was three very distinct shots, tore up the car, it was a Jeep Cherokee, I believe that they were driving at the time. And, Judge, they indicated they did not want to address Your Honor directly today but they were content for me to put their

feelings on the record. They do believe that Mr. Stewart obviously deserves a significant jail sentence, prison sentence for this incident and we're just glad that they're still here to be with us in court today.

THE COURT: I do understand.

Mr. Stewart, you heard what the Solicitor put on the record a few moments ago about this incident. Is it true that you fired these shots into that Jeep on that particular day?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. So you are guilty of this crime?

THE DEFENDANT: Yes, sir.

THE COURT: I need to briefly review with you rights that you're giving up by pleading guilty. If you don't understand something, just stop me, I'll let you talk to your lawyer about it as long as you need to or you can ask me about it, okay?

THE DEFENDANT: Okay.

THE COURT: Now, first of all, Mr. Stewart, you understand that these charges arose in Abbeville County and obviously we are physically present here in Greenwood County today. I can accept your plea today but you'll have to waive venue and allow the matter to be heard here in Greenwood. Are you okay to do that?

THE DEFENDANT: Yes, sir.

THE COURT: And, obviously, Mr. Stewart, you could have a jury trial in this case you don't have to plead guilty. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: I'm hearing that the case either was or soon will be on the trial docket for Abbeville and if you wanted you could have 12 people from Abbeville that you would help select. You could have them decide whether you're guilty of this crime. The State would try to meet its burden of proving your guilty beyond a reasonable doubt by calling witnesses and all 12 jurors would both -- all 12 jurors would have to agree that you are guilty before you could be punished in any way for this particular crime.

Do you understand that, sir?

THE DEFENDANT: Yes, sir.

THE COURT: You would be able to see, confront, and question those witnesses and even though you have no burden of proof at trial, if you wanted you could call your own witnesses to testify, you could subpena reluctant witnesses and, of course, you'd be free to take the stand in your own defense. Do you understand, Mr. Stewart?

THE DEFENDANT: Yes, sir.

THE COURT: You'd be treated pretty much the same way as any other witness, so if you decided that you didn't

want to take the stand if you decided that you didn't want to testify, I would instruct the jury that they could not hold your failure to testify against you, they couldn't use it as evidence of guilt. Do you understand that, sir?

THE DEFENDANT: Yes, sir.

THE COURT: As your Fifth Amendment Right against self incrimination by pleading guilty you waive -- you waive that in that you admit to me that you did commit this offense. Do you understand, Mr. Stewart?

THE DEFENDANT: Yes, sir.

THE COURT: Now, additionally, at trial you would be presumed innocent. I often describe the presumption of innocence to a jury as being like a robe of righteousness that's placed about your shoulders, only they can take it from you. Obviously, if you plead guilty though, you waive that presumption of innocence and your right to challenge any of the evidence that was seized in this case.

I've only been given a brief overview of the allegations in this case. I'm told that there was an independent witness. I'm told that, you know, there were shots or slugs recovered from the vehicle. I don't know if they conducted any kind of search of your property or if you gave any sort of confession, but you understand you could mount a legal challenge to any and all evidence at trial.

Do you understand that, sir?

THE DEFENDANT: Yes, sir.

THE COURT: So if you gave a statement, they didn't read you your rights, they searched your place and they didn't have probable cause, they searched your property didn't have probable cause or a warrant, perhaps that evidence would not even be presented to the jury, it would be suppressed. But if you plead guilty, you waive your right to challenge any of the evidence against you.

Do you understand that, Mr. Stewart?

THE DEFENDANT: Yes, sir.

THE COURT: Now, finally, Mr. Stewart, do you understand that by pleading guilty, you're waiving your right to present any defense. And understand that I have no way of knowing if you have a defense to this charge or not. I'm sure that that's something you've discussed with your lawyer; is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: The defense to this case could be something as mistaken identity, it wasn't me who fired these shots, I didn't get into an altercation with this person outside the Dollar General, it wasn't me, it was somebody else who looked like me. That's a possible defense, or I was acting in self defense, or something along those lines. They pulled a gun first, I fired in response because I feared for my life. Those are possible defenses you could

offer. If you plead guilty, though, you waive your right to present any defense to a trial jury and you waive your right to do all the other things I've just described.

Do you want to give up these rights and plead guilty?

THE DEFENDANT: Yes, sir.

THE COURT: And I assume that you are satisfied with the discovery response from the State in this case?

Counselor, you're happy with the discovery response?

MR. HISKER: Yes, sir. I've had everything. We've thoroughly reviewed it all. I am, yes, Your Honor.

THE COURT: And you've shared it with Mr. Stewart to the extent he needed or wanted to see it?

MR. HISKER: I've taken every bit of it to the jail. He's gotten to see everything they have. We also had a very thorough preliminary hearing.

THE COURT: Got ya. Mr. Stewart, are you satisfied with the way that Mr. Hisker represented you on these charges?

THE DEFENDANT: Yes, sir.

THE COURT: Has he done everything you wanted him to do?

THE DEFENDANT: Yes, sir.

THE COURT: Have you talked to him enough?

THE DEFENDANT: Yes, sir.
THE COURT: All right. And have you understood all your conversations with him?
THE DEFENDANT: Yes, sir.
THE COURT: So you're totally satisfied with his assistance?
THE DEFENDANT: Yes, sir.
THE COURT: All right. is there anything that he has failed to do that you want him to do?
THE DEFENDANT: No, not that I know of.
THE COURT: No. All right. Do you have any complaints to make against your attorney, the Solicitor, law enforcement, court personnel, or anyone involved in this case? Any complaints at all?
THE DEFENDANT: No, sir.
THE COURT: And aside from the cap of 15 years and the reduction of the charge and dismissal of those companion cases, has anyone promised you anything else or held out any other hope of reward to get you to plead guilty?
THE DEFENDANT: No, sir.
THE COURT: You are pleading then of your own free will?
THE DEFENDANT: Yes, sir.
THE COURT: Pleading guilty because you are guilty, correct?

THE DEFENDANT: Yes, sir.

THE COURT: And have you understood all my questions, Mr. Stewart?

THE DEFENDANT: Yes, sir.

THE COURT: Is there anything that you want to ask me or your attorney about anything that we've gone over?

THE DEFENDANT: I want to ask my attorney something.

THE COURT: Sure. Y'all just step back for a second. Y'all can step away from the microphone so it doesn't get taken down, please.

(WHEREUPON, there was a pause in the proceedings.)

MR. HISKER: Judge, I think we've clarified everything.

THE COURT: Give me two seconds, I'm very sorry.

All right. Mr. Stewart, you had a question for your attorney and y'all discussed it and you're satisfied with the answer that he gave you?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. You're okay to proceed further then?

THE DEFENDANT: Yes, sir.

THE COURT: All right. You still want to enter this plea; is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: All right. I do find there is a basis for these pleas, they are freely, voluntarily, knowingly, and intelligently made, Mr. Stewart is satisfied with counsel and I will accept his pleas on this charge.

Solicitor, anything further?

MR. STUMBO: We did have a permanent restraining order.

THE COURT: Yes.

MR. STUMBO: The victims did request that.

THE COURT: All right. Do you understand, Mr. Stewart, that as part of this plea the State is requesting a permanent restraining order that will prohibit your contact -- prohibit you from contacting these folks over here, Mr. Cunningham and Ms. Durban.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: So you won't be able to contact either of them at any point in the future and if you do, you're looking at going to jail just for that contact even.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. That doesn't change anything, does it?

THE DEFENDANT: No, sir.

THE COURT: Very good. All right. Solicitor,

nothing further from the State?

MR. STUMBO: No.

THE COURT: Happy to hear from you.

MR. HISKER: Judge, may it please the Court.

THE COURT: Yes, sir.

MR. HISKER: Mr. Stewart fully acknowledges his guilt in this matter. He understands what he did was wrong. but, Judge, there's some things that I would -- would like to talk to you about the facts that we do disagree with.

Mr. Stewart tells me the victim in this case has a long standing family beef with him. And I did confirm that at the preliminary hearing that this victim has shot at Mr. Stewart's house, has shot at his brothers, this is a beef that has went on for a long time. And I'm not offering it as a way of excuse but more of an explanation.

Mr. Stewart denies that he attacked the victim outside of this store. This victim actually attacked him, he was carrying a bottle of mouthwash that shattered on the ground. He acknowledges that, you know, he did go too far in pulling the trigger at that car. He did not know there was a child in the vehicle. He acknowledges what he did was wrong. And there was -- there was another victim, there was a bystander that he may have pointed a gun at and he tells me in the heat of things, it was just him running, the guy comes out of nowhere he points it at him, says basically get

back and then he runs. He did feel threatened at that time. This individual -- the victim is a known shooter, has got other cases that he's a shooter. And I don't usually -- I don't usually like to go there, but this is a case where this individual furthered this beef with Mr. Stewart.

I'd ask you to consider that. Mr. Stewart is now 33-years old. His grandmother is really the only family he has left other than his brother. She's 77 and is in the courtroom and when I'm finished she would like to address the Court. And Mr. Stewart would like to address the Court at some point as well.

I'd ask Your Honor to consider structuring a sentence that lets him do some time, but also be released on some form of a suspended sentence. He's 33 now, if he did about seven years he'd be 40 when he gets out. Mr. Stewart and I went over everything in this case. He acknowledges what he did was wrong. He acknowledges, you know, the lifestyle he was living was wrong. But he does want to -- he wants to put this behind him. He wants to forgive and forget this beef. He wants to be done with it. He tells me that when he got out of prison the last time he felt like he was constantly under assault. Not just by this victim but by other people related to him. And it's really something that he had nothing to do with, it's something that involved his brother. He felt like he was always getting attacked

and he acknowledges he went too far in this matter.

Your Honor, at this time if you would hear from Ms. Stewart. If she may come forward?

THE COURT: Sure. Just come on down and if you could, yeah, find a microphone, either -- yeah, that one would be perfect if you wish or the one closer to your grandson. What's your first name, Ms. Stewart?

MS. STEWART: Laura Ann Stewart.

THE COURT: Yes, ma'am. I'm happy to hear anything you want to tell me, ma'am.

MS. STEWART: All I can say, kind of have been picking at my grandson, both of them, for quite a long time. Come by my house, shooting, shooting up my house, shooting in my yard, go to the stop sign, come back, shoot in my yard. Making threats talking about they might put a hit man out on them, stuff like that. So my grandsons, they're not bad people, they're good people. But they keep picking on them for no reason.

THE COURT: I understand your position, ma'am.

Was there anything else that you wanted to say?

MS. STEWART: Well, they always start these things and then when my grandson say something, they run and tell the police. The police come out and they try to say my grandsons is the bad guys, which they are not bad. I mean, I raised them, and I raised them up to be good children and

honorable and all of that and get along with everybody, like I taught them.

THE COURT: All right. I appreciate you being here on your grandson's behalf, I really do. Thank you.

MR. HISKER: Your Honor, at this time Mr. Stewart would like to address the Court.

THE COURT: Certainly. I'm happy to hear anything you want to say, sir.

THE DEFENDANT: Yes, Your Honor. I just want to say I take my responsibility for the actions on my behalf of what happened. And I just want to say that I do apologize to the plaintiff and I do apologize to the community. And then I want to say as soon as I got out, really, I had problems as soon as I got out, like, a month later. You know, there was a lot of stuff going on that I didn't tell, I was just dealing with it. And, I mean, you know, I didn't know how to deal with it, but I had a lot of people coming at me with -- there was a lot of stuff going on that I didn't expect. And, I mean, me and Mr. Cunningham, we have problems as soon as I got out. And I didn't even really -- I know them, but I didn't know them like that. And, I mean, there was an incident where he done shot at me a couple of times. And, you know, I done shot back, but it was an ongoing thing. It never really ended until somebody made a point of it and said, You know, he shot at me, that's when

it ended. And, you know, I don't -- I don't want no more problems. I don't want no more problems with them and I don't want no more beef with none of that. I mean, I try to be in peace. And, you know, that day at the Dollar Store, it was the day before my birthday and I was just going to the Dollar Store for my grandma and I ain't expect trouble, but it was almost like I was being stalked because when I came out he was right there. And, you know, we did get to swinging and, you know, we were swinging, but I was followed, I wasn't never in a vehicle when it happened.

I was being followed, he kept pursuing me, I was walking. And, you know, me and him, you know, we got into it. But, like I say, I feel threatened, too. I feel like I was going to lose my life at one point, too. And, you know, it's just like when he came back I seemed like -- I seen him point so, you know, it just happened so fast.

I was just saying, like, you know, I mean, I do apologize and when I got out of prison this last time, I had my mind straight, I was thinking I was going to be straight. But it was just as soon as I came home back in the same -- same neighborhood, the same results. And I hated it because I tried to change and I wanted to do something better with myself. And, I mean, you know, plus as far as, like, the drug dealing, that was my past. I wasn't really participating with drugs when I had got out, I was working

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and I was keeping a job. But I just want to say I do apologize one more time and just want say that I don't want no beef or no problems, you know, all that stuff in the past. I ain't got no hate for nobody. The plaintiff I ain't got no hate, it ain't nothing but love, and I'm glad ain't nobody get hurt.

And, like I say, I did not know that there was a little baby in the car. Because if it was like that, I wouldn't have never even engaged in him. That's just what I wanted to let you know.

THE COURT: Thank you, sir. I understand.

MR. HISKER: Judge, just if I -- just because a couple of things were brought up. We did fully discuss self defense.

THE COURT: Sure.

MR. HISKER: And we discussed, you know, all the elements of it and at this point Mr. Stewart and I have come to the conclusion that we don't believe that would be a viable defense and we have fully discussed it. That's something that we have completely went over.

Your Honor, I just -- I again, I would ask you to consider structuring a sentence to where Mr. Stewart can pay his debt to society, but then possibly come out on some form of a probation to where he can show the Court that he's going to better himself and not do this anymore. And,

again, if he does about seven years he'll be about 40 and hopefully that is -- that will change some things. And also potentially allow him to be out to see his grandmother again.

THE COURT: I understand. Thank you.

MR. STUMBO: Judge, at the appropriate time, I was looking up something, if I could just briefly respond?

THE COURT: Sure. What I asked my Clerk to check was to see if -- Mr. Stewart seemed somewhat familiar, I don't know if I maybe had a bond hearing or I handled something previously with him. But, apparently, I think it was Judge Mullen who handled the plea in 2012. And the active eight year on the distribution of meth was that Greenwood or was that Abbeville? Greenwood? I couldn't...

MR. STUMBO: Bryan Maroney (ph) handled it from our office, Judge, I'm not sure who the judge was.

THE COURT: Apparently, I did handle a DV second about nine years ago in Laurens.

MR. STUMBO: Right. And I think --

THE COURT: But I'm not indicating any sort of conviction in Greenwood that I handled.

MR. STUMBO: DV second was 18 months probation, I think, on that one the 2011. Is that the one you're looking at?

THE COURT: Yes. But that's probably not a hear

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nor there. I just felt that Mr. Stewart seemed familiar for some reason. Did I handle a bond hearing on this for you at some point?

THE DEFENDANT: Yes, sir.

THE COURT: Perhaps that's what I'm thinking about then.

MR. STUMBO: The last bond hearing was Judge Morgan. You may have handled one early -- early on.

THE COURT: Okay. All right. I'm usually good with faces and not so good with names.

But, Solicitor, you wanted to reply briefly. I understand that, obviously, you're going to be taking issue with some of the representations made here.

MR. STUMBO: Yes, sir. I mean, Mr. Cunningham didn't want to address the Court, but, I mean, he completely denies ever shooting at Ms. Stewart's house. He has had a criminal past, too, and our office has prosecuted Mr. Cunningham at times in the past. But what physical evidence corroborates his story that day, they did a GSR kit on his hands, which came back clean. We were going to introduce that at trial next week at the time if we were trying the case. There's no evidence that he was shooting at Stewart, which Ms. Durban would say the same thing. And then obviously there was a fist fight that escalated into a shooting. And, Judge, that's precisely what we're fighting

in this community.

THE COURT: I understand. I do understand.

MR. STUMBO: We -- just that Mr. Cunningham, I would be on record as saying he did not shoot at Mr. Stewart before or that day. He's denied that.

THE COURT: I hear you loud and clear.

MR. STUMBO: Yes, sir.

THE COURT: All right. I understand that there's always two sides to every story. I do, obviously, acknowledge that there's bad blood here and it always takes two to tango. I always give the defense the last word though so anything that you wanted to say in response to that or anything that you wanted to accentuate or emphasize to me, I'm all ears.

MR. HISKER: Judge, I mean, Mr. Stewart is not maintaining that Mr. Cunningham shot at him that day. But all the other things he believes and, I mean, at this point that was what was in his mind, that he believed that he was under attack. And at this point he truly regrets it and he wants to put all of that behind him and he want to extend forgiveness on his part and he hopes that the victim can forgive him.

THE COURT: Certainly. One other housekeeping matter, he has been continually in custody since when?

MR. STUMBO: 350 days, Judge, December 15th of

last year.

MR. HISKER: That's my understanding as well, Judge.

THE COURT: 350. Okay.

(WHEREUPON, there was a brief pause in the proceedings.)

THE COURT: All right. Mr. Stewart, first I want to say the fact that you've got family member -- family members here like your grandmother to speak on your behalf, of course, speaks well of you in the sense that too often I come in here and people are standing up here taking responsibility for tragic and bad decisions that they've made and they have no one here who loves them enough to take a few moments out of the day and come up here and be with them during a very difficult part or a very difficult time in their lives. So I appreciate your grandmother being here and I'm convinced that she genuinely loves you and cares for you. And, obviously, I have no reason to doubt the sincerity of what she told me, any of it, so I've certainly taken that into account.

And, of course, Mr. Stewart, as I'm sure you're aware, I also have to take into account, you know, a person's prior criminal history. How many times they've been in trouble with the law, what kind of sentences they've received previously, and that factors into this sentence, as

well, as the fact that it sounds like this got out of hand really, really quick.

And what I'm hearing from you is that you regret it -- you regret it getting out of hand. You regret your actions that day. And had you known that there was a child in the backseat of this car you, would have never -- never done what you did.

The tragic part of my job, Mr. Stewart, and that of your lawyer and Mr. Stumbo, is that so often we see people in this courtroom who they pull a gun, they fire a gun, and the bullet has no brain, it doesn't hit the intended target, it hits somebody who's totally innocent, some innocent bystander, somebody who had no issue with you or anybody else. And understand if one of those bullets had struck that infant we wouldn't be talking about whether or not you were going to serve five, ten, fifteen, years, twenty years, we'd be talking about whether or not it's the death penalty or life in prison, okay. And it's that simple. All right. Because, again, a bullet's got no brain.

And, most importantly, based on your record, you should have never had a firearm in your possession on that day, period, end of story. The law is pretty clear. People -- some people just can't be trusted with firearms. Individuals who have been convicted of the crimes that

30

you've been convicted of, you're one of those people. And it's but for the grace of God that you're not here looking at a minimum 30 years for murder or possibly life in prison, you know. And that's not even taking into account the fact that Brooke over there was pregnant at the time this shooting took place. So this was out of hand. This was unnecessary and we see too much of it. I see too much of it.

And to -- your lawyer's request is not that unreasonable, but with your record, Mr. Stewart, you having just been released from prison, I'm giving you as much consideration as I can for coming up here and accepting responsibility, but your record is bad. What you did was horrible. It had potentially tragic consequences. Thankfully, at some point you will breathe free again.

But I've taken all this into account Mr. Stewart and I'm simply giving you a straight 13 years. So you've got 13 years to do on these charges. All sentences are concurrent with each other and you do get credit for the 350 days that you've served since December the 15th of 2020.

Mr. Stewart, I genuinely wish you luck. When you get ready for your release I would suggest that you go to a halfway house. I would suggest that you go some place where maybe you get back on your feet and maybe not engage in the same kind of lawless conduct that got you here today. So

look at that as a possible option when you're ready to be released from prison. I sincerely don't want to see you back here again, Mr. Stewart. I do wish you luck.

I let you know if you want to appeal these proceedings today, you need to let your lawyer know immediately, because he's got to file a notice of intent to appeal within ten days. If you want to file any action for post conviction relief that needs to be filed either one year from today's date if there's no appeal or one year after the exhaustion of any appeal. Okay, Mr. Stewart?

THE DEFENDANT: Okay.

THE COURT: I sincerely wish you luck and I have signed the restraining order. So no contact with these folks once you get done with this 13-year sentence.

Good luck, sir.

MR. HISKER: Thank you, Judge.

THE COURT: Thank you.

END OF REQUESTED PROCEEDINGS

CERTIFICATE OF TRANSCRIBER

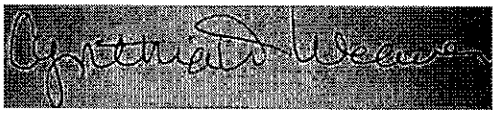
Case Name/Number: State of South Carolina vs. Lemarcus A. Stewart, 2021-GS-01-00392, 00393, 00394

Date of Hearing: November 30, 2021

Court Reporter/Monitor: DCRP

I, Cynthia D. Weaver, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither Counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

March 23, 2023



Cynthia D. Weaver,
Official Court Reporter
State of South Carolina

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Aiken)
Lawrence A. Stewart Jr. #359126)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)

IN THE COURT OF COMMON PLEAS

2023CP0100015

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS – READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution

2. Name and location of Court which imposed sentence Clerk of Court Aiken

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) 2021GS0100482
   (b) 2021GS0100345

TRUE COPY
BY _____
Aiken County Clerk

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(c) 2021-GS-07-03814

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

(a) November 30, 2021

(b)

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

(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. South Carolina Court of Appeals

ii.

iii.

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

i. Failed to provide a sufficient Guilty Plea Explanation

ii. Held without jurisdiction of the South Carolina Court

iii. of appeals / remittitur Feb. 15, 2022

(c) the date of each such result:

i. Mr. Steven Hisker a Notice of Appeal on 12/8/2021

ii. Mr. Lamarcus A Stewart Argue Appeal Reason on 1-9-22

iii. Mr. V. Claire Allen Mailed Court of Appeals remittitur on 3/2/2022

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

i. South Carolina Court of Appeals denied applicants

ii. Mr. Stewart Appeal for lack of jurisdiction

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) _____

(b) Null and void Sentence

(c) breach of guilty plea agreement

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

(a) _____

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? N/A

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

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

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

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

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?

_____

_____

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

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) Defendant incompetent of him

(b) Attorney Ineffective Assistance of coinsel

(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? Mr. Steve Hasker

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

NO

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

(a) the name and address of each attorney who represented you:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

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

STATE OF SOUTH CAROLINA)
)
County of Asheville SC)

VERIFICATION

I, _____, 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.

SWORN to and subscribed before me this 17th day of January, 2023.

Lakiasa D Gray (L.S.)
Notary Public

My Commission Expires: 01/13/30

LAKIASA D. GRAY NOTARY PUBLIC SOUTH CAROLINA MY COMM. EXP. 01/13/2030

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

I, Lamarcus A. Stewart Jr., 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.

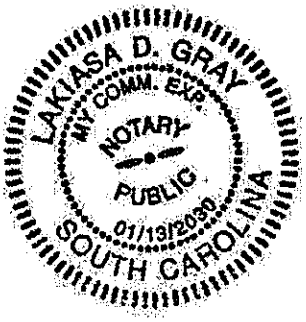
(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Lamarcus A Stewart
Applicant

SWORN or affirmed to and subscribed before me this 17th day of January, 2023.

Lakiasa D Gray
Notary Public

My Commission Expires: 01/13/30



Discussion

Well Your Honor, based off the facts in the case. and Strickland V. Washington, Lamarcus Alexander Stewart Jr. is entitled to relief as far as Voluntariness of the plea, the plea was not taking voluntary, because pertaining to Lamarcus's sixth amendment right, which pertains to fairness, Lamarcus was advised by Mr. Hiskers when to say yes and when to say no pertaining to the quetions being asked pertaining the plea. Next a plea can only be accepted when it is voluntarily knowingly and Intelligently made in which the defendant competitly had a (Full) understanding of the consequences he was pleaing to, in which your Honor I would say no next pertaining to Lamarcus's sixth amendment right garaunteeing him (Lamarcus) effective assistance of counsel, Mr. Hisker (Counselor) was in fact ineffective, because Mr. Hisker being competent of the law and also being competent of legal proceedings would have known by fully and accurately reviewing the discovery, Mr. Hisker would have known not to advise Mr. Stewart to take a plea, when Mr. Stewart more than likely would have had a better outcome if he had continued to trial on Dec. 06, 2021 which with in itself, Shows Lamarcus's attorney was ineffective and shows that Mr. Hisker's performance prejudice the defendant, because Mr. Hisker would have known also from reviewing the discovery himself, it would have altered his decision on taking a plea, knowing that Lamarcus was placed on the trial docket by his decision and knowing Lamarcus had a reliable defense of Mistaken Identity and even during the plea hearing Mr. Hisker could have advised the court during the plea that he could not have let his client (Lamarcus Stewart) take the plea, because

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being that, Lamarcus was pleading to lesser included offenses, he still could have continued to trial on Dec. 06 2021 and instruct the Jury on lesser included as well. Now Your Honor the victims in the case never positively identified defendant as the shooter, Mr. Cunningham, one o the alleged victims who was in the car at the time said the person had on blue jeans, black shirt and a green mask, Mr. Cunningham stated he (thinks) it was Think Your Honor that it was the defendant, that goes against fully knowing who your attacker was or is and being that the other alleged victim readed their statement saying the same things which was Brooke Durbin, She said the person she saw had black plain shirt, blue jeans with holes in them and most of all your Honor a Green Mask. So how would they known it was defendant, so constitutionally, Your Honor pertaining to the sixth amendment and fairness it wasn't fair and defendant was advised to take a plea when Lamarcus Stewart shouldn't have accepted aplea and should have continued to trial on Dec. 06, 2021 as he would have seen a different outcome of his proceedings. Mr. Hisker prejudiced Stewarts entire case by having Stewart take a plea instead of going to a Jury trial and picking 12 Jurors like Mr. Stewart insisted him in doing. Mr. Hisker as Mr. Stewarts counselor had a chance to review all evidence and discovery in a matter of time to make the best decision for his client and in Mr. Stewart's case he was denied effective counseling and Mr. Stewart was prejudiced by Mr. Hisker's unprofessional errors.

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Relevant Facts

On or about 9/6/2020, I Lamarcus A. Stewart Jr., the
Defendant was making an errand for my grandmother, who
doesn't live to far from the dollar General 5 Ware St. Ware Shoal
She sent me that day to get some supplies for the house which
was around 10:30 A.M. when I left her house. Now that day as
I was going to the Store I was never confronted by anyone,
but when I came out of dollar general, I was confronted by
the alleged victim Mr. Cunningham, who appeared to be very
angry at the time, he was telling me I finally caught you
it's going down today, he then threw his I.d. down and
started towards me with his fist balled up and yelling I owed
him lots of money for his mothers house being damaged by
fire. I told him he better get out my face I don't know
anything about a fire, Mr. Cunningham then continued pressing
toward me and swung at me a few times but he never connected
I then started rushing towards him and I could hear a female
voice screaming in the back saying "no tayo stop come on
and get back in the car" please baby Stop and get in this car now"
It was Brooke durbin, I didn't actually see her so I'm assuming
it was her I was too busy trying to focus on Mr. Cunningham
When I advanced towards Mr. Cunningham he went towards
the front door and still had his fist balled up and I pointed
my hand at him and told him Man I do not want to fight
you, you childish and you acting like a kid, but If you
keep pressing ME I don't have no choice but to fight you. I then stated I'm gone because

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I know you wanna see me get locked up, you been hating me for no reason. I walked off and he went in the dollar General. I then walked back and pick his Id off the ground and I walked out of Dollar General parking lot towards our local car wash on the way back to my grandmother house on Ware St. When I was walking through the car wash parking lot I seen Tyler Halpin coming up the road, he's a guy I know from school, I'm waved at him and he pull in the parking lot and asked me was I straight? And he said whats up with you dude. He then got out and I told him give me a ride to Ware St. He said come on, he moved stuff around on back of his truck and put my bags on back of is truck and we both got in and left the car wash. I did tell him a dude named Tayo tried to start something with me at the dollar General and he said "well now you're with me I'm taking you home where you'll be straight, I've ever heard anything good about that kid Tayo, everybody I know says he's a troublemaker. Tyler dropped me off and at my grandmother's shortly after.

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Ineffective Assistance of Counseling (A)

Applicant, Mr. Lamarcus A. Stewart Jr. originally took a plea and pleaded to "Assault and Battery of a High and Aggravated Nature In regards to three counts of Attempted Murder Indictments for attempted Murder 16-03-0029 #2021GS01-0392 Indictment #2021GS01-0393, Indictments #2021GS-01 0394 and recieved 13 years ran concurrent and 350 days credit time served.

Law Analysis

To establish a claim of Ineffective Assistance of counseling Post Conviction Relief (PCR) Applicant has the burden of proving the claims made in his or her application, he must prove that counselors performance was deficient and that this deficient performance prejudiced his case U.S.C.A. Amendment 6. A post conviction relief applicant (PCR) claiming ineffective assistance of counsel must show that his counselor's performance was deficient such that it falls below an objective standard of Reasonableness. An applicant must show there is a reasonable probability, but for counsel's "unprofessional errors" the results of the proceeding would have been different and he would have insisted on going to trial (Strickland v. Washington) 466 U.S. 668 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) " Plea counsel is ineffective within the meaning of the sixth amendment only when the applicant satisfies both requirements." Stalk v. State 383 S.C. 559, 561, 681, S.E. 2d 592, 593 (2009) " where a defendant pleads guilty upon the advice of counsel, Post conviction relief is available only when the applicant proves the advice he recieved from counsel fell below an objective standard of reasonableness

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And that but for counsels deficient representation, he would not have pled guilty." Berry v. State 381 S.C. 630 675 S.E.2d 425 (2009) "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him Stalk v. State 375 S.C. 289 652 S.E 2d 402 2007) Respondent can make out a claim of ineffective assistance of counsel only by pointing to specific errors made by trial counsel. The time afforded for investigation and preparation, the experience of counsel, the gravity of the charge, the complexity of possible defenses and the accesibility of witnesses to counsel U.S. v. Cronic 466 U.S. 648 104 S. Ct. 2039 80L Ed. 2d 657 (1984) Held that where demand for preliminary hearing, following arrest on two warrants issued by Magistrate charging offenses of grand larceny and recieving stolen goods, was made ten days before convening of next term of court of General Sessions but such hearing was not held until after indictment was submitted to Grand Jury and true bill returned, the Court was without Jurisdiction and Grand Jury being coextensive with the criminal Jurisdiction of the Court, the indictment was a nullity and conviction was required to be vacated and the Magistrate not finding probable cause Funderburk v. State 259 S.C. 256 191 S.E. 2d 520 (1972) One accused of crime properly requests preliminary hearing, Magistrate court retains Jurisdiction until such hearing is held, therefore Jurisdiction had vested in Court of general sessions when grand Jury true billed indictment because indictment itself established probable cause for arrest, indictment was not subject to dismissal. State v. McClure 277 S.C. 432 289 S.E 2d 158 (1982) Held that where defendant makes substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard

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for the truth, was included by affiant in search warrant affidavit, and if allegedly false statement is necessary to the finding of probable cause, fourth Amendment requires that a hearing be held at defendant's request. Franks v. Delaware 438 U.S. 154 98 S. Ct. 2674 57 L.Ed.2d 667 (1978) But in declaring the rule of Wade and Gilbert to be applicable only to lineups conducted after those cases were decided, we recognized that, Judged by the totality of the circumstances, the conduct of identification procedures may be so unnecessarily suggestive and conducive to irreparable mistaken identification as to be a denial of due process of law. 388 U.S 218, 87 S. Ct 1926, 18 L.Ed.2d 1149 (1967) Gilbert v. California, 388 U.S. 263, 87 S. Ct. 1951, 18 L.Ed.2d 1178 (196

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

Allegation I

11. (A) My Attorney Mr. Steven Hisker was ineffective pertaining to the 1st prong in Strickland V. Washington in allowing me to take a plea when I should have continued to trial on December 06, 2021 and establishing before the Court, how my attorney performance was deficient would be my attorney having the discovery and reviewing the evidence himself, he would have known that the alleged victims in the case unequivocally without a doubt would have not been able to identify the alleged Shooter in the case based off the statements given by both alleged victims at the conclusion of the incident and most importantly and stating on the record, that there would have been only just an assumption that defendant was the Shooter and also stating for the record, My attorney Mr. Hisker's performance as my attorney and advocate, Mr. Hisker was ineffective because he failed, not only to communicate with his client (defendant Stewart) to carry out certain investigations, he could have made pertaining to the information giving between he lawyer and the client under the rules of professional conduct rule 1.4 communication and him, Mr. Hisker knowing the evidence the State was presenting against the defendant Mr. Stewart was weak, because the alleged victims in this case could have never made

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or been able to make a positive identity of defendant Mr. Stewart as the shooter which would show Mr. Hisker's performance pertaining to the 1st prong in Strickland v. Washington was deficient and Ineffective. Also applying to the 2nd prong of Strickland v. Washington defendant Mr. Stewart was preydiced by his attorney for advising Mr. Stewart to accept a plea, when Mr. Stewart maintained his innocence throughout the whole proceedings and wanted to go to trial and pick a jury of 12, Mr. Stewart was prejudiced satisfying the 2nd prong of Strickland v. washington by Mr. Hisker not allowing Mr. Stewart to continue to trial on Dec. 06, 2021 and being placed on the trial docket. In Strickland v. Washington, Stewart satisfying both the 1st and 2nd prongs, his attorney Mr. Hisker was Ineffective and his performance was deficient and Mr. Hisker performance did fall below a reasonableness of standards required by a criminal defense attorney.

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Pg. 6 Ineffective Assistance of Counseling
Pg. 3 PCR Application (10A-11A)
11A

Your Honor,

My Attorney Mr. Steven Hisker was ineffective, counsel's representation fell below an objective standard of reasonableness and there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different, there is a reasonable probabilit that Mr. Steve Hisker's client Mr. Lamarcus A. Stewart Jr., that he was prejudiced by counsel's unprofessional errors. Mr. Steven Hisker unprofessional errors repeated throughout his client Mr. Lamarcus A. Stewart Jr. Trial/Plea Hearing and Preliminary Hearing proceedings, in violation of Mr. Lamarcus A. Stewart Jr.'s Sixth Amendment right by denying Mr. Stewart of effective assistance of counseling, Mr. Steven Hisker being incompetent of the demand of a criminal defense attorney. Mr. Lamarcus A. Stewart Jr. was in denial of effectiv assistance of counseling at the "critical stage" in the steps required of a criminal proceeding. A critical stage includes the "retrial process, Trial process and pleahearing process. Under Cronic the question is not whether Mr. Lamarcus A. Stewart Jr.'s counselor Mr. Steven Hisker was inadequate, but whether the inadequacy reset a complete denial of representation. The Grim Reality is in the Critical stage of the pretrial phase when trial

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Counsel must meet with his client to review the evidence, develop strategy, and prepare for trial, which in Mr. Stewart's case that did not occur. Your Honor my attorney, Mr. Steven Hisker was ineffective pertaining to the 2nd prong In Strickland V. Washington as far as the prejudice requiremen on the other hand which focuse's on whether counselor's errors constitutionally Ineffective performance affected the outcome of the plea process, again like I stated Your Honor by my Attorney Mr. Steven Hisker advising me inaccurately was not competent lacking the ability and skills necessary to advise the defendant in a way to make the best possible decisi to bring about the best possible outcome. In which your Hono Instead of Mr. Steve Hisker advising his client Mr. Stewart to take a plea Mr. Hisker would have insisted on proceeding to a Jury trial or a bench trial, by Mr. Stewart already being placed on the trial dockett scheduled for December 06, 2024 In Which Your Honor I Mr. Stewart would like to state for the record that by his attorney Mr. Hisker having the discovery and investigating and knowing the evidence and also the facts of th case, it would have altered Mr. Hiskers decision into advisir Mr. Stewart to take a plea and not proceeding to trial for Dec. 06, 2024, not only that your honor during the plea hearin he affected Mr. Stewart's plea process by not advising the Court that after him reviewing the discovery and knowing the evidence and facts of the case that was being

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PG. 8 Ineffective Assistance of Counseling (IDA-IIA) continue answer for IIA PCR application 2nd prong Washington V. State 466 U.S 668 104 S. ct. 2057 80 L.Ed 2d. 674

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presented against Mr. Stewart, Mr. Hisker would not have recommended Mr. Stewart to accept the plea. Only reason seing is because he would known that there was reliable defense that counsel Mr. Hisker could have presented to a Jury of Mistaken Identity, in which Your Honor the Court in the plea Hearing transcript page 16 lines (4-5) The Plea Judge Mr. Frank Addy Jr. basically states to Mr. Stewart that he had no way of knowing if Mr. Stewart had a defense to the charges he was pleading to, but he continues on and States on lines (9-17) page 16 of the plea transcript Line 9 the defense to this case could be something as Mistaken Identit or self defense, because even Mr. Frank Addy Jr. knew your Honor without saying it or trying to include himself into knowing like he stated what possible defense to the charges, but Mr. Addy said in a lot of ways, Mr. Stewart could have proceeded to trial on Dec. 06, 2021 and presented a good case to 12 Jurors to 12 fact finders with a defense of Mistaken Identity, because from the Statements Given by the alleged victims in the case, Miss. Brooke Durbin and Mr. Cunningham stated, The person who shot at their vehicl had on a Green Mask.

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G.7 Ineffective Assistance of Counseling (IDA-IIA) continue

Defendant Lamarcus A. Stewart Jr. argues he was denied his sixth amendment right to effective assistance of counsel because Plea counselor Mr. Hisker advised Mr. Stewart to plead guilty to offenses of Assault and battery of a high and Aggravated Nature (ABHAN) without discussing to Mr. Stewart the penalties and punishment of what Assault and battery of a hig and Aggravated nature was and how much (ABHAN) carries. Mr. Hisker did violate and denied Mr. Stewart his Sixth amendment right of effective assistance of counseling by misinforming Mr. Stewart that Assault & Battery of a high and Aggravated Nature is not eligible for a suspended sentence under the State law of South Carolina any sentence twenty years and above must be served eighty five percent and is not an parolable offense. (Even though facts of the case did not support a conviction of attempted murder.) In (Stalk) Stalk V. State 2007 375 S.C. 652 S.E. 2d 402 Counselor was ineffective for failing to inform defendant that if he went to trial on grand larceny of automobile charges he could have requested a charge on lesser included offenses of use of a vehicle without permission and might have been convicted of lesser included offense, Kerrigan V. State, 304 S.C. 561 406 S.E. 2d 160 (1991) Like her n the instance case Counsel was Ineffective for failing to inform defendant that if he went to trial

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he could have requested charges of lesser included offenses of attempted Murder and might not have been convicted on lesser included offenses of Assault and Battery of a high and Aggravating Nature because the alleged victims Ms. Durbin and Mr. Cunningham could have never positively identified the alleged suspect, who had on a green mask at the time of alleged shooting incident. Bennett V. State 371 S.C. 198 638 S.E. 2d 673 "Defense counselor advised defendant charged with first degree burglary to plead guilty was not deficient performance, and thus was not ineffective assistance I cited this case for this very reason because it shows Bennett was not advised incorrectly because first degree burglary does carry a life sentence. Alexander v. State 303 S.C. 539 402 S.E. 2d 484 (1991) Defendant testimony that counsel misinformed him erroneously in which the record would reflect his contention and also here in the instant case and in this case your Honor would show the lack of competence Alexander's counselor lacked in reviewing the indictments and advising Alexander erroneously into taking a plea when Alexander could have gotten lesser time if indictments were viewed correctly. Also here in the instant case where it would show Mr. Steven Hisker also lacked competence in advising Mr. Stewart to take a plea when Mr. Hisker knew by reviewing the discovery the alleged victims Brooke Durbin and Taliaferro Cunningham could have never positively identified the shoot and Mr. Stewart could have proceeded to trial on December 06, 2021 with a very reliable defense.

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Sellner V. State 416 S.C. 606 787 S.E. 2d 525 2016
Defendant Sellner's counselor's advice to defendant who ultimately entered a guilty plea that he could have been convicted of armed robbery without proof of a physical representation of a deadly weapon rendered counselor's performance deficient such that counselor was ineffective in as much facts presented by the State here in this instant case did not include the requisite corroborating evidence to show that the defendant In the case could really have been positively identified as the shooter when alleged perpetrator from statements given by one of the victims known as Mr. Cunningham who was in the car with Ms. Durbin at the time when the alleged Incident took place said "this guy started shooting at their car, the guy he saw shooting had on a green mask", cunningham then stated "he thinks the guy was Marcus Stewart." Garren v. State 423 S.C. 1 813 S.E. 2d 704 (2018)
In this case it deals with competency having the ability and necessary skills to understand the proceedings against him. Now here in this instant case involving the defendant Mr. Lamarcus Stewart he proclaimed that he's not competent in applying legal issues to proceedings and he's not competent in the law and applying the law to legal issues to a proceeding which is why Mr. Stewart didn't voluntarily understand the penalties and stipulations of what he was pleading Guilty to because he only understood he was going to trial on Dec. 6, 2021, so when his attorney came to him in the detention Center it was an turn of

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Changed events. This in turn made Mr. Hisker rush the process without fully explaining to Mr. Stewart what he was pleading to and how much time Assault and Battery of a high and aggravated nature imposed of. Mr. Stewart never was fully informed of what an ABHAN was until the day of his plea hearing when the plea Judge Mr. ADDY explained to him that this charge carries a maximum penalty of 20 years and whoever is found guilty of this must complete eighty-five percent of their time with no suspended sentence or parolable offense. Mr. Hisker only came to the jail to see Mr. Stewart and tell him to sign papers without giving Mr. Stewart a full understanding of what he was signing his signature on. Mr. Stewart asked Mr. Hisker why he wasn't proceeding to trial, Mr. Hisker told Mr. Stewart when the solicitor saw Mr. Stewart's name on the trial docket Mr. Matthew Stumbo gave Mr. Hisker a call and advised him he will give Mr. Hisker and his client Mr. Stewart a plea deal instead of going to trial because Mr. Stumbo stated he was acting in the best interest for Mr. Hisker and his client Mr. Stewart so it wouldn't be humiliation on Mr. Stewart in a public trial. Mr. Stewart then ask his lawyer what kind of plea did Mr. Hisker have for him. Mr. Hisker stated I can get you a suspended sentence of 14yrs. Mr. Stewart asked Mr. Hisker how is he sure he will get him a 14yr. suspended sentence. Mr. Hisker stated he was an officer of the court and the plea Judge will listen to him because after he state the facts of the case the plea Judge will know this is not a open shut case. In the plea transcript on page 22 lines (8-11) Mr. Hisker was asking the plea Judge to consider a suspended sentence Mr. Hisker stated Your Honor to consider structuring a sentence that lets Mr. Stewart do some time but also be released on some form of a suspended sentence. He's 33 now, If he did about 7 seven years, he'd be 40 forty when he gets out.

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Mr. Hisker was deficient for misleading Mr. Stewart to believe he could get a suspended sentence on charges of ABHAN which = Assault and Battery of a high and aggravated nature which carries a maximum of 20 years eighty-five percent a no parolable offense. If Mr. Hisker inform Mr. Stewart that he was pleading to a 20 twenty year sentence and can't be suspended and eighty five percent Mr. Stewart would have declined the plea and proceeded to trial on Dec. 06, 2021 and the results of the outcome of trial would have been different. On page eighteen in the trial/plea transcript the Court asked Mr. Stewart "Is there anything that you want to ask me or your attorney about anything that we've gone over? Mr. Stewart stated I want to ask my attorney something. The court stated Y'all just step back for a second pages 18 lines (22-25) Page 19 lines (1-3). Mr. Stewart asks Mr. Hisker why did he tell him the sentence carried a non-violent sixty five percent? Mr. Hisker told Mr. Stewart "I thought it was non-violent sixty five percent, Mr. Hisker then checks on his laptop and confirmed what the court said and he told Mr. Stewart that it does indeed carry 85%. Mr. Stewart then tells Mr. Hisker he didn't want to take the plea. Mr. Hisker told Mr. Stewart that was the best deal that we can get, he tells Mr. Stewart your back against the wall you don't have much of an option at this point. Mr. Hisker then tells Mr. Stewart you don't want to go to trial and get forty years then you won't ever get to see your grandmother or anybody. Mr. Hisker then states hopefully this will be his last trip down here. Mr. Hisker was deficient for not withdrawing the guilty plea right then thats coercion. In the Plea transcript Page 27 Lines (3-11) Mr. Hisker is still requsting a suspended sentence that he

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Mr. Stewart believing he would recieve for not continuing to trial. Law here in this instant case involving Mr. Stewart he's not competent in applying legal issues to proceedings and he proclaims he's not competent in the law and applying the law to legal issues to a proceedings, Now Your Honor in the plea transcript on Page 18 Lines (1-2) which is why when the court asked Mr. Stewart Is there anything that he has failed to do that you want him to do? Mr. Stewart answereed No. Not that I know of, and the reason being was because he was not competent of law to knew from a legal standpoint if Mr. Hisker was deficient cause he don't know the law. Mr. Hisker has been an Licensed Attorney for 20+ years and also is a board member of project innocence, it's no reason for him not to answer to his clients interest and conflicts. Mr. Hisker was paid fifteen thousand dollars from Mr. Stewart to be his advocate and be responsible for rendering his best Judgement of Mr. Stewart's case. Mr. Hisker didn't care that he was paid fifteen thousand to go to trial and still fall short on his duties by advising Mr. Stewart not to continue to trial on Dec. 06, 2021. Mr. Hisker neglected his duties by being Mr. Stewart's advocate and not giving his best Judgement to Mr. Stewart's case and advising Mr. Stewart to accept a plea when he had Mr. Stewart believing they was heading to trial up until the last moment. Mr. Hisker was ineffective at the plea hearing for not correcting deceptive and defamatory testimony from Solicitor Stumbo. Mr. Hisker never stated any facts of the case to the plea Judge so that Mr. Addy could render his Judgement from the facts of both sides. Mr. Hisker knew from being a Trial attorney that the Solicitor acted in retaliation and made deceptive and perjury statements that breached the plea agreement because LEGAL MAIL from Mr. Stewart understanding that was not an MAIL ROOM

agreement to get him in court and take out animosity on Mr. Stewart in front of plea Judge, Mr. Hisker was automatically suspsed to withdraw from the plea right then. It would not be fair and that is not the integrity of the court to only look for a conviction, it is not the integrity to let the Solicitor play advocate for niether side he must be detached in a plea agreement Mr. Hisker knew Mr. Stumbo was bias against Mr. Stewart In the plea transcript pages 8 Lines (21-25) Page 9 lines (1-25) Page 10 Lines (1-8) (22-25) Page 11 (1-16) Page 12 (11-17) Page 8 Lines (7-20). Mr. Hisker knew from the police body camera the witness Stated he didn't see a Shooting, he heard a shooting Mr. Hisker knew officer Ricketts made a false affadavit entitling Mr. Stewart to a franks Hearing (Frankes analysis) Ofc. Ricketts Story of events in his affadavit contradicted what Ofc. Davis wrote in her affadavit. Mr. Hisker knew that officer Ricketts acting in permissive suggestiveness on the photo array. Mr. Hisker knew the video he recieved from Dollar General was fabricated. Mr. Hisker knew the gunshot residue kit was conducted 4 hrs. after the incident happen. Mr. Hisker never obtained any arrest warrants in the case, didn't ask for gunshot residue kit from Steed, Mr. Hisker knew officer Ricketts told false statements at Mr. Stewart Preliminary Hearing. In the Plea transcript page 17 Lines (1-8) Mr. Hisker was deficient to Mr. Stewart at his preliminary Hearing but he stated to the court, We also had a very thorough preliminary hearing. In the Plea transcript page 16 lines (23-25) The court ask Mr. Hisker, and I assume that you're satisfied with the discovery response from the state in this case? Counselor you're happy with the discovery responses?

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Plea Transcript Mr. Hisker answered on page 17 Lines (1-3) Yes, Your Honor. I've had everything We've thoroughly reviewed it all. I am. Yes, Your Honor. Mr. Hisker Never retrieved arrest warrants, Mr. Hisker never file for any motions including Motion of discovery or pretrial motions, Mr. Hisker never obtained Sled Gunshot residue kit, Mr. Hisker never research legal meterials that Mr. Stewart advised him to do, Mr. Hisker never interviewed defense witnesses Mr. Hisker never viewed scene of allegedly crime, Mr. Hisker never advised Mr. Stewart of his rights or preserve his trial rights. In the plea transcript page 26 lines (21-25) and Page 27 lines (1-2) Mr. Hisker never discussed any elements of self defense to Mr. Stewart because if Mr. Hisker did he still couldn't rule at self defense because he didn't fully investigate the case to know if it was a self defense case or not because Mr. Hisker knew the alleged crime never happen where victims and witness said it happen, Mr. Hisker even questioned Mr. Ricketts in the preliminary and asked How did a Shooting happen at the Stop Sign when the bullet casings was way up in the middle of the Main Rd.? Officer Ricketts stated I don't know they could of blowed up the road by cars passing by. Had Mr. Hisker visited the scene of the allegedly crime he would have known its no way possible. Mr. Hisker also would have known that contradicted witness and victims statement. From Mr. Hisker being deficient and failing to fulfill his duties he couldn't have made the best decisions for Mr. Stewart's case. If Mr. Hisker would have did his legal research like Mr. Stewart requested he would have known Mr. Stewart was indeed almost killed by

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Mr. Taliaferro Cunningham on Sept. 17, 2018, while Mr. Stewart was on his property. Mr. Taliaferro Cunningham drove by Mr. Stewart residence and saw Mr. Stewart and then begin Shooting a Handgun at Mr. Stewarts house and Mr. Stewart returned fire with a Shot gun loaded with bird Shot hitting Mr. Cunningham in his lip and arm before cunningham went to the hospital to be treated cunningham handed the handguns that was used to someone else. Had Mr. Hisker researched legal materials and interviewed Sheriff Dennis Kelly and Investigator Scott Russ like Mr. Stewart asked him he would have represented Stewart better on What Mr. Stewart was trying to tell the plea Judge but by Mr. Stewart being nervous in court and feeling left stranded in the and it was confusing with what happen on Sept 06, 2020. In the plea transcript page 24 Lines (10-14) Stewart took responsibility because Mr. Hisker told him to say that So the plea Judge will be more lenient and understanding. Plea transcript page 24 Lines (15-25) Stewart was speaking on the Sept. 17, 2018 incident Pages 25 lines (1-4) Stewart was still speaking on the Sept. 17, 2018 incident because cunningham did tell investigator Scott Russ Stewart Shot at me, but investigator Russ did an investigation and knew what happen. Plea transcript page 25 lines (19-25) Stewart was still speaking on the Sept. 17, 2018 incident. Plea Transcript page 26 lines (1-19) Stewart was speaking on week in 2018, but he was still taking responsibility for the Sept. 06, 2020 incident from the advice Mr. Hisker was advising him to do So in order to resolve the case with the plea. Mr. Stewart did not want

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to accept no plea, Mr. Stewart was maintaining his innocence and wanted to have his day in a public trial, Which is why he dismissed Bruce Byrholdt from his case because Bruce tried to get Mr. Stewart to accept a plea. Mr. Stewart then hired Mr. Hisker as a trial Attorney and to represent him so that his Trial would be fair. Mr. Hisker Misrepresented Mr. Stewart ill across the board. Plea transcript Page 28 Lines (23-25) Mr. Stumbo states Mr. Cunningham didn't want to address the court, but, I mean, he completely denies ever shooting at Mrs. Stewarts house. Plea transcript Page 29 lines (1-15) Had Mr. Hisker researched legal materials and interviewed Sheriff Dennis Kelly and Investigator Scott Russ he would have knew Taliaferro in fact has Shot at Mrs. Stewarts House and tried to kill Mr. Stewart before. Had Mr. Hisker did his research he would have known Mr. Stumbo knew Talia ferro did in fact do what Mr. Stewart said because Mr. Stumbo is cheif Solizitor he knows all incidents thats happened in his city and counties. Mr. Hisker would in fact knew Stumbo was in fact playing victims advocate and had animosity against Mr. Stewart. Mr. Hisker knew Mr. Stumbo in was in fact in retaliation against Mr. Stewart and having animosity against Mr. Stewart, because in October 2021 at Mr. Stewarts bond hearing Mr. Stumbo gave the bond Judge a different version of the facts of the case Just so Mr. Stewart would not get a bond and Mr. Hisker failed to correct the version of Mr. Stumbo's statement and correct the facts of the case to the bond Judge so the bond Judge cold render his best decision on giving Mr. Stewart a bond.

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G.14 62 Ineffective Assistance of counsel (10A-11A)

Standard of Review

In a Post conviction Relief (PCR) proceeding the applicant still bears the burden of proving he's entitled to relief Caprood v. State, 383 S.C. 103, 109, 525 S.E 2d 514, 517 (2000) In determining guilty plea issues, it's proper to consider the guilty plea transcript as well as the evidence at a Post conviction Relief Hearing, Harres v. Leeke 282 S.C. 131, 133, 318 S.E. 2d 360, 361 (1984)

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

Plaintiff(s)

vs.

South Carolina State Of

Defendant(s)

CIVIL ACTION COVERSHEET

2023 -CP- 01 -00015

Submitted By: Lawrence A. Stewart #354 SC Bar #:
Address: McCormick Correctional Institution Telephone #:
Fax #:
Other:
E-mail:

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

DOCKETING INFORMATION (*Check all that apply*)

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

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

NATURE OF ACTION (*Check One Box Below*)

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

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20___-NI-____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

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

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

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

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

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

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

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

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Submitting Party Signature: _____ **Date:** 1/2023

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

RECEIVED
JAN 25 2023
Referred to PCF
Answered

ALAN WILSON
ATTORNEY GENERAL

January 27, 2023

The Honorable Shandal Boggs
Abbeville County Clerk of Court
102 Court Square, Room 103
Abbeville, SC 29620

RE: **Lamarcus A. Stewart Jr. v. State of South Carolina**
2023-CP-01-00015

Dear Ms. Boggs:

The above-referenced individual has filed an Application for Post-Conviction Relief (PCR) in the Circuit Court and needs to have an attorney appointed to represent him. Please appoint an attorney and serve our office, the applicant, and the attorney with the results of the appointment. If you have any questions with regard to this matter, please let me know.

Sincerely,

Zachary W. Jones
Assistant Attorney General

ZWJ/cbh

cc: Lamarcus A. Stewart Jr. #351926

ALAN WILSON
ATTORNEY GENERAL

January 27, 2023

The Honorable Shandal Boggs
Abbeville County Clerk of Court
102 Court Square, Room 103
Abbeville, SC 29620

Re: **State of South Carolina v. Lamarcus A. Stewart Jr.**
General Sessions Indictment No(s). 2021-GS-01-00392; 00393; 00394

Dear Ms. Boggs:

The above-referenced individual has filed an application for post-conviction relief, challenging his conviction(s) for the indictment(s) listed above. According, please forward our office a full and complete copy of his General Sessions file(s) for the indictment(s) listed, including:

-All sentencing sheets
-All indictments (including for any dismissed charges)
-All motions and returns to motions
-All orders

If you would prefer to send these electronically, please feel free to email the complete file to me using the following email address: eighthcircuitpcr@scag.gov.

If you have any questions or need any additional information to comply with this request, please contact our office at (803) 734-3737.

Sincerely,

Zachary W. Jones
Assistant Attorney General

ZWJ/cbh

Emailed 2/3/2023

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

State of South Carolina	In the court of common pleas
Lamarcus A. Stewart #351926 Applicant, V. Kenneth Sharp; Warden, T.C.I.; and Alan Wilson, Attorney General for the State of South Carolina Respondents	Case no. 2023-CP-01-015 Amended and Supplemental Pleadings Rule 15, (6) SCRCP

I, Lamarcus A. Stewart #351926 Am Amending the following:

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
Filed 1/8 A.D. 2024
at 10:00 o'clock A M
Shondral Boggs
Clerk of Court

In the United States Court of Appeals for the fourth circuit

United States of America,

Plaintiff-Appellee,

V.

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
Filed 7/8 A.D. 2024
at 10:00 o'clock A.M.
Shandal Boggs
Clerk of Court

Lamarcus A. Stewart,

Defendant-Appellant.

Lamarcus A. Stewart Jr. pleaded guilty to three counts of Assault and battery of a high and aggravated nature (2021-GS-01-0392, 2021-GS-01-0393 and 2021-GS-01-0394), and he was sentenced to (13) years of imprisonment.

Appellant contends that he was denied effective assistance of counsel when Counselor Steven M. Hisker neglected his clients Lamarcus A. Stewart's 6th amendment rights by disregardi his client's specific intstructions to file a notice of appeal and by - Mr. Hisker representing Mr. Lamarcus Stewart as his advocate, acts in a professionably unreasonable manner (Rodriquez V. U.S., 395 U.S. 327, 89 Ct. 1715, 23 L.E.d 2d. 340), while a defendant who explicitly tells his attorney not to file an appeal plainly cannot later complain that, by following those instructions his counsel performed deficiently Jones V. Barnes, 463 U.S. 745, 751, 103, S. Ct. 3308, 17, L.Ed 2d 987 An attorney must advocate his client's cause vigorously and may not withdraw from a nonfrivolous appeal - counsel must present on appeal all nonfrivolous arguments requested by his client. The Court of Appeals held that respondent's counsel has not met this standard in that he failed to present certain nonfrivolous claims. (Anders V. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493)

The proper standard for evaluating Robbins' claim on remand is that nunciated in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 .Ed. 2d 674: He must first show that counsel was objectively unreasonable d., at 687-691, 104 S.Ct. 2052, in failing to find arguable issues to appeal nd, if Robbins succeeds in showing, he then has the burden of emonstrating prejudice, id., at 694, 104 S.Ct 2052. He must satisfy both rongs of the Strickland test to prevail, for his claim does not warrant a presumption of prejudice. He has recieved appellate counsel who has omplied with a valid State procedure for determining whether his appeal s frivolous, and the State has not left him without counsel on appeal. Thus, it is presumed that the result of the proceedings is reliable, and obbins must prove the presumption is incorrect. further, his claim does not all within any of the three categories of cases in which prejdice is resumed, for it does not involve the complete denial of counsel on appeal, State interferance with counsel's assistance, or an actual conflict of nterest on his counsel's part. id, at 692, 694, 104 S. Ct. 2052
Smith v. Robbins 528 U.S. 259, 120 Ct. 746, 145 L.Ed. 2d. 756 (2000)
Claim that where counsel failed to make a particular argument on appeal, in such circumstances, whether we require the defendant to show actual prejudice - "a reasonable probability that, but for counsel's nprofessional errors, the result of the proceedings would have been ifferent," Strickland, 466 U.S., at 694, 104 S.Ct. 2052
Held where counsel's deficient performance has not deprived him of anything, and he is not entitled to relief, (Peguero v. U.S., 526 U.S. 23, 119 S. Ct. 961, 143 L. Ed. 2d. 18 (1999)
Because those whose right to an appeal has been frustrated should be treated exactly like any other appellant," we rejected any requirement that he would be appellant "specify the points he would raise were his appeal ights reinstated id at 330, 89 S. Ct. 1715 see also (Evitts v. Lucey, 469 U.S. 387 105 S.Ct 830, 83 L.Ed. 2d. 821 (1985)
Defendant is entitled to new appeal when counsel's deficient failure to comply with mechanistic local court rules led to dismissal of first appeal and where there were nonfrivolous grounds for appeal, A.B.A. Model code of professional responsibility, EC 2-31 (1991) provides that trial counsel for a convicted defendant should continue to represent his lient by advising whether to take an appeal likewise ABA Model

2 of professional conduct 1.3, comment (1996) "If a lawyer has
elled a judicial or administrative proceeding that produced a result
verse to the client but has not been specifically instructed concerning
suit of an appeal, the lawyer should advise the client of the possibility of
peal before relinquishing responsibility for the matter of restatement
third) of the law Governing Lawyers § 31(3) proposed final draft No. 1
arch 29, (1996)

defendant has a right to purse a direct appeal, even if frivolous,
which counsel must assist as an active advocate in behalf of his client
nders v. California, 386 U.S. at 752, 103 Ct. 3308)

ppellant asked trial counsel to file an appeal in the matter even after
ppeal waiver in a plea agreement does not relieve defense counsel of its
bligation to file an appeal (Roe v. Flores-Ortega, 528 U.S. 470 120 S. Ct
029 (2000). Counsel's obligation to assist the defendant includes a
uty to consult with the defendant on important decisions; A defendant
as a right to purse a direct appeal, even if frivolous or is the result
f a guilty plea, which counsel must assist as an active advocate in
ehalf of his client. Counsel's failure to consult with him in this regard
onstitutes a Sixth admendment right to effective assistance of
ounsel. Rule 52 (b) Fed. R. Crim. P. Frazer v. State, 430 F. 3d. 696
(4th Cir. 2005) See Strickland v. Washington "provides the proper framework
or evaluating a claim that counsel was constitutionally ineffective for failing
o file a notice and brief of a appeal. Under strickland a defendant
ust show (1) that counsel's representation "fell below an objective
standard of reasonableness", at 688, 104 S. Ct. 2052, and (2) that counsel's
eficient performance prejudiced the defendant (he) would have timely or
uccessfully appealed. (Strickland v. Washington, 466 U.S. 668, 104 S. Ct.
052, 80 L. ed. 2d. 674) Even when defendant pleads guilty, in
etermining whether counsel had constitutionally imposed duty to consult
with defendant about appeal, court must consider such factors as whether
efendant recieved sentence bargained for as part of plea and whether
plea expressly reserved or waived some or all appeal rights. A defendant
choice between entering a plea agreement with the government
or proceeding to trial rests upon his calculation of the realitive ri
and benefits of each option. The degree of risk in accepting a

lea agreement that specifies a sentence recommendation is directly
lated to the degree of discretion afforded a trial court in imposing
sentence greater than that settled upon by both the parties. A defendant
ll undoubtedly have more concerns about accepting a plea agreement if the
ial court has the discretion to bind him irrevocably to a higher
entence. (Brady v. U.S., 397 U.S. 742, 756, 90 S.Ct. 1463, 1473, 25 L.Ed.
2d 747 (1970) often the decision to plead guilty is heavily
nfluenced by the defendant appraisal of the prosecution's case against
im and by the apparent likelihood of securing leniency should a guilty
lea be offered and accepted. In order to satisfy the due process
equirements of the fifth amendment, a defendant's guilty plea must
e voluntary and intelligent. (Carter v. McCarthy, 806 F.2d 1373,
375. (9th Cir. 1986). As the supreme court has observed, the acceptance
f a guilty plea requires the "utmost solicitude of which courts are
apable in canvassing the matter with the accused to make sure he
as a full understanding of what the plea connotes and of it's
onsequence". (Boykin v. Alabama). "An accused's plea of guilty can
e voluntary only if he is fully aware of the direct consequences of
is plea". (Brady v. U.S., 397 U.S. 742, 756, 90 S.Ct. 1463, 1473, 25 L.Ed
2d. 747 (1970). However once a defendant enters a guilty plea, whether
o allow withdrawal of the plea is left to the sound discretion of th
ircuit court. (State v. Riddle, 278 S.C. 148, 150, 292 S.E. 2d. 795, 796 (198
t that stage the circuit court stated it accepted the pleas pending
resentation of the facts by the State. Generally, the circuit court ma
onduct an inquiry broad in scope, largely unlimited either as to the kin
f information it may consider or the source from which the
nformation may come, to assist it in determining the sentence to be
mposed of. (State v. Gulledge 326, S.C. 220, 228, 487 S.E. 2d. 590,
594 (1997). A guilty plea may not be accepted unless it is voluntarily an
understandingly made. (Boykin v. Alabama, 395 U.S. 238, 242, 89 Ct. 1709, 23
Ed. 2d 274 (1969). All that is required before a plea can be accepted
is that the defendant understand the nature and crucial elements of the
charges, the consequences of the plea, and the constitutional rights he
is waiving, and that the record reflect a factual basis for the plea

Applicant argues that his guilty plea was not voluntary because he was not informed of and did not understand every element of the offenses, and because the factual basis was insufficient to prove every element of the offenses. Because applicant did not raise this issue in circuit court, review is only for plain error. See Puckett v. United States, 129 S. Ct. 1423, 1429 (2009).

The list of elements for the offenses is as follows: 16-03-6200(B)(1). And the circuit court did not inform applicant of these elements of the offenses. See: United States v. Johnson, 381 F.3d 506, 508 (5th Cir. 2004); See also United States v. Hooker, 997 F.2d 67, 74 (5th Cir. 1993) By not informing applicant of these "crucial elements" of the offenses, the circuit court erred by failing to inform applicant of, and ensuring that he understood, the nature of the charge, in violation of Federal rule of criminal Procedure 11(b)(1)(G) Additionally, the circuit court erred in accepting applicant's guilty plea because there was an insufficient factual basis to support these elements of the offenses. See Fed. R. Crim. P. 11(b)(3); United States v. Adams, 961 F.2d 505, 508 (5th Cir. 1992) "These actual basis cannot be implied from the fact that the defendant entered a plea, but must appear on the face of the record and must be precise enough and sufficiently specific to demonstrate that the accused committed the charged criminal offense. (Quoting United States v. Johnson, 546 F.2d 1225, 1226 (5th Cir. 1997). In light of the record as a whole and Johnson and Hooker, these errors are clear or obvious.

Further the Supreme court held that defendant who seeks reversal of his conviction after guilty plea, on ground that district court committed plain error under Rule 11 in connection with warnings given, must show a reasonable probability that, but for this error, he would not have entered his guilty plea. It is only certain structural errors undermining fairness of criminal proceedings as whole that even preserved error requires reversal without regard to mistake's effect on proceeding.

Ralison v. State, 346 S.E. 506, 511, 552, S.E. 2d, 290, 292 (2013).
When a Judge violates rule 11 (b) it requires automatic reversal because it may effect someones substantial rights. Judge violates rule 11 (b) by not informing defendant of his constitutional right to have counsel representation prior to trial (U.S. v. Bagley, 473 U.S. 667, 682 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985). Rule 11 (b)(1)(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under Oath; Rule 11 (b)(1)(D) the right to be represented by counsel and if necessary have the court appoint counsel at trial and every other stage of the proceeding. Rule 11 (b)(1)(L) the courts obligation to impose a special assessment; Rule 11 (b)(1)(M) In determining a sentence, the Court's obligation to calculate the applicable Sentencing-guideline range and to consider that range, possible departures under the Sentencing guidelines, and other sentencing factors under 18 U.S.C. § 3353 (a); (N) the terms any plea agreement provision waiving the right to appeal or to collaterally attack the sentence; If defendant wasn't adequately informed of his federal rule 11 criminal procedures before he pleads guilty- then the court undergoes violation of due process 14th amendment right and 5th amendment rights. Rule 11 is designed to ensure that the defendant is aware of his fundamental rights before he pleads guilty, not that he will become of those rights some time after the plea (Jaramillo-Suarez, 857 F. 2d at 1372-73.) The dictates of rule 11 and the federal policy of fair and efficient Judicial administration require that the reviewing court look solely to the record of the plea proceeding (U.S. v. Kamer, 781 F. 2d. 1380, 1383 (9th cir.).

For non-structural errors relief for error is tied in some way to error's prejudicial effect. To be prejudicial, as affecting defendants substantial rights, error must have substantial and injurious effect or influence in determining verdict. Burden of establishing entitlement to relief for plain error is on defendant claiming it. Defendant who seeks reversal of his conviction after guilty plea, on ground that district court committed plain error under rule 11 in connection with warnings given, must show a reasonable probability that, but for this error, he would not have entered his guilty plea; defendant must satisfy judgement of reviewing court, informed by entire record that probability of different results is sufficient to undermine confidence in outcome of proceeding. Fed. Rules Cr. Proc. Rule 11 (c)(3)(B) 18 U.S.C.A.

Standard employed by court of appeals in deciding whether defendant was prejudiced by district court's unpreserved error in failing to warn him, in connection with his guilty, that he would be imposed of a Pre sentence Report upon a plea of guilty, defend was not told by the court, the clerk, counsel or anyone else. further under Rule 11 (2)(D) and under Rule 11 (2)(M) 18 U.S.C. § 3553(a) the court did not advise defendant of either or thus affecting defendant's substantial rights, which focused on whether error was minor or technical and on whether defendant understood rights at issue when he entered his guilty plea, improperly foreclosed consideration of record evidence tending to show that error was inconsequential to defendants decision to plead guilty, or indicating the relative significance of other facts that may have borne on defendant's choice, regardless of any Rule 11 error. Fed Rules Cr. Proc. Rule 11 (c)(3)(B), 18 U.S.C.A. (a) When a defendant is dilatory in raising Rule 11 error, reversal is unwarranted unless the error is plain U.S. v. Vonn, 535 U.S. 55, 63, 122 S. Ct. 1043, 152 L. Ed. 2d. 90. Rule 52(b) applies, with its requirement to prove effect on substantial rights. See (Kotteakos v. U.S., 328 U.S. 750, 66 S.Ct. 1239, 90 L. Ed. 557.) See Also (United States V. Dominguez Benitez 542 U.S. 74 159 L. Ed. 2d. 157) (June 14, 2004).

All Lawyers that represent criminal defendants are expected to know the laws applicable to their clients defense (U.S v. Graves, 951 F Supp. 2d 758 (E.D. Pa. 2013) Mr. Steven Hisker was ineffective for being incompetent failing to impose the laws applicable to his clients defenses and duties that are owed to his client. Defendant alleged that his attorney failed to make a timely motion to withdraw plea U.S.C.A. Const. Amend. 6. U.S.V. Racich, 35 F. Supp. 2d 1206 (S.D. Cal. 1999) Mr. Hisker was ineffective for allowing the court to accept the guilty plea when he had known prosecutor/solicitor breached plea agreement with defendant Mr. Lamarcus Stewart, by giving the court a deceptive testimony of the facts of the case. Mr. Stumbo stated at Mr. Stewarts plea hearing, Mr. Stewart followed the victims from Dollar general parking lot in a black tahoe, then went around in front of victims, blocking their vehicle off and then jumping out of a black Tahoe and opening fire on victims. By Solicitor Stumbo giving the court deceptive statements of the evidence and rules breached the plea agreement contract and committed fraud of plea-agreement, he didn't act in accordance of the obligation to present facts of the case, he has the obligation not ~~to present facts~~ to make false statements of material facts or law and consistent with his or her statutory obligation not to hold back relevant information regarding the plea-agreement. Mr. Hisker was ineffective and prejudiced defendants 6th amendment rights by continuing with plea and not withdrawing it, by Mr. Hisker having Mr. Stewarts rule 5 and by not correcting those deceptive statements with the facts of the case. Had Mr. Hisker investigated Mr. Stewart's rule 5 he would have known the allegations the Solicitor stated were fabricated and false. Thus Mr. Hisker not studying and investigating Mr. Stewart's case prejudiced Mr. Stewarts arraignment thus making Counselor ineffective. Counselor Mr. Hisker was incompetent by allowing the court to accept the plea

reason being the solicitor's statements could have had an adverse effect on the ruling of trial judge decision on sentencing defendant. By the plea-agreement being intentionally breached that's a fundamental Error making the plea unable to stand. The qution is who broke plea-agreement? Was violation deliberate or inadvertent? Has circumstances changed between entry of plea and the present time? Whether additional information has been obtained, that if not considered, would constrain the court to a disposition that it determines to be inappropiate? What the particular wishes of the defendant are? Substantial and Material breach? Major breach and prejudice caused the defendant? Prosecutor or Solicitor didnt correct inaccurate informations to the court at time of sentencing? Unjustifiably breached? Violation of provisions of plea-agreement, conflict in testimony Constitutional Error applies, false and perjury remarks. Writ of error Coram Nobis as remedy where plea of guilty is entered under fraud, duress, or mistake, Plead on false premise, because a prosecutor or solicitor is given such great power and discretion, he is also charged with a high ethical standard, the district attorney or solicitor always has an absolute duty to act fairly and to see that justice is done not just win the case or convict. (Simmons V. U.S. 390 U.S. 377, 88 S.Ct. 967 19 L.Ed. 2d 247 (March 18, 1968) The facts as to the identification claim are these. As has been noted previously, FBI agents on the day following the robbery obtained from Andrews' sister a number of snapshots of Andrews and Simmons. First, Simmons asserts that his pretrial identification (by means of photographs was in the circumstances so unnecessarily suggestive and conducive to misidentification as to deny him due process of law, or at least to require reversal of his conviction in the excercise of our supervisory power over the lower federal courts. In the case of Simmons v. U.S. Mr. Steven Hisker was ineffective for not recognizing unnecessarily suggestiveness of the identification process being tainted by officers Miss Davis and Mr. Ricketts by showing the victims a single

photo of Mr. Stewart and asking the victims together in the same room is this the person that shot at their vehicle while they was at a stop sign? By the officers committing police misconduct, Mr. Hisker allowed them to violate Mr. Stewarts due process rights and his fourth nd fourteenth amendment rights, in return making Mr. Hisker ineffectiv ay violating Mr. Stewarts sixth amendment rights. By Mr. Hisker thoroughly eviewing Mr. Stewarts discovery he would have known to file a dismissal notion to protect his clients rights ensuring that his client receives a fair rial. Mr. Hisker was incompetent by allowing the courts to continue with he identification process without the officers preserving the single photo hown to the victims because it could have been the same photo officer's ut in the six photo array. Mr. Hisker did not defend his clients rights ay allowing this to go forward in the pre-trial process because by the fficers committing police misconduct this in return made the solicitor o present false evidence to the grand jury thus returning an indictment hat's misrepresented which in turn is a due process violation which ould have led to a miscarriage of Justice. Which in turn should have ade Mr. Hisker question the Grand Jury Minutes because being absent Judge the Solicitor is the one presenting the evidence to the rand Jury. Officer's Miss Davis and Mr. Ricketts did not investigate the rime Scene thoroughly, thus making them misrepresent where a crime ook place and making officers fabricate an affadavit to the magistrate udge entitling Mr. Stewart to a franks hearing See: ranks v. Delaware. Mr. Hisker was ineffective for failing to file a ranks analysis to challenge officer's statements (Neil v. Biggers 409 U.S 88, 93 S. Ct. 375, 34 L. Ed. 2d 401 (December 06, 1972) factors to be eighed against the corrupting effect of a suggestive identification procedure n assessing reliability are those set at in Neil v. Biggers, and include the opportunity of the witness to view the criminal at the time of the rime, the witness degree of attention, the accuracy of his prior escription of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and confrontation

Mr. Hisker was ineffective under Neil v. Biggers.
Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed. 2d 1199 (1967)
eliability is the linchpin in determining the admissibility of identification
estimony for confrontations occurring both prior to and after Stovall v.
Denno, wherein it was held that the determination depends on the
otality of the circumstances. Mr. Hisker was ineffective under (Stovall v.
Denno. Manson v. Brathwaite 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed. 2d
40 (While the identification procedure was suggestive since only one
hotograph was used, and while it was unnecessary since there was no
mergency or exigent circumstance, there did not under the totality
f the circumstances, exist a substantial likelihood of irreparable
misidentification, where the identification was made by a trained police
fficer who had a sufficient opportunity to view the suspect, accurately
escribed him, positively identified his photograph, and made the photograph
dentification only two days after the crime. Mr. Hisker was in fact
ineffective under (Manson) v. Brathwaite). Mr. Hisker did violate
rofessional rules (8.3)(a) because Mr. Hisker is entitled to "Reporting
rofessional Misconduct because it does provide "a Lawyer who knows
hat another Lawyer has committed a violation of the rules of
rofessional Conduct that raises a substantial question as to that
awyer's honesty, trustworthiness, or fitness as a Lawyer in other
espects, shall inform the appropiate professional authority."
Mr. Hisker did violate professional rule 1.1 as far as his competence as
n attorney" provides that a Lawyer shall provide competent representation
o a client. Competent representation requires the legal knowledge,
kill, thoroughness and preparation reasonably necessary for the
epresentation. Mr. Hisker did violate professional rule 1.3 as far as
the due diligence owed to his client "requires that a Lawyer shall
ct with reasonable diligence and promptness in representing a client.
The obligation to act diligently encompasses providing services within a
easonable time, attending promptly to legal matters with which one is
ntrusted, and committing to achieving clients lawful objectives

Additionally, the use of testimony that the prosecution or solicitor knows is perjured or false may constitute prosecutorial misconduct. Giglio v. U.S., 405 U.S. 150, 153 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972). In Napue v. Illinois, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 217 (1959), the court held that due process is generally denied if the government knowingly uses perjured testimony against the accused to obtain a conviction. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. "To meet his burden of proof, a defendant must show that (1) perjured testimony was presented (2) the prosecution knew the evidence was false (3) There is a likelihood that the false testimony could have effected the judgement of the proceedings". (Boyd v. French, 147 F. 3d. 319, 330 (4th cir. 1998). Mr. David Stimbo did use a false statement at plea hearing that "so infected the trial or court proceedings with unfairness as to make the resulting conviction a denial of due process violation of defendant's 14th amendment rights". (Donnelly v. DeChristoforo, 416 U.S. 637, 643, 94 S. Ct. 1868, 40 L. Ed. 2d 431 (1974). Thus when a prosecutor or a solicitor breaches it's promise with respect to a plea agreement a defendant pleads on a false premise and is entitled to relief (Mabry v. U.S. 467 U.S at 509, 104 S. Ct. at 2547 81 L. Ed. 2d at 443; (State v. Seaman, Idaho 955, 957 877 P. 2d 926, 928 (Ct. App. 1994). As a remedy, the court may order specific performance of the plea agreement or may permit the defendant to withdraw the guilty plea. (Santobello, 404 U.S. at 263, 92 S. Ct. 495, 30 L. Ed. 2d at 433). Breach of a plea agreement by the State is a fundamental error and therefore, the failure to seek relief in trial court does not preclude a defendant from raising the issue for the first time on appeal if the record is adequate for that purpose. (State v. Fuhriman, 137 Idaho 741, 744, 52 P. 3d 886, 889 (Ct. App. 2002); (State v. Brooke, 34 Idaho 802, 809, 10 P. 3d 756, 758 (Ct. App. 2000). Here the transcript of the plea hearing sufficiently establishes the terms of the plea agreement, and we will consequently address Kennedy's claim of the breach. When a plea rests in any significant degree on a promise of agreement of the prosecutor, so that it can be said to be a part of the inducement or consideration, such promise must be fulfilled. (Santobello v. N.Y., 404 U.S. 257, 262, 92 S. Ct. 495, 498

30 L.Ed. 2d 427, 433 (1971). We note at the outset of Kennedy did not object to the prosecutors recommendation of a substantial intermediate sentence, nor did he move to withdraw his guilty plea. Ordinarily, this Court will not address an issue not preserved for appeal by an objection in trial court. (State V. Ozajewski, 130 Idaho 644, 645, 945 P.2d 1390, 1391 (Ct. App. 1997). However, we may consider fundamental error in a criminal case, even though no objection was made below. Fundamental error has been defined as error which goes to the foundation or basis of a defendant's rights, goes to the foundation of the case or take from the defendant a right which was essential to his or her defense and which no court could or ought to permit to be waived. (State V. Babb, 125 Idaho 134, 940, 877 P.2d 905, 911 (1994). Breach of a plea agreement by the state is a fundamental error and therefore, the failure to seek relief in trial court does not preclude a defendant from raising the issue for the first time on appeal if the record is adequate for that purpose. (State V. Fuhriman 31 Idaho 741, 744, 52 P.3d 886, 889 (Ct. App. 2002); (State V. Booker, 31 Idaho 807, 809, 10 P.3d 756, 758 (Ct. App. 2000). Here the transcript of the plea hearing sufficeintly establishes the terms of the plea agreement, and it will consequently address Kennedy's claim of breach. When a plea rests in any significant degree on a promise or agreement of the solicitor, so that it can be said to be a part of the inducement or consideration such promise must be filled. (Santobello V. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 498-99, 30 L.Ed. 2d 427, 433 (1971).

Applicant finds it appropriate for this court to exercise its discretion to correct this error in this case. See Puckett, 129 S. Ct. at 1429. Accordingly, applicant's conviction should be vacated, and this matter should be remanded for entry of a new plea or withdrawal of plea. See (United States V. Hall, 110 F3d. 1155, 1162 (5th Cir. 1997).

Respectfully submitted,
s/ Lamarcus Alexander Stewart Jr.

Date
June , 2024

Lamarcus Alexander Stewart Jr.
Turbeville C.I. TA-109 A
1578 Clarence Coker Hwy.
Turbeville, S.C. 29162

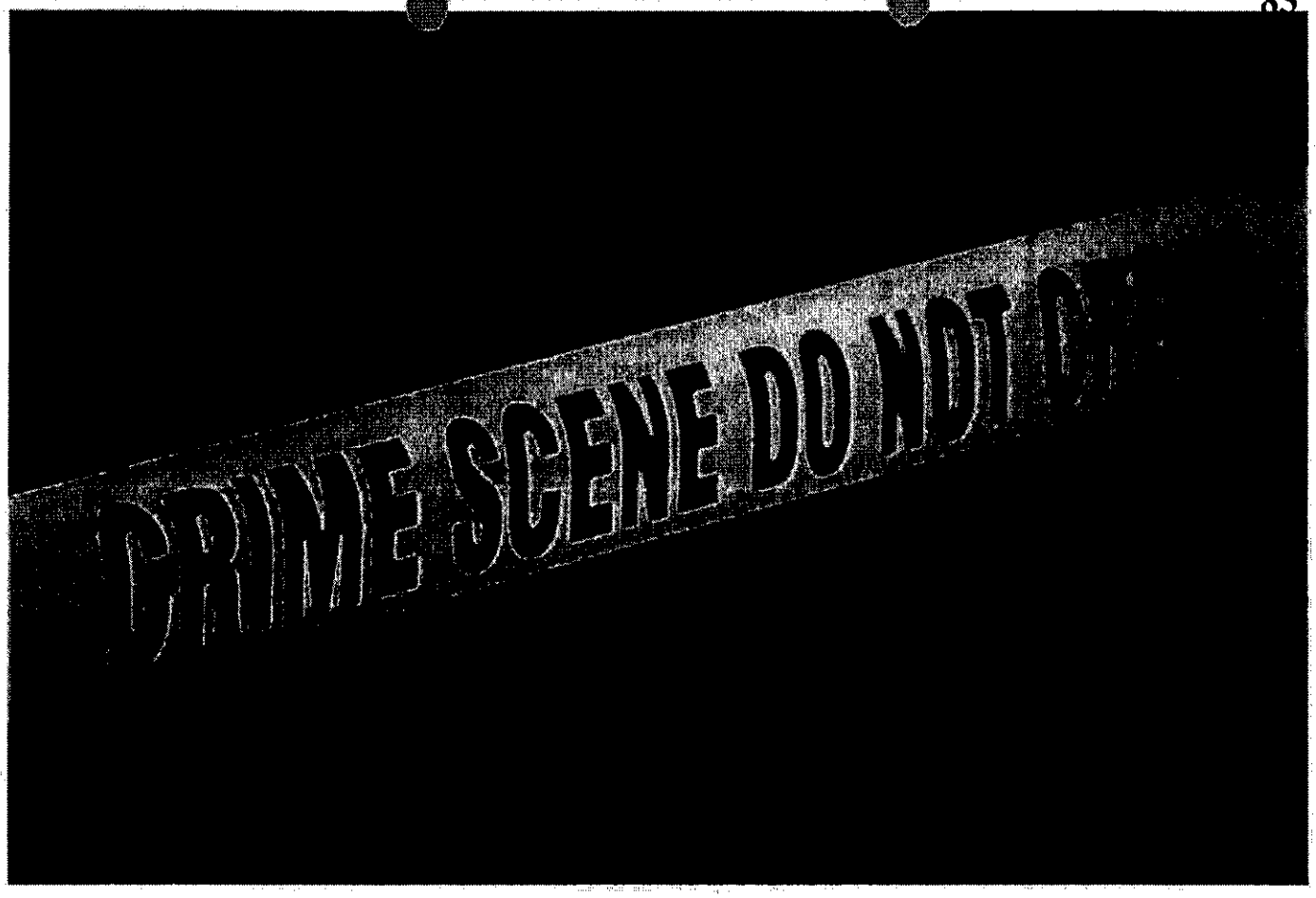
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
Filed 7/8 A.D. 2024
at 10:00 o'clock A M
Shandal Boggs
Clerk of Court

https://www.indexjournal.com/news/crime/greenwood-county-deputies-investigate-two-shootings/article_264b705a-8721-563e-ba86-7fd3e84a22b9.html

Greenwood County deputies investigate two shootings

By DAMIAN DOMINGUEZ ddominguez@indexjournal.com
Sep 17, 2018

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
Filed 9/18 A.D. 2024
at 10:00 o'clock A M
Shandal Boggs
Clerk of Court



One man ended up in the hospital for treatment after he and three others in a vehicle were shot at, according to Greenwood County Sheriff Dennis Kelly.

At 11:42 p.m. Sunday, deputies got a call of a shooting on Indian Branch Road, Kelly said. Deputies learned through their investigation that four people had been in a vehicle when someone fired a shotgun loaded with birdshot at them. The people who were shot at then left the area and went to Windtree Court.

Kelly said one person appeared to be injured — the driver reported birdshot hit him in the lip and one of his arms. While investigating the case, deputies learned that multiple people in a truck fired handguns out the vehicle's windows as the vehicle drove in the area of Ware Shoals, according to a report.

The woman said she heard a gunshot from outside, and that's when she saw the driver had been hit. She drove the others to a Windtree Court apartment, where she said she gave the firearms to someone, then people left for the hospital.

Earlier, at 5:21 a.m. Sunday, dispatchers received multiple calls about gunshots at Lakeview Apartments near 106 Barkwood Drive, according to a news release from the sheriff's office. Deputies found two vehicles had been struck by multiple projectiles, but no one had been reported injured. Deputies secured the scene and crime scene unit investigators processed the scene.

At Barkwood Drive, deputies found two vehicles that had been struck by rounds, according to a report. Officers contacted the vehicles' owners and one gave officers a tip. A witness told deputies they heard a vehicle speed off after the shots were fired.

Deputies found seven 9mm shell casings in the parking lot and determined that one of the cars was the intended target. There appeared to be a camera that recorded what happened on the management building, but officers couldn't immediately review the surveillance video, the report said.

Contact staff writer Damian Dominguez at 864-634-7548 or follow on twitter @IJDDOMINGUEZ.

Eighth Circuit Solicitor's Office
David M. Stumbo, Solicitor

600 Monument Street, Suite 203
Greenwood, SC 29648
864-942-8800

ABBEVILLE COUNTY TRIAL DOCKET

Week of December 6, 2021

DEFENDANT	PROSECUTOR	DEFENSE ATTORNEY
John Lewis	Micah Black/Elizabeth Taylor	Chalres Grose
[redacted]	[redacted]	[redacted]
Tavis Jackson	Micah Black	Jane Merrill
[redacted]	[redacted]	[redacted]

Though cases are listed in the order they are expected to be called, the order may change at any time and without notice. All defendants listed are innocent until proven guilty.

STATE OF SOUTH CAROLINA COUNTY OF ABBEVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
Lamarcus A. Stewart, Jr., #384762, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2023–CP–01–00015 **RETURN** (Counsel Appointed)

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2023 JAN 30 P 4:03

In response to Applicant Lamarcus A. Stewart's application for post-conviction relief (PCR) commenced on January 20, 2023, Respondent, the State of South Carolina, makes the following Return:[1]

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections (SCDC). During the May 2021 term, the Abbeville County Grand Jury indicted Applicant for Attempted Murder (2021-GS-01-00392, -00393, -00394), Possession of a Weapon During the Commission of a Violent Crime (2021-GS-01-00395), Pointing and Presenting a Firearm (2021-GS-01-00396), Unlawful Carrying of a Pistol (2021-GS-01-00397), Aggravated Breach of Peace (2021-GS-01-00398), and Malicious Injury to Property (2021-GS-01-00399). Applicant was

[1] Respondent's return was due to be filed within sixty days of receipt of Applicant's instant post-conviction relief application. 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."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to 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.).

TRUE COPY
BY Shandal Boggs
ABBEVILLE COUNTY CLERK OF COURT

represented by Steven M. Hisker, Esquire (Plea Counsel). Eighth Circuit Solicitor David M. Stumbo prosecuted the case.

On November 30, 2021, Applicant appeared before the Honorable Frank R. Addy Jr. and pled guilty to three counts of the lesser included Assault and Battery of a High and Aggravated Nature (ABHAN) (2021-GS-01-00392, -00393, -00394). All other charges were nolle pross'd due to the guilty plea negotiations. Judge Addy sentenced Applicant as negotiated to thirteen (13) years imprisonment.

Applicant filed a timely Notice of Appeal. On February 15, 2022, the South Carolina Court of Appeals issued an Order dismissing the appeal for failing to provide a sufficient guilty plea explanation required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was returned to the circuit court on March 9, 2022.

FACTS PRESENTED AT THE GUILTY PLEA

The facts were taken from the guilty plea transcript as articulated by the State:

> This occurred September the 6th of 2020. Ware Shoals Police Department responds to reported gun shots fired into a vehicle in the roadway at up around West Summit Drive intersection with Greenwood Avenue, which, of course, is the main thoroughfare going through Ware Shoals. Judge, in the Jeep that was being shot at, and there's an independent witness that reports it, this was in the middle of the day, the victims who were in the Jeep were, Talefero (ph) Cunningham and Brooke Durban, who are here in the courtroom behind me, and their infant – infant child who was less than one-year old at the time – or excuse me, I believe he was just turned one, that's correct. And Brooke was actually nine months pregnant, as well. Judge, essentially, what Mr. Cunningham tells law enforcement is that he's at the Dollar General, there's an altercation with Mr. Stewart that basically stems, from my understanding, is they just bump into each other. And Mr. Stewart exchanges some words with Mr. Cunningham and takes a swing at him. And Cunningham ducks, Mr. Cunningham ducks, misses, and throws a punch at Mr. Stewart that connects. Mr. Stewart, ultimately, tells him he's strapped and he'll see him in a few minutes. Very shortly

after this, Judge, Mr. Stewart follows them in their vehicle, gets out of the car and shoots three times into the vehicle. There's three 40 caliber shell casings in the road that law enforcement finds to corroborate that. They ultimately get surveillance cameras from the Dollar General, Judge, which corroborates Mr. Cunningham's version of this altercation that Mr. Stewart basically starts the fight. But it takes a fistfight and takes it ultimately to the next level, Judge. The independent witness that called it in witnessed the whole thing. He indicated that – described Mr. Cunningham -- or, excuse me, Mr. Stewart, the defendant as shooting. And when he comes back up the street he actually threatens the witness. The witness tries to tell him to stop. He kind of raises the gun, doesn't point it at him, but raised the gun up and says come on, man and basically just blows him off and leaves. Judge, victims both picked Mr. Stewart out of a photo lineup, as well. Judge, warrants are issued in this case and it takes a while. There's a manhunt for Mr. Stewart, with this being a violent offense and with his criminal history, which I'll tell you about in a moment. But ultimately they get a tip that he's at his mother's house. They had a helicopter out there in the woods behind his mother's house off Indian Mound Road in Ware Shoals looking for him, and he fled, being apprehended that day. And, ultimately, they are able to take him into custody in Greenwood on these warrants in December. So about three months later he's picked up on these -- these charges, Judge. He was also out on bond for the failure to stop for a blue light incident from 2019 that I discussed with Your Honor earlier. That was a Greenwood – essentially that was a drug DEU case where they were running surveillance on him, they blue-lighted him when they believe they see a drug transaction and he runs from them then. So, Judge, based on his record he -- he does run from law enforcement a good bit. There's resisting arrest, there's other offenses on his record that are consistent with that. Judge, his prior record is as follows, there's a 2006 possession of a controlled substance and a simple assault and battery. There's an open container and malicious injury, to personal property in '06. There's a domestic violence in '07. There's a domestic violence in 2011. There's a giving false info to law enforcement in '12. 2012, there's an assault and battery, first degree and a possession with intent to distribute narcotics and he got an active YOA on that sentence. There's a resisting arrest in 2014. 2016, Judge, he was convicted of distribution of meth, two counts, and received an eight year active sentence on those charges in 2016. Judge, I believe just tracking this, it's not long after he gets out that he's arrested again on a failure to stop for a blue light which results from what apparently was some

> drug transactions. And then we have this shooting incident in Ware Shoals, Judge, that he's pleading to today. So he has a significant prior record.

(Plea Tr. pp. 6–9).

CURRENT APPLICATION

On January 20, 2023, Applicant timely filed this application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following:

1. "Null and void sentence"
2. "Breach of guilty plea agreement"

In a document entitled "Discussion" attached to the application, Applicant raises the following allegations as grounds for relief:

1. Involuntary Guilty Plea
   a. Applicant was advised by counsel when to say yes and when to say no during the plea colloquy.
   b. Applicant lacked a full understanding of the consequences of his plea.
2. Ineffective Assistance of Counsel
   a. Failure to investigate and review discovery, which would have revealed that Applicant had a viable defense of mistaken identity.
   b. Failure to advise ABHAN was an 85% offense and misinforming Applicant that he would receive a suspended sentence under the plea agreement.
   c. Failure to advise that Applicant could have requested a charge on lesser-included offenses at trial.
   d. Failure to rebut the State's version of the facts.

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

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

Applicant alleges Plea Counsel was constitutionally ineffective for various reasons. 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 can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction 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 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, 8 (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 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 that 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 693 (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 range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59. This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland's high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. at 368-369 (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. at 368. 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, 282 S.C. at 134, 318 S.E.2d at 361.

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.

Respondent submits Applicant is not entitled to relief on the basis of ineffective assistance of Plea Counsel. However, to the extent this allegation raises questions of fact that the record does

not conclusively refute, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

RESPONSE TO PLEA COUNSEL FAILED TO INVESTIGATE

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

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

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses the applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also

present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Respondent submits Applicant is not entitled to relief on this ground. However, to the extent this allegation raises questions of fact that the record does not conclusively refute, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

RESPONSE TO FAILURE TO EXPLAIN CONSEQUENCES OF PLEA

Applicant contends Plea Counsel failed to advise him that he would have to serve 85% of his sentence for ABHAN. He also contends Plea Counsel incorrectly told him he would receive a suspended sentence. Applicant claims his guilty plea was not entered knowingly and intelligently as a result of these alleged deficiencies.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of the plea and the charges against him. Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991); see also Boykin v. Alabama, 395 U.S. 238, 243 (1969) (Courts must make sure defendants have "a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories."). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris

v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

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

In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); cf. Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant's claim his lawyer misadvised him).

Respondent submits this allegation is wholly without merit. The following colloquy occurred between the plea court and Applicant:

> THE COURT: Mr. Hisker, you're representing Mr. Stewart on these charges. The ABHAN charges would each carry up to 20 years, but I hear that there's a cap of 15 years, and I'm assuming that it's understood that all sentences would run concurrently; is all that correct?
>
> MR. HISKER: Yes, Your Honor.

THE COURT: All right. You've reviewed with Mr. Stewart then the ramifications of these pleas, the elements of these offenses and all his Constitutional rights?

MR. HISKER: Yes, Your Honor, I have.

THE COURT: And you agree with his decision to plead guilty?

MR. HISKER: Yes, I do.

THE COURT: I believe that these are *85 percent offenses*, they're also classified, I think, as violent and serious. You've gone over those ramifications, as well?

MR. HISKER: Yes, Your Honor, I have.

. . . .

THE COURT: Mr. Stewart, I'm told that you want to plead guilty to three counts of assault and battery of a high and aggravated nature. You understand that *that charge carries up to 20 years but in this case the State is recommending a cap of 15 years.* The way I take this recommendation is essentially I will not exceed a 15-year active sentence. I can be anywhere from zero to 15, but your exposure is capped at 15. *Do you understand that?*

[APPLICANT]: *Yes, sir.*

. . . .

THE COURT: Now, Mr. Stewart, *you understand that these crimes are classified as 85 percent offenses, meaning, that whatever time I give you, for example, if I gave you ten years, you'd have to do eight and a half years, 85 percent of ten years before you could hope to be released from prison. You understand that?*

[APPLICANT]: *Yes, sir.*

(Plea Tr. pp. 3–5) (emphasis added).

Respondent contends that even if Plea Counsel did not inform Applicant of the fact that ABHAN was an 85% offense or of the potential sentence he could receive under the terms of the plea agreement, the plea court cured any misadvice with this colloquy. Applicant affirmed, under oath, that he understood the information conveyed by the plea court. Respondent submits the record conclusively shows that, prior to the entry of the guilty plea, Applicant was made aware that he would have to serve 85% of the sentence given and that he was not guaranteed a suspended sentence. This allegation should be denied.

RESPONSE TO INVOLUNTARY GUILTY PLEA

Applicant further claims his plea was not entered voluntarily because Plea Counsel told him when to say "yes" or "no" during the plea colloquy.

Respondent denies this allegation. However, even if this claim were true, it would not justify granting post-conviction relief. See, e.g., Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (1998) (holding an applicant's claim that he answered the plea judge's questions affirmatively based on counsel's alleged advice that the questions were meaningless does not support granting PCR); Wolfe, 326 S.C. at 165, 485 S.E.2d at 370–71 (1997) (holding counsel's alleged statement that the plea judge's questions were "routine" was not an invitation for applicant to answer them untruthfully or to believe they meant nothing); see also Edmonds v. Lewis, 546 F.2d 566, 568 (4th Cir. 1976) (dismissing claim that habeas petitioner gave false answers during plea colloquy where petitioner "[did] not allege that his attorney instructed him to answer the trial court's inquiries falsely nor . . . claim his attorney made a threat intended to induce him to perjure himself.").

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.

CONCLUSION

WHEREFORE, the State respectfully requests this Court convene an evidentiary hearing on the allegations contained in Applicant's application for post-conviction relief.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

ZACHARY W. JONES
Assistant Attorney General

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

January 27, 2025

ALAN WILSON
ATTORNEY GENERAL

January 27, 2025

The Honorable Shadal Boggs
Abbeville County Clerk of Court
Post Office Box 99
Abbeville, SC 29620-0099

Re: **Lamarcus A. Stewart, Jr., #351926 v. State of South Carolina**
2023-CP-01-00015

Dear Ms. Boggs,

Enclosed please find the original Return of the Respondent, with its accompanying attachments, in the above-captioned case, for filling in your office.

If you have any questions regarding this matter, please let me know.

Sincerely,

Zachary W. Jones
Assistant Attorney General

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2025 JAN 30 P 4:03
CLERK OF COURT

ZWJ/zew
Enclosure

cc: Ashley A. McMahan, Esquire

TRUE COPY
BY Shandal Boggs
ABBEVILLE COUNTY CLERK OF COURT

McMahan Law
PO Box 50536
Columbia SC 29250

RE: Lamarcus A. Stewart Jr
v. The state of South Carolina)
Advisment to Amend

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2015 APR 14 P 1:53
SHANDAL BOGGS
CLERK OF COURT

Esquire

Respectfully I hereby advise my court appointed post conviction relief counsel thus to amend to the above cited PCR action Please consider, that this correspondence is not for the purpose of hybrid representation see State v. Rivera Supreme Court of South Carolina February 13 2013 402 S.C. 225 741 S.E. 2d 694) and Janes v. state Supreme court of South Carolina January 10 2002 348 S.C. 558 S.E. 2d 517. However with respect to S.C. code ann 17-27-20 (A) provides that I the Applicant is so the person whom may institute proceeding., Part (A) of S.C. code ann §17-27-20, provides in part that a person who has been convicted of or sentenced for a crime and who claims I... see S.C. code Ann § 17-27-20 (A). Please consider that S.C. code Ann § 17-27-20 (A) do not regulate a post conviction counsel as the exclusiveness per right of remedy for a PCR proceeding, in pursuant to South Carolina Rules of civil procedure, 71.1 (d)

provides a command that the purpose of a court appointed post conviction relief counsel is to assure the equal protection pursuant to 14th amendment U.S.C.A and S.C. const Art. 1 section 3, thus to prevent any circumstances rendering such processs ineffective to protect rights of prisoner exhaustion of a state remedy. see Baskin V. Moore U.S. District court D. South Carolina. Columbia Division 362 F. Supp. 187.

Again, this correspondence is not for the purpose of of hybrid reprenstation. The reason for this request i.e this preparation by way of advisement of the need for add to the applicants application, for post conviction relief is based upon a actual presence malice with respect to malicious prosecution. However documentary evidence do hereby establishes the actual element of malice that which consist as statements rendered per persons named as Brooke Durbin as well as a T. cunninoham see (Exhibit A) and (Exhibit B). by this fact of actual presence of malice substaniates lack of probable cause thus for the Applicant held at jeopardy..

Lamarcus A. Stewart Jr

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2005 APR 14 P 1:54
SHANDAL BOGGS
CLERK OF COURT

Ware Shoals Police Department

201 McLane Ave/PO Box 510; Ware Shoals, SC 29692
(864) 456-7444 (Office); (864) 456-7675 (fax)
Chief Bryan M. Louis

(Exhibit B)

Location of Incident: Stop Sign on Summit Park

Person Marking Statement: T Cunningham

Address: [redacted]

Phone Number: [redacted]

Rights Wavier Attached: (Circle) YES NO N/A

Was going to a friends house in Summit Park but my friend wasn't home so we left Then we started to leave and when we came out of summit the guy started shooting at my car with my girlfriend, my son, & me in it

Think it was Marcus Stewart

Blue jeans black shirt green mask

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STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2025 APR 14 P 1:57
SHANDAL BOGGS
CLERK OF COURT

Date _____ Signature T Cunningham

106

Ware Shoals Police Department

201 McLane Ave/PO Box 510; Ware Shoals, SC 29692
(864) 456-7444 (Office); (864) 456-7675 (fax)
Chief Bryan M. Louis

(Exhibit A)

Location of Incident: Leaving Summit park

Person Marking Statement: Brooke Durbin

Address: [redacted]

Phone Number: [redacted]

Rights Wavier Attached: (Circle) YES NO N/A

Me (Brooke), my son Kimerious and taliaferro was on our way to his friends house when we saw marcus Stewart walking on the side walk towards the dollar general. We passed him and turned on West Summit to continue where we were going and he turned around and put his arms up. When we came back out of the road and got to the Stop Sign he was accross the Street talking to someone in a truck. He ran accross the road when he saw us and once he got on the passenger side of the car he pulled a gun out of his jeans and Shot the front and back passenger side he shot about 4 times. I was driving, my son was in the back in his car seat and taliaferro was in the passenger seat. He had on a black plain shirt, blue jeans with holes in them, a green face mask and he had a low hair cut.

Date 09/06/20 Signature Brooke Durbin

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2020 APR 14 P 1:57
SHANDAL BOGGS
CLERK OF COURT

STATE OF SOUTH CAROLINA
county of Abbeville

IN THE COURT OF COMM

Lamarcus A. Stewart Jr
APPLICANT

V.

The State of South Carolina
Respondent

CERTIFICATE OF SERVICE

Case No.: 2023-CP-01-00-015

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2025 APR 14 P 1:54
SHANDAL BOGGS
CLERK OF COURT

I hereby certify that I had fowarded a correspondence to my post conviction counsel titled: RE: Lamarcus A. Stewart Jr V. The State of South Carolina) Advisment to Amend on the 8 day of April 2025. all parties listed below has been served the Same

sworn to and subscribed before me
this 8th day of April 2025

Notary Public for South Carolina
My Commission Ends 8-16-2034

Lamarcus A. Stewart Jr.

office of the Attorney General
P.O. Box 11549
Columbia S.C. 29211

State of South Carolina
County of Abbeville

Lamarcus A Steward
Applicant

V.

The State of South Carolina
Respondent

In the Court of Common Pleas

Case 2025-CP-01-00-015

AMENDMENTS TO Post conviction Application
request for Proposed order

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2025 JUN 16 A 8:19
SHANDAL BOGGS
CLERK OF COURT

The Applicant hereby advised his court appointed Post conviction counsel thus to amend to the above cited post conviction proceeding case no 2023-CP-01-00-015, wherefore on 8th day of April 2025 I had forwored to, i.e. the applicant had fowarded a correspondence Titled RE: Lamarcus A. Steward Jr v. The State of of south Carolina, Advisement to Amend. Said correspondence was drafted and amended with certificate of service and submitted to this court. The Applicants advisement to this post conviction court appointed counsel is in pursuant to S.C.R.C.P. 71.1(d) which supports that a counsel may and should amend the Application to include additional grounds for relief. The Applicant hereby provide that this document is not for the purpose ora request for • of hybrid representation see State v. Rivera Supreme

Court of South Carolina February 13 2013 402 S.C 225 741 S.E 2d 694.

FACTS OF LAW

The Applicant hereby advise his court appointed Post conviction to amend with respect to: Hill v. Lockhart November 18. 1985 474 U.S. 52 106 S.Ct 366 88 L Ed 2d 203. The applicant hereby provides that the law mandates the role of the attorney in the course of the defendants decision centers on providing reliable guidence concerning the applicable law, only then can the defendant knowingly and inteligently balance the merits and risks of possible choices. An attorney's actual misadvice may lead a defendant to take action which would not have been taken if the correct information was available see 23 Am Crim. L Rev 73. The Applicant hereby advise his Court appointed Post Conviction counsel that which a substaintial issue regarding essential due process of law with respect to U.S.C.A 5th amendment concerning a indictment. The Applicant asserts that a preliminary hearing had not been held untill after indictment was was submitted to a grand jury and a true bill returned see Funderburk v. State 259 S.C. 256 191 S.E. 2d 520 (1972)[1]

[1] The applicant asserts, define vied under the rule permitting relief from judgment only encompasses judgements from court which failed to provide proper due process or judgements from court which lack Inck subject matter jurisdiction or personal jurisdiction see Sanders v. Smith Court of Appeals of South Carolina August 26. 2020 431 S.C. 605

Applicant Plea was not Voluntary

The applicant herein provides that it is beyound reasonable probability that. but for the trial counsel's error the applicant could not have pleaded guilty and would insisted on going to trial see Hill v. Lockhart 106 S.ct. 366. As argued below. the applicant do hereby provide documentary evidence which supports that the applicant plea did not comport with the Fifth amendment due process based on the varacity concerning the circumstances surrounding the Applicants Case,[2] see U.S. v. Garrett 128 Fth 583. The south Carolina court of appeals held that to prevail in a post conviction action the applicant most prove by a preponderance of the evidence he was incompetent when he entered his guilty plea see matthews 358 S.C at 458-59 596 S.E. 2d at 51 see also see rule 71.1 (e) SCRCP

malicious prosecution

[2] The applicant asserts that the Documentary evidence provides that the applicant is certified as the prevailing party wherefore the applicant is expected a proposed order see Fishburne v. State (S.C. 2019) 427 S.C. 505 833 S.E. 2d 584

The applicant hereby advise his court appointed PCR counsel to amend this issue regarding a possible voidance of due process with respect to probable cause. Documentary evidence concerning the applicant rule 5 brady discovery substantiates that a continuation of an judicial proceeding per the instance of the state of south Carolina within the plea transcript of record see Court of General session docket 2021-GS-01-00392 likewise 2021-GS-01-00393 - 2021-GS-01-00394. held, November 30 2021 with the Honorable Frank R. Addy Jr presiding. Furthermore lack of probable cause do hereby exclude jurisdiction a court. The effect of this none voluntary plea derives from documents i.e. statements of the state witnesses that which these documentary evidence prevade a actual suggestive identification line up see(Exhibit A) also see(Exhibit B). The South Carolina rule, governing prior inconsistent, requires that a proper foundation must be laid before admitting a prior inconsistent statement, and thus it is mandatory that a witness be permitted to admit deny of explain inconsistents. A criminal defendant may be deprived of due process of

of law by an identification procedure arranged by police which is unnecessarily suggestive and conducive to irreparable mistaken identification of an accused see State v. Traylor, 360 S.C. 74, 81, 600 S.E. 2d 523, 526 (2004)[3] An in-court identification of an accused is inadmissible if an suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification.

HILL V. LOCKHART 106 S. Ct 366
APPLICANT COULD NOT PER LAW PLEA GUELTY

The Applicant hereby advise his court appointed Post Conviction Counsel thus to amend to the Applicants PCR application in pursuant to SCRCP Rule 71.1 (d) thus insure that all available ground for relief are included in the application and shall amend the application if necessary

[3] The Applicant certifies before this honorable Court documentary evidence which supports the Applicant right to confront the "Witness" - one who "bears] testimony - against the accused. Id at 48-882 S.E.2d at 162. see (Exhibit 1) (Exhibit 2) (Exhibit 3)

STATE OF SOUTH CAROLINA COUNTY OF ABBEVILLE Lamarcus A. Stewart, II, #351926, Applicant, v. State of South Carolina.	COURT OF COMMON PLEAS FOR THE 8th JUDICIAL CIRCUIT Case No.: 2023-CP-01-00015 **AMENDED POST-CONVICTION RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on or about January 20, 2023, to add the following allegations:

1. Ineffective Assistance of Counsel:
    a. Failed to adequately review the evidence prior to advising Aplicant to plead.
        i. Evidence suggests that Applicant could not have been identified by the witnesses, because Witnesses stated that the shooter was wearing a green face mask.
        ii. Had counsel reviewed the Witnesses statements with Applicant, Applicant would have proceeded to trial.
    b. Failed to adequately present mitigating evidence at sentencing
        i. Law enforcement took part in a suggestive identification procedure which created a likelihood of irreparable misidentification by witnesses. As a result, witnesses' statements, identifying Applicant as the shooter, were inconsistent and intentionally suggestive.
    c. Failed to adequately review with Applicant the penalties and punishment of Assault and Battery of a High and Aggravated Nature.
    d. Failed to inform Applicant that Assault and Battery of a High and Aggravated Nature is a no-parole offense.
    e. The day of the guilty plea, Applicant told counsel that he wanted to proceed to trial, however counsel informed Applicant that the plea was the best he was going to get. Applicant ultimately plead guilty based off what counsel advised him of.

TRUE COPY
Shanda Boggs

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

Respectfully submitted,

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July 2, 2025

CERTIFICATE OF SERVICE

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

Zachary W. Jones
Assistant Attorney General
ZacharyJones@scag.gov

FILED
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
2025 JUL 14 P 3:51

This 2nd Day of July, 2025

Ashley A. McMahan
Attorney for Applicant

State of South Carolina) In the Court of General Sessions
) Eighth Judicial Circuit
County of Abbeville) 2023-CP-01-00015

Lamarcus Alexander Stewart Jr.,)
)
)
vs.) Transcript of Record
)
The State of South Carolina.)
)

July 8, 2025
Abbeville, South Carolina

B E F O R E:

The Honorable Courtney Clyburn Pope, Judge

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

Ashley A. McMahan, Esquire
Attorney for the Applicant

Zachary W. Jones, Esquire
Attorney for the Respondent

Latasha Jefferson
Transcriber

I N D E X

Description — Page No.

TUESDAY, JULY 8, 2025

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Respondent's Case

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PROCEEDINGS - JULY 8, 2025.

THE COURT: Okay. So we have the case of Lamarcus Stewart versus the State of South Carolina. Please tell me your name, sir. I'm sorry.

MR. JONES: I'm sorry. Your Honor, I'm Zachary Jones with the State of South Carolina.

THE COURT: Mr. Jones. I see a lot of correspondence from you. I just --

MR. JONES: Yes, ma'am.

THE COURT: -- need to place the name, lock it in.

MR. JONES: It's a pleasure to finally meet in person.

THE COURT: Just give me one moment. I just need to review all of this.

MR. JONES: Yes, your Honor.

THE COURT: All right. So we have an amended application. Any objections to the amended application, Mr. Jones?

MR. JONES: No, your Honor. I believe it mostly restates matter from earlier applications, so no objection.

THE COURT: All right. Okay. Then we still have that, so I'm -- I'm letting that one sit back. And so I'm ready to move forward.

MS. MCMAHAN: Sure. Your Honor, we call Mr. Stewart.

THE COURT: Okay. All right. Mr. Stewart, you stand right here and you'll be sworn.

THE CLERK: Raise your right hand.

LAMARCUS ALEXANDER STEWART, JR., APPLICANT,

being duly sworn, testified as follows:

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. MCMAHAN:

Q. All right. Mr. Stewart, are you Lamarcus Stewart, II?

A. Yes, ma'am.

Q. Did you file this PCR application?

A. Yes, ma'am.

Q. It looks like you made some pro se amendments also, but would you say that those -- your -- your pro se amendments have been summarized in this amended application I filed on your behalf?

A. Yes, ma'am.

Q. Okay. And who was your attorney?

A. Mr. Steve Hisker.

Q. He's here today?

A. Yes.

Q. And what did you -- was he appointed to you? Did you retain him? How did you --?

A. I retained him.

Q. Okay. And how long after you were arrested did you retain him?

A. Let me see. It was, like -- I think two to three months because I got arrested in December, and he was retained in March.

Q. And these are just on the aggravated charges, right?

A. Yes.

Q. Did you have -- you had some pending regular charges at the same time. Who was your attorney on that?

A. Mr. Stephen Geoly.

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

A. Yes, detention center.

Q. Okay. How many times do you think you met with Mr. Hisker?

A. Prior to -- to going over all the, like, evidence, it was, like, three times.

Q. That was before you brought a discovery?

A. We never had discovery. I had a different attorney, and it was Bruce Byrholdt. He got me a Rule 5 on my preliminary hearing. That's when Mr. Steve Hisker got -- got the Rule 5.

Q. So you didn't have a preliminary hearing?

A. Yes, ma'am.

Q. And I see that (inaudible) there was a hearing session scheduled with Mr. Byrholdt. So did you -- were you

-- did you only hire Mr. Byrholdt for the -- prior to the prelim and then you picked up Mr. Hisker, or how did that work?

A. Well, from my understanding, when I hired Mr. Byrholdt, I hired him for a trial attorney, like, doing a trial. So he tells me, he was like, "Well -- you know, we agreed on 10,000," but he said, "That's not for trial." He was like, "That's only for a plea."

So -- you know, I was like, "Nah, I ain't planning on taking a plea." So he was like, "Well, it will be 20,000 if I continue the trial." And he was like -- you know -- and I told him that wasn't a part of the agreement. So -- you know, I just -- I just dismissed him from the case.

Q. That's when you got Mr. Hisker?

A. Yes. And that's when we hired Mr. Hisker.

Q. And so just starting quickly with your application and everything, let's talk about the issues you have with Mr. Hisker. Well, let me back up before that. You said you wanted a trial the whole time?

A. Yes, I was maintaining my innocence, and I wanted to go to trial.

Q. Okay. So the first issue would be summarized as that Mr. Byrholdt failed to adequately review the discovery with you prior to you pleading guilty. Tell the Court about that.

A. Okay. Well, prior to me pleading guilty, we -- we went over, like, body cams in the -- in the discovery. But we never actually looked into the Rule 5 or, like -- you know, broke down the defenses and -- and things that we could've suppressed prior to the trial like in pre-trial.

So -- okay, we never even looked at the witnesses' statements. We never even looked at the officer reports. We never went over -- we never really went over all the -- all the body cams. We only looked at some of them.

Q. Okay.

A. Like -- maybe, like, two body cams of where the bystander was in the yard. We looked at that, but -- I mean, I just have a problem with -- with the officer being suggestive on the photo lineup. Like, she asked Mr. Cunningham and Ms. -- Mr. Cunningham and Ms. Durbin to come in to the office.

So she showed them a photo of me, and -- you know, she basically asked them, "Was this the guy?" And they identified me through the photo. And then the next day, she asked them to come and complete a photo lineup, which was -- which was suggestive and unnecessary because it wasn't any exigent circumstance, but...

Q. So you guys didn't have a conversation about whether or not you could move to suppress the photo lineup?

A. No, ma'am.

Q. If you'd known you could move to suppress the photo lineup, would you have wanted a trial instead of going to plea?

A. Yes, ma'am, I -- I would've went to trial instead of taking a plea.

Q. And -- and what was -- you said it was suggestive in nature?

A. Yes, ma'am.

Q. Tell the Court why you think it's suggestive in nature.

A. Well, I think it's suggestive because by Mr. Cunningham and Ms. Brooke -- Ms. Brooke Durbin ending their statements right here -- right here -- right here. Right here, Mr. Cunningham, he --

THE COURT: Tell me -- tell me where he is.

MS. MCMAHAN: He's looking at the police report right now.

THE COURT: Okay.

THE WITNESS: This is one of the statements, but right here it was where he said this guy started shooting at his car, but he thinks it was Lamarcus Stewart, blue jeans, black shirt, green mask. Ms. Durbin, she ended her statement saying the same thing. So -- so that's why I think it was suggestive because Officer or Sergeant Rick -- Sergeant Davis, she knew that they was dealing with an unidentified

perpetrator of this case, and so -- you know, they went and consulted with the cops.

She showed them a photo of me and suggested it was basically me. So -- so this -- this was in the witness's mind that -- you know, "Okay, he's the guy." So the next day when they completed the photo lineup, they pointed me out, which made it suggestive and -- you know, which violated due process also.

BY MS. MCMAHAN:

Q. And so was there an issue about a mask being worn?

A. Yes, ma'am, there was a issue about a mask being worn and an unidentified assailant to where they -- they were saying they thought it was me, but the whole time they were saying it was a person with a green face mask on, but...

Q. They were still somehow able to identify you even though there was (inaudible) face mask on?

A. Yes, it was -- yes, ma'am, and -- and it was a misidentification by -- you know, by being suggestive.

Q. And the two witness statements, did you guys go over those two witness statements from Mr. Durbin and -- I mean, Ms. Durbin and Mr. Cunningham?

A. No, ma'am.

Q. And when did you get those -- copies of those statements?

A. I got those when I hired Bruce -- Bruce Byrholdt.

It was back in -- let's see. I hired Bruce -- I got these in, like, February -- early part of February.

Q. So you already had those before Mr. Bruce came on the case?

A. Yes, ma'am.

Q. Okay. And what were you hoping to talk about if you guys had discussed those witness statements?

A. Well, if I had a discussion, I was hoping that I could got some assistance on defenses and -- you know, to apply certain motions to the case.

Q. Like motions in limine to -- to exclude evidence?

A. Yes, ma'am, and -- you know, like, if I continued to trial, then -- you know, I would -- if he had advised me of my Fifth Amendment right -- you know, I would've continued to trial on his advice of the Fifth Amendment and the identification.

Q. Did you tell him that you wanted a trial when you first hired him?

A. Yes, ma'am. I was telling him "I think that I should go to trial," and -- you know, and he was telling me that he thinks it was a -- a good case to go to trial up until the last minute. I don't know what happened. At the last minute, he started talking about a plea. So it was -- it was -- it was just -- I wasn't aware of a plea until the last day when I went to court.

Q. And were you supposed to start a trial, like, shortly after that, the -- the day before court, or what was -- what was that?

A. Well, I was on the trial docket, and all of a sudden, Mr. Hisker comes to the jail. He tells me like -- you know -- well -- he was like, the solicitor called him or something and told him that he had a good plea offer on the table, and he didn't want to see his client humiliated in a public trial, so he would offer a plea.

So -- you know, I asked him what kind of plea he had. He tells me that he could get me a 14-year suspended sentence. And -- you know, I asked him how was he sure, and he was like, "He's the officer of the court, and by the time he go over all the inadequacy of the case and -- and just all the things that's wrong with the case, the judge will listen to him."

So -- you know, I'm going off that advice. But I asked him was he sure that he could at least get a 14-year suspended sentence, and he said "Yes." And then he told me he might can even get a better deal than that. So I was relying on his information and -- and his advisement.

Q. What were you originally charged with? Attempted murder?

A. Three -- three attempted murders and breach of peace of high and aggravated nature.

Q. And then you got those Greenwood charges then, the (inaudible)?

A. Yes, ma'am.

Q. And -- but that was a totally different sentence?

A. Yes, ma'am.

Q. And then in -- when he came to you with the plea offer, did he say it was assault and battery high and aggravated, did he tell you it was -- the offer was to ABHAN?

A. No, ma'am. He never -- he never told me what the charge would be dropped down. From my understanding, he was telling me that it'd be 65 percent nonviolent. So -- you know, he never said it was ABHAN or assault and battery first, but I never really knew what ABHAN was.

I never seen ABHAN or been charged with it, so I'm thinking that it was ABHAN, assault and battery first. And then when I get in court, it was something different. It was 20 years and 85 percent.

Q. Do you remember Solicitor Stumbo saying it was a -- they had negotiated a cap of 15 on that?

A. Well, I -- I do remember him telling the judge that they had agreed on a cap of 15, but honestly, I never had an open sentence. I always had a negotiated sentence, and I -- I didn't understand the -- the open sentence. I never understood it. So by me listening to Mr. Hisker, I'm thinking that the sentence is going to be suspended to a 14-

year -- you know, but the whole time it was 85 percent. That's what the State called it. It was 85 percent, non-parolable offense.

Q. But you said that he told you it was 65 percent?

A. Yes, ma'am, before we -- yeah, before the plea.

Q. Oh, did he give you a specific time period that you could expect to be released from prison or anything like that?

A. Well -- I mean, he was telling me like, "You know -- well, I can get you 14 years suspended, and you'll do about seven years, and you'll be about 40 years old by the time you come home, and you'll get to see your grandmother again." And -- you know, I took all this into consideration, so that's why I went with the -- with the 14 years suspended because -- because like I said, the day of -- when we was talking about the plea, he was telling me that if I went to trial I'd get 40 years, and I'd never be able to see my grandmother anyway.

Q. So he told you if you went to trial on the attempted murders, that you were looking at probably 40 years?

A. Yes, ma'am.

Q. Did you have any issue with the fact that Judge Addy noted that he was taking your rap sheet into consideration? Did you have a conversation with Mr. Hisker

about that?

A. No, ma'am, and -- and if I did, I wouldn't have never took the plea because at the end, Mr. Addy, he told me he had to take my personal record into consideration and how many times I've been in trouble with the law into consideration of a sentence.

But he was saying that what my lawyer was asking, it wasn't like -- you know, he was saying that it wasn't unreasonable, but he was just saying he got to take into consideration of how many times I've been in prison and how many times I've been in trouble with the law.

Q. And how old were you at the time of this offense?

A. 33.

Q. And then you -- you put in there that the day of the plea you told Mr. Hisker that you wanted a trial. What -- what was he telling you about taking a plea deal?

A. He was telling me that that's -- that's the best deal that we're going to get. And he was like -- you know, "Right now, you don't have any other options."

He said my back was against the wall because the State got a strong case and -- you know, and he was just telling me like -- you know, "This will be the best deal that we're going to get right now." I mean, I just -- I didn't know what else to do. I mean, so I just had to go off of his advice.

Q. Did he tell you if you went to trial that Mr. Cunningham's rap sheet would come out on (inaudible) testifying?

A. No, ma'am.

Q. Did he talk to you about testifying?

A. He told me -- he told me that I had to get on the stand, and he was like, the jury might frown on me because of my record and how many times I've been to prison. But from my understanding, I could've -- I could invoke my Fifth Amendment rights, and had I known that, I would've went to trial also on that. I never knew about the Fifth Amendment.

Q. Your right to remain silent?

A. Yes, ma'am.

Q. Okay. Did you have any discussion about if you asked for lesser included offenses at trial and maybe get convicted of a lower offense?

A. No, ma'am. I never -- I never had that discussion with Mr. Hisker.

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

A. Yes. I also wanted to know, like, a part -- a part of the case.

Q. You mean the Smalls case?

A. No. I mean, I'm just saying, like, also a part of this case, like, if I had known that the officers conducted

an improper GSR kit and -- and -- to where Officer Riggins, he -- he misrepresented to where it was an independent witness, Ray Medlin. He said Ray Medlin witnessed the whole thing.

So -- you know, the prosecution, they relied on his evidence. And -- you know, had I known how to apply all this, then I never would've taken a plea because -- you know, it would've -- it would've been credibility issues with the -- with the officers in trial, and it would've -- it would've questioned the victim's statements in trial, too, their credibility. So -- you know, I do -- I did have an issue with that, I wanted to bring it up.

Q. Okay. Was there -- what -- was there another issue that I didn't discuss that you need to bring up, too?

A. The -- the issue about the officers, like, misrepresenting an affidavit all with, like -- you know what I'm saying, that it was a positive identity of -- of me to the warrant judge. That -- that was --

Q. You mean --

A. -- that was an issue.

Q. You mean when the officers went to get the warrant on you, they misrepresented to the magistrate that (inaudible) an --

A. Yes, ma'am.

Q. -- identification?

A. Yeah, that it was a problem with identification. But the two officers that investigated the case, they never went to the -- to the magistrate judge. They passed it on to a co-officer, and he relayed the information, like, relying on their affidavits, but it was unreliable.

Q. So they sent another coworker to the magistrate?

A. Yes, ma'am.

Q. Did you guys have a discussion about whether or not you could challenge the affidavit to the warrant at trial or anything like that, or in a pretrial motion?

A. No, ma'am. We never had that conversation. I never knew anything about the suppressions and how it worked. I never knew that.

Q. Did he discuss with you what "probable cause" means?

A. No, ma'am.

Q. What else did you want talk about?

A. I did -- I did want to say, like, from me reviewing the evidence, that I did -- I did see in Sergeant Davis, in her report, where she actually said that she -- she showed the witness a -- a single photo of me, and they identified me that day through that photo, and the next day they came and completed the photo lineup.

Q. So she showed them an individual photo of you first, and then they came back and saw a big photo lineup?

A. Yeah, a six-pack photo array.

Q. Did you have any discussions -- I think you already addressed this, but you didn't really have any discussions about the fact that you could try to move to suppress the photo lineup?

A. No, I didn't have a conversation about that.

Q. What else did you want the Judge to know about (inaudible)?

A. I really want -- I really wanted to cite a couple of cases --

Q. Okay.

A. -- for the Judge. In -- in the case of *Hill v. Lockhart*. It was *Hill v. -- Hill v. Lockhart,* 474 U.S. 52, 56, 10 --

Q. You can stop at the 52.

A. Okay -- okay.

Q. 474 U.S. 52.

A. Okay. Well, this was, like, a case dealing with the validity of the guilty plea and voluntary and intelligent choice among a ton of courses of action. It was open to --

Q. So when -- when you talk about you had never really experienced an open plea before, did you mean that -- well, you -- you had a cap of 15, did you mean that you didn't realize it was open all the way to 0 to 15, or...?

A. Well, really, I -- I didn't know how it worked.

Like, I thought it -- I thought it could be 65 percent, but I think that was the decision why I really went with the plea and went with the decision, because I didn't know that it was actually like it, it had to be 85 percent. I didn't know it was -- my ABHAN was actually at 85 percent offense.

Q. Okay. Sorry. Continue with the cases.

A. Okay. And then I got -- I got another case with -- with *US v. Fisher*, US Court of Appeals for the Fourth Circuit, April 1, 2013, 711 F.3d 460. It's a case dealing with -- with the search warrant affidavit being impermissible with government conduct. And -- and it -- it induced the plea, like, deceived me into accepting the plea by -- by these affidavits.

Q. Okay. What was the next one?

A. Okay. The next one was Brady -- *Brady v. United States,* 397 U.S. 18 748, 90 --

Q. You can stop at 748.

A. Okay. Well --

Q. It's the *Brady v. U.S.?*

A. Yes, ma'am.

Q. Okay. 397 U.S. 748 is the citation. So what -- what did you want the Court to know about that case?

A. Okay. It was -- it was just a case where -- you know, a plea is accepted where Brady and the (inaudible) would be accepted only with care and discernment. Yeah, but

-- I think -- I think that's it for the cases.

Q. Did you want to -- did you -- the Smalls case we talked about that you were wanting to cite?

A. Oh, yeah -- yeah, I wanted to cite *U.S. v. Smalls*, but I don't -- I don't have the citation numbers -- yeah, the citation numbers.

MS. MCMAHAN: Which we can get for you, your Honor.

THE COURT: You don't have to worry.

MS. MCMAHAN: Sorry.

THE COURT: Just tell me the point of law you want to reference for that case, or tell me what it is about that case you want me to look up.

THE WITNESS: Okay. It was about the case -- it was impermissibly suggestive from the officer, like, completing the photo lineup. It was a suggestive.

BY MS. MCMAHAN:

Q. Anything else you want the Court to know today?

A. Well, you mean besides that? I really -- I really was expecting Mr. Hisker to object to -- you know, erroneous -- erroneous testimony of the solicitor, like, where -- where he was -- he was telling the judge, like, different things of what happened that really didn't happen. He -- he was saying that I followed these people out of the Dollar General parking lot in the -- in the -- behind them in their vehicle and blocked them off and jumped out and -- and shot the car

up, which it didn't happen. You know what I mean? I just -- I just had a problem with -- with that.

And by him, he basically was saying, like, he heard of me for quite a few years, and he was talking to Shannon Riley about me outside of the courthouse about -- about my case and saying that I was the guy selling a lot of drugs back then, and my name was coming up. I just had a problem with that, like, because it kind of had an adverse effect on my plea by the judge hearing this and -- and nobody objects to it to correct it and -- you know, to correct any deceptive information. So that was another thing I had a problem with -- with the plea.

Q. So during your plea, at some point you stopped and you say to the judge that you need to take a minute to talk to Mr. Hisker. Do you remember that?

A. Yes, ma'am.

Q. What -- what was the question at that point?

A. Well, I asked him, I was like, "Well, I thought it was nonviolent," and -- and I thought -- you know, that it was 65 percent. And then he checked on his laptop, and then he was like, "Well, you know what? It is 85 percent." And he was like, "Well -- you know, I still can talk to the Judge." And -- you know, at this point, I'm trying to tell him that I didn't want to accept the plea. I would've just continued to trial, just not even accept the plea.

But he was telling me -- like I said, he was telling me I ain't really have another option, but to take the plea I'd come out better. And he was saying that if I did not get 40 years, then I'd never get to see my grandmother or anybody again. And so I took that into consideration of the sentence, and I just went ahead and went with it. But at that point, I -- I didn't want to take the sentence.

Q. Okay. That's where you -- that was what the (inaudible) was for?

A. Yes, ma'am.

Q. Anything else you want the Judge to know, sir?

A. Well, like I say, I had a problem with the forensics evidence.

Q. Okay.

A. Forensics evidence, that was a part of that case because there was a slug found that didn't have no logistics, and they were saying that -- they assumed that it matched to a 40 caliber shell. So -- you know, that was a problem. And with the GSR kit, the officer -- Officer Sergeant Davis, she conducted a GSR kit while I was at the -- at the incident. She went to Mr. Cunningham's house the first time, and she forgot to do the GSR kit. So that was an improper GSR kit that was admitted in the evidence. So I had a problem with that too, because that was --

Q. Do you -- do you mean where Solicitor Stumbo

references that they did a GSR and Mr. Cunningham (inaudible) that he'd been shot by slug?

A. Yes. And -- and it was while I was leaving, he was already at his house, so...

Q. And Mr. Hisker didn't address that during the plea?

A. No, ma'am.

Q. Okay. Anything else?

A. I think -- I think that was it.

MS. MCMAHAN: Okay. Answer any questions Mr. Jones may have.

MR. JONES: Okay. Thank you.

CROSS-EXAMINATION

BY MR. JONES:

Q. All right, Mr. Hisker (sic). I believe you said you wanted to take this case to trial, correct?

A. Yes, sir.

Q. And you testified just now that Mr. Hisker also told you initially that you should take this to trial?

A. That was -- that was our agreement when I first hired him, that we was going to trial.

Q. All right. But then ultimately, you entered this guilty plea?

A. Yes, sir.

Q. All right. Do you recall when Judge Addy

explained to you that the crime you were pleading guilty to was three counts of assault and battery of a high and aggravated nature?

A. Yes, I remember that.

Q. And do you recall Judge Addy explaining to you that the charge carried up to 20 years, but that in this case, there was a -- recommended cap of 15 years?

A. Yes, sir.

Q. Do you recall Judge Addy telling you that it could be anywhere from 0 to 15, but your exposure would be capped at 15?

A. Yes, sir.

Q. Do you recall Judge Addy telling you that the crimes were classified as "85 percent offenses," meaning you'd have to do 85 percent of whatever sentence you received?

A. Yes, I remember.

Q. Do you recall Judge Addy telling you that they were classified as "violent and serious offenses"?

A. Yes, sir.

Q. Do you recall telling the judge you understood all these things?

A. Yes, sir.

Q. And do you recall then telling the judge that knowing all these things, you still wished to plead guilty?

A. Yes, sir.

Q. Do you recall Judge Addy informing you about the fact that you could -- that you had a Fifth Amendment right not to speak at -- oh, not to testify during your trial?

A. Yes, I remember that. Yes, sir.

Q. All right. And do you recall Judge Addy explaining to you that you could challenge the admission of evidence during a trial or raise a defense such as "mistaken identity"?

A. Yes.

Q. And you told Judge Addy that you understood all these things?

A. Yes, sir.

Q. And then you proceeded with the guilty plea proceeding?

A. Yes, sir.

Q. All right. So I want to mention a few things about the police report you mentioned. In that police report, the witness stated that they thought -- this would -- would have been Mr. Cunningham, I believe, stated that he thought the assailant was the Lamarcus Stewart, that is it was you, correct?

A. Yes, he said "I think it was Lamarcus Stewart."

Q. All right. And -- but you're saying that he couldn't have known who the assailant was because the

assailant was wearing a face mask?

A. Yes.

Q. All right. And this incident occurred in September 2020?

A. Yes.

Q. So that would be, like, a COVID-style protective face mask?

A. I don't -- I don't know what kind of mask he was talking about. Only thing I know is with the mask being involved and with the officer showing him the photo, like, you hold a photo lineup --

Q. After you -- the witness stated that he thought it was you, correct?

A. Yes, sir, he had (inaudible).

Q. All right. I just wanted to clarify that. And you have -- is this a tattoo above your --

A. Yes, sir.

Q. -- your eye?

A. Yes, sir.

MR. JONES: Okay. I think that's all the questions I have for you, Mr. Stewart. Thank you.

THE WITNESS: All right.

RE-DIRECT EXAMINATION

BY MS. MCMAHAN:

Q. How long have you had that tattoo above your eye?

A. I had this since, like, 2019 or -- I think 2018.

MS. MCMAHAN: Nothing further.

THE COURT: All right. Thank you. This witness may be excused. Any other witnesses?

MS. MCMAHAN: Your Honor, the Applicant rests.

THE COURT: All right. Thank you. Mr. Jones?

MR. JONES: Thank you, your Honor. The State calls Steve Hisker.

THE COURT: Approach the podium.

STEVEN M. HISKER, ESQUIRE,

being duly sworn, testified as follows:

THE CLERK: Please have a seat.

DIRECT EXAMINATION

BY MR. JONES:

Q. Thank you, Mr. Hisker. You represented Mr. Stewart during his guilty plea proceeding; is that correct?

A. Yes, that's correct.

Q. All right. Can you just tell the Court in general terms about the history of how you came to represent Mr. Stewart and what occurred during the course of your representation?

A. I have some notes. I was retained on March 30, 2021. Within a week, I had requested -- I filed a Rule 5 and Brady motion and requested a preliminary hearing. On May 10th, I attended his preliminary hearing and met with

Mr. Stewart. He did give me the packet of discovery that his previous attorney had requested. However, on June 2, 2021, I received the entire packet from the solicitor's office.

When I handle a case, I'm not going to go with the discovery that the defendant gives me because I -- I don't know whether it's correct, whether everything's there. I received additional discovery directly from law enforcement on June 7th, with photos and reports. And then on July 7, 2021, I reviewed everything with Mr. Stewart in his detention center.

I mean, that would be standard practice. If I had -- I've done this for almost 25 years, and if I had ever went to a client and not showed them all the discovery, that -- that would be absurd. He would have seen everything. We would have talked about everything. There was video from a convenience store or CVS, I believe, where these two individuals had a prior altercation that same day, just minutes before the incident.

Mr. Stewart did give me some back and forth about whether this was mistaken identity. He -- he looked at a lot of issues. He -- he's a bright guy. But at the end of the day, once we reviewed everything, he told me the entirety of what had happened, that this was a self-defense case. That they had had an altercation, that this individual threatened to shoot him, he shot back.

The biggest problem that we saw with the case was what -- was Mr. Medlin, who identified Mr. Stewart. His -- that the fact that he pointed a gun at Mr. Stewart and basically told him to back up, and used some slur or something of that -- to that extent. And Mr. Stewart's explanation for that was just that after the altercation, Mr. Medlin walked up on him, he was startled and he pointed a gun at him to get him back.

There was never any question about what he was facing. I would -- I don't -- I don't twist the arm of my client to get them to plead guilty. If an offer is given to him, which it was, and this case progressed over. I -- I believe if I was hired in March, we resolved the case in November.

We had another bond hearing. We had several meetings in the detention center to discuss going to trial. We would have talked about all the trial issues going forward, including the fact that in order to -- for self-defense, he would have to testify. He does have a record that some of that potentially would come in against him. We would have reviewed that.

Now, he didn't have -- it wasn't a perfect case. The State did not have a perfect case. I interviewed law enforcement. Law enforcement confirmed to me that the victim -- that victim Cunningham did have a prior beef with Mr. Stewart. Victim Cunningham was a known gun toter and a

shooter in prior instances. Law -- I would have gotten this out of law enforcement.

So there were some trial issues. There was never any question about what the plea offer was. The solicitor gave me initially an offer for 15 negotiated. It was always known that would be 85 percent. I would have discussed with Mr. Stewart the emails I had with the solicitor during those negotiations because my offer would have been, I think -- if I can pull up the email. I had emails with the solicitor on October 13, 2021, trying to get a 20-year suspended sentence, 10 active, with five years of probation to follow.

With 15, he would have done about 12. With 10, he does eight and a half, so he has to do another eight and a half if he violates probation. So there was no question this was an 85 percent offense. Mr. Stewart did ask about it being a 65, and I confirmed for him again, "No, this is an 85 percent offense."

Everything was in the email to the solicitor about the victim being a known shooter. There were some trial issues, but at the end of the day, Mr. Stewart wanted this deal. We would have went to trial had he wanted to go to trial.

So the -- any idea that I didn't request the discovery, didn't have the discovery, is completely -- completely absurd to me. I had all the discovery. I reviewed the State's discovery that -- it was provided directly to me with

Mr. Stewart. And the only thing that we did not have was that GSR, and we got that looks like several days before we actually did the plea, because that was the one thing I really wanted to see.

That was a perfect defense, and Mr. Stewart and I discussed that. You know, his question is: "Why did they wait until they got to the house?" To -- to call -- I think that's where they actually called in the report. They didn't call it in from the street. They called in when they got home, they were already there.

There were issues about whether the baby was actually in the vehicle or not. And those were issues that we -- we -- we could have addressed at trial. But the bottom line was that even without that GSR, they could have -- they could have washed their hands at the house before the GSR was swabbed. And that was an issue we knew of going into it.

But ultimately, he took the plea. It was all -- at that point, it was mitigation. The facts presented to the Judge were facts given to me by Mr. Stewart. I didn't come up with that on my own. And ultimately, the Judge -- Judge ended up giving him a reduction from the cap of 15. We did -- we -- we -- I think we got 12 or 13 years.

Q. All right. Let's see here. So Mr. Stewart did briefly discuss with you a possibility of a mistaken identity defense before moving on to saying it was self-defense?

A. We -- we talked about a lot of issues.

Q. All right.

A. And -- and I think the biggest issue with mistaken identity was Cunningham knew him by name and sight. We would have -- we went over -- we definitely went over all the statements directly. The issues in the -- the weaknesses in the statements, we would have discussed.

Q. All right. And -- and you testified that there was prior difficulties between him and Mr. Cunningham?

A. Yes. I believe it -- I believe it had something to do with the shooting of either Mr. Cunningham's brother or Mr. Stewart's brother. I can't remember, but there was prior -- there -- there was definitely some prior --

Q. And on the day of this -- on the day of this incident, there was -- a few minutes before the shooting, there was a prior altercation between them that was video recorded at the store, correct?

A. There was substantial evidence of --

Q. All right.

A. -- of -- of -- of an altercation. There was some items that were dropped out of a bag when they had had the confrontation, and you could see that evidence. And they -- but they were both clearly in the store with Mr. Stewart wearing essentially the same clothing that was described by Mr. Cunningham when he described the shooter.

Q. All right. Did you ever tell him that he was pleading to a 14-year suspended sentence?

A. No. It was -- it was a cap of 15, and that I could have argued for as low as I could get.

Q. Did you ever tell him he would do seven years and would get out when he was 40?

A. No.

Q. And I believe you had testified there was a preliminary hearing?

A. There was.

Q. All right. And the purpose of a preliminary hearing is to challenge whether there was probable cause for his arrest?

A. That's correct.

MR. JONES: All right. Mr. Hisker, I think that's all the questions I have for you. Thank you so much.

CROSS-EXAMINATION

BY MS. MCMAHAN:

Q. (Inaudible). Did you ever talk to Mr. Byrholdt after you took the plea deal?

A. No, I didn't -- or not that I remember.

Q. But you said that he gave you the discovery that Mr. Byrholdt had given you?

A. Mr. Stewart gave me an entire packet of discovery.

Q. But you ended up getting some additional discovery

from law enforcement, so later on in June or July?

A. I got a complete copy from the State.

Q. Okay.

A. Of the State -- and then I compared what Mr. Stewart had previously given me to what the State gave me, and then I did get some additional discovery from the State.

Q. Well, and then you got the -- the GSR test back, which was the -- the three pages?

A. I would think it was three productions of discovery. I got the initial packet of discovery on June 2nd. I got additional discovery directly from law enforcement on June 7th. And then I got the GSR test on November 24th.

Q. Was he on the trial docket?

A. I believe he was. He was coming up for a trial very soon.

Q. And what -- you had made reference to a less previous offer. What were the other offers presented?

A. The only offer that I got from the solicitor was a negotiated 15 years for three counts of aggravated assault.

Q. So the 20 that you were talking about, was that you writing him back saying, "Hey, would you consider 20 years suspended to five years probation?" Something like that?

A. Yes.

Q. Okay.

A. Yes.

Q. Okay. Did Stumbo ever indicate to you, like, if he was going to oppose any request for probation or anything like that?

A. Oh, he was definitely going to oppose. I mean, he was going to oppose.

Q. Okay.

A. Yes. And yes, he -- well, he's not going to consent to probation.

Q. And how often does Solicitor Stumbo take on cases individually?

A. I can't say that I know. I -- I would -- I would assume rarely.

Q. Okay. And you said you had a discussion about self-defense with him?

A. We did.

Q. And that he would have to testify -- to testify about self-defense?

A. Yes.

Q. And did you discuss that if he were to get to testify that you guys would also be able to bring up his prior record, too?

A. Yes.

Q. Were you concerned about Mr. Stewart's prior

record with this if he testified?

A. I can't say specifically what on it I would have been concerned with, but I -- I know that's -- that's an ordinary course of preparation that we would have done.

Q. And up to the point of the guilty plea, was he always insisting on trial, or was it a -- was it, "Hey, let's see what kind of deal I can get"? What was the -- the timeline of how it switched from a trial to a plea?

A. I don't -- I don't know that precisely when that changed. It -- it could have been over the time we reviewed his discovery.

Q. And did you think taking a plea was in his best interest?

A. I did.

Q. And why is that?

A. Well, just based on the fact that the video puts him at the scene of the crime just minutes before, the fact that Mr. Cunningham knew him by name and sight, based on the fact that an independent third-party witness plus victim also identifies him.

Q. And did you have a discussion about -- with him at the time of the plea that his rap sheet would come out, and the judge would consider that at the time of the plea?

A. We would have definitely discussed that the -- the judge would have considered his prior record.

Q. And it looks like you have the plea in a different county; is that right? It wasn't heard in Abbeville?

A. That might be the case. I mean, we may -- we may have done it in Greenwood just for the timing of it. And I wanted to plead it in front of Judge Addy, too. Judge Addy is -- is -- is usually a favorable judge.

Q. One second. Do you remember if Solicitor Stumbo said that nobody ever pointed a gun at the bystander? I guess, the bystander just saw it?

A. I don't remember.

Q. And do you remember if you recall Gray saying that he didn't see a shooter, that he heard it?

A. Yeah, I think -- I think so. I -- I don't think he had a complete -- I don't think he had a complete picture of what had happened. It was more of a concern of what had happened to him after it happened.

Q. And you didn't see the GSR kit until closer to the plea date?

A. Oh, yeah. It was -- it was very close to the plea date. We -- we were in --

Q. But the --

A. We were in trial preparation at that point.

Q. Okay. And did you provide a copy of that GSR to Mr. Stewart prior to the plea?

A. Yeah, we would have definitely reviewed that.

Q. Okay. Would that have been a trial issue that you would have tried to bring up about washing of the hands or anything like that?

A. Of course.

Q. And then do you remember Solicitor Stumbo saying something about a mouthwash bottle got shattered by the manager?

A. I don't know. Was that -- are you talking about what happened in front of the --?

Q. At the Dollar General?

A. I think so.

Q. And did he ever ask for an appeal or a request for you to file an appeal?

A. He requested an appeal, and I filed one.

Q. And -- and that appeal is what got dismissed; is that your recollection?

A. That is.

Q. And when you were in trial prep -- I'm sorry, I just sort of repeated the question, but you did have a discussion about GSR and how basically GSR neither proves nor disproves that anybody had done anything?

A. We would have fully discussed every aspect of GSR. When I talk to clients about GSR, I explain to them what GSR is. That GSR can be found in nature. I've had -- I've had experts testify about GSR that could -- you could get it from

dirt. You could have that material on you from climbing under a house of lead, barium, and antimony. I discuss that stuff with clients all the time.

Q. What would have been your defenses had the gun been brought up?

A. It -- it would have had to be self-defense because that was what Mr. Stewart had presented to me.

Q. And -- and would you prepare in such a way that you go through the witness statements and see their inconsistencies and possibly cross-examine them on those inconsistencies?

A. Absolutely.

Q. Were there some inconsistencies in this case in some of the statements?

A. There were.

Q. Did you request a suspended sentence at the hearing?

A. I can't remember exactly what I asked for.

Q. Were you trying to request as much as you could on the lower end of the sentencing range?

A. I -- I don't remember. I'd have to look at the transcript to see what I said to the judge.

Q. Would that have been your goal, though? Like --

A. I would have wanted to give him the best sentence possible.

Q. And then do you remember his grandma being there to testify about -- you know, some of the facts where they had beefs with each other, and they'd been ongoing for years?

A. I don't remember, but it's very possible that that did happen.

Q. And then during a plea hearing, when the solicitor gives their facts, do you have an opportunity to sort of correct those facts or discuss with the judge where you disagree with some of those issues?

A. Yes.

Q. And is that normal in a guilty plea for that to happen?

A. It is normal.

Q. And -- and did you feel like you addressed those issues that you had with Solicitor Stumbo's facts?

A. I know I discussed the facts. I -- I know I discussed the fact that they had a prior altercation and a prior beef. I'm pretty certain all that was discussed in front of the judge.

Q. In -- in the photo lineup and stuff, did you discuss the fact that, I guess, they had presented a single photo at first and then later on presented a photo lineup, or if you had noticed it at the time, because that's something you would have addressed with him as possible defense?

A. I don't remember off the top of my head. I don't

remember off the top of my head. I think the biggest issue there was that he knew them, and he knew them by name and sight.

Q. Would you have been able to, if you'd gone to trial, file a motion in limine to try to suppress the photo lineup for --?

A. Oh, sure. Oh, yeah. We could have challenged -- we could have challenged a lot of things. When -- when that's -- and that's standard trial prep stuff, and Mr. Stewart and I would have talked about all the things that we could have challenged.

Q. And then the -- the fact with, like, the mask and all that stuff?

A. Absolutely.

Q. So if he had gone to trial, I guess, like, the following week, these would have been motions that you would have made on his behalf prior to the trial starting?

A. Yes.

MS. MCMAHAN: I have no further questions.

MR. JONES: No re-direct, your Honor.

THE COURT: All right. This witness may be excused. Any further witnesses, Mr. Jones?

MR. JONES: None from the State, your Honor.

MS. MCMAHAN: None from the Applicant, your Honor. We just ask that you take this under advisement before making a

decision.

THE COURT: Certainly, will do. Yes, that's normally what I do. I would like the opportunity to essentially skim the PCR, but sometimes because we don't know whether things will go through or not, we do not read extensively. I am going to go back and read the documentation extensively and make a decision at that point. I will notify both of your offices.

MR. JONES: Thank you, your Honor.

MS. MCMAHAN: Thank you.

THE COURT: Thank you. We'll stand down.

(THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

CERTIFICATE OF TRANSCRIBER

I, LATASHA JEFFERSON, a certified transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 8 of Abbeville County, South Carolina, on July 8, 2025.

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

June 2, 2026.



LATASHA JEFFERSON

Transcriber

STATE OF SOUTH CAROLINA COUNTY OF ABBEVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
Lamarcus A. Stewart, Jr., #384762,	)	Case No. 2023-CP-01-00015
Applicant,	)	
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

INTRODUCTION

The matter before this Court arises from an application for post-conviction relief ("PCR") commenced by Lamarcus A. Stewart, Jr. ("Applicant"), on January 20, 2023, and amended on July 15, 2025. On July 8, 2025, a hearing into the matter was convened before this Court at the Newberry County Courthouse. Ashley A. McMahan, Esquire, appeared on behalf of Applicant. Assistant Attorney General Zachary W. Jones represented the State. After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds all of Applicant's allegations are without merit. For the reasons discussed below, this Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections ("SCDC"). During the May 2021 term, the Abbeville County Grand Jury indicted Applicant for Attempted Murder (2021-GS-01-00392, -00393, -00394), Possession of a Weapon During the Commission of a Violent Crime (2021-GS-01-00395), Pointing and Presenting a Firearm (2021-

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
Filed March 20 A.D. 2026
at 2:00 o'clock P M
Shandal Boggs
Clerk of Court

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BY Shandal Boggs

GS-01-00396), Unlawful Carrying of a Pistol (2021-GS-01-00397), Aggravated Breach of Peace (2021-GS-01-00398), and Malicious Injury to Property (2021-GS-01-00399). Applicant was represented by Steven M. Hisker, Esquire ("Counsel"). Eighth Circuit Solicitor David M. Stumbo prosecuted the case.

On November 30, 2021, Applicant appeared before the Honorable Frank R. Addy Jr. and pled guilty to three counts of the lesser included Assault and Battery of a High and Aggravated Nature ("ABHAN") (2021-GS-01-00392, -00393, -00394). All other charges were nolle pross'd due to the guilty plea negotiations. Judge Addy sentenced Applicant as negotiated to thirteen (13) years' imprisonment.

Applicant filed a timely Notice of Appeal. On February 15, 2022, the South Carolina Court of Appeals issued an Order dismissing the appeal for failing to provide a sufficient guilty plea explanation required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was returned to the circuit court on March 9, 2022.

FACTUAL SUMMARY

At Applicant's guilty plea proceeding, the factual basis of the plea was summarized by the State as follows:

> This occurred September the 6th of 2020. Ware Shoals Police Department responds to reported gun shots fired into a vehicle in the roadway at up around West Summit Drive intersection with Greenwood Avenue, which, of course, is the main thoroughfare going through Ware Shoals. Judge, in the Jeep that was being shot at, and there's an independent witness that reports it, this was in the middle of the day, the victims who were in the Jeep were, Talefero (ph) Cunningham and Brooke Durban, who are here in the courtroom behind me, and their infant – infant child who was less than one-year old at the time – or excuse me, I believe he was just turned one, that's correct. And Brooke was actually nine months pregnant, as well. Judge, essentially, what Mr. Cunningham tells law enforcement is that he's at the Dollar General, there's an altercation

with Mr. Stewart that basically stems, from my understanding, is they just bump into each other. And Mr. Stewart exchanges some words with Mr. Cunningham and takes a swing at him. And Cunningham ducks, Mr. Cunningham ducks, misses, and throws a punch at Mr. Stewart that connects. Mr. Stewart, ultimately, tells him he's strapped and he'll see him in a few minutes. Very shortly after this, Judge, Mr. Stewart follows them in their vehicle, gets out of the car and shoots three times into the vehicle. There's three 40 caliber shell casings in the road that law enforcement finds to corroborate that. They ultimately get surveillance cameras from the Dollar General, Judge, which corroborates Mr. Cunningham's version of this altercation that Mr. Stewart basically starts the fight. But it takes a fistfight and takes it ultimately to the next level, Judge. The independent witness that called it in witnessed the whole thing. He indicated that – described Mr. Cunningham -- or, excuse me, Mr. Stewart, the defendant as shooting. And when he comes back up the street he actually threatens the witness. The witness tries to tell him to stop. He kind of raises the gun, doesn't point it at him, but raised the gun up and says come on, man and basically just blows him off and leaves. Judge, victims both picked Mr. Stewart out of a photo lineup, as well. Judge, warrants are issued in this case and it takes a while. There's a manhunt for Mr. Stewart, with this being a violent offense and with his criminal history, which I'll tell you about in a moment. But ultimately they get a tip that he's at his mother's house. They had a helicopter out there in the woods behind his mother's house off Indian Mound Road in Ware Shoals looking for him, and he fled, being apprehended that day. And, ultimately, they are able to take him into custody in Greenwood on these warrants in December. So about three months later he's picked up on these -- these charges, Judge. He was also out on bond for the failure to stop for a blue light incident from 2019 that I discussed with Your Honor earlier. That was a Greenwood -- essentially that was a drug DEU case where they were running surveillance on him, they blue-lighted him when they believe they see a drug transaction and he runs from them then. So, Judge, based on his record he -- he does run from law enforcement a good bit. There's resisting arrest, there's other offenses on his record that are consistent with that. Judge, his prior record is as follows, there's a 2006 possession of a controlled substance and a simple assault and battery. There's an open container and malicious injury, to personal property in '06. There's a domestic violence in '07. There's a domestic violence in 2011. There's a giving false info to law enforcement in '12. 2012, there's an assault and battery, first degree and a possession with intent to

> distribute narcotics and he got an active YOA on that sentence. There's a resisting arrest in 2014. 2016, Judge, he was convicted of distribution of meth, two counts, and received an eight year active sentence on those charges in 2016. Judge, I believe just tracking this, it's not long after he gets out that he's arrested again on a failure to stop for a blue light which results from what apparently was some drug transactions. And then we have this shooting incident in Ware Shoals, Judge, that he's pleading to today. So he has a significant prior record.

(Plea Tr. pp. 6–9).

CURRENT APPLICATION

On January 20, 2023, Applicant timely filed this application for PCR, in which Applicant alleges he is being held in custody unlawfully based on the following:

1. "Null and void sentence"
2. "Breach of guilty plea agreement"

In a document entitled "Discussion" attached to the application, Applicant raises the following allegations as grounds for relief:

1. Involuntary Guilty Plea
   a. Applicant was advised by counsel when to say yes and when to say no during the plea colloquy.
   b. Applicant lacked a full understanding of the consequences of his plea.
2. Ineffective Assistance of Counsel
   a. Failure to investigate and review discovery, which would have revealed that Applicant had a viable defense of mistaken identity.
   b. Failure to advise ABHAN was an 85% offense and misinforming Applicant that he would receive a suspended sentence under the plea agreement.
   c. Failure to advise that Applicant could have requested a charge on lesser-included offenses at trial.
   d. Failure to rebut the State's version of the facts.

At the outset of the evidentiary hearing, Applicant clarified that he would be moving forward on the following grounds, which were presented in his amended application later filed on July 15, 2025:

1. Ineffective Assistance of Counsel:
   a. Failed to adequately review the evidence prior to advising Applicant to plead.

i. Evidence suggests that Applicant could not have been identified by the witnesses, because Witnesses stated that the shooter was wearing a green face mask.
ii. Had counsel reviewed the Witnesses statements with Applicant, Applicant would have proceeded to trial.

b. Failed to adequately present mitigating evidence at sentencing
i. Law enforcement took part in a suggestive identification procedure which created a likelihood of irreparable misidentification by witnesses. As a result, witnesses' statements, identifying Applicant as the shooter, were inconsistent and intentionally suggestive.

c. Failed to adequately review with Applicant the penalties and punishment of Assault and Battery of a High and Aggravated Nature.

d. Failed to inform Applicant that Assault and Battery of a High and Aggravated Nature is a no-parole offense.

e. The day of the guilty plea, Applicant told counsel that he wanted to proceed to trial, however counsel informed Applicant that the plea was the best he was going to get. Applicant ultimately plead guilty based off what counsel advised him of.

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. Before the Court are the application for PCR, the records of the Abbeville County Clerk of Court concerning the subject conviction, the records of Applicant's plea proceeding, and Applicant's appellate records. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court finds all of Applicant's allegations are without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented:

Ineffective Assistance of Counsel, Generally

In a PCR action, the applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for

relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that Counsel's performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). 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. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (quoting *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons Counsel may have had for proceeding as he did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, Counsel's deficient performance must have prejudiced 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 (quoting *Strickland*, 466 U.S. at 694). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112.

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." *Garren v. State*, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); *see Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea"). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, the statements he or she made during the original proceeding should be deemed conclusive. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th

Cir. 1975)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696–97.

1. Failure to Investigate Defense of Mistaken Identity.

Applicant claims that Counsel was ineffective for advising him to plead guilty without adequately investigating or reviewing the discovery. Applicant refers specifically to statements given by the victims in this case to the effect that the shooter was wearing a green face mask at the time of the shooting. Applicant claims this evidence should have caused Counsel to realize that Applicant had a viable defense of mistaken identity. Had he known he had a potential mistaken identity defense, Applicant claims, he would not have pleaded guilty but would have insisted on going to trial. The Court finds this allegation meritless.

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information." *Id.*

At the evidentiary hearing, Counsel testified that he *did* review all the discovery with

Applicant prior to his guilty plea. Counsel also testified that he discussed the possibility of a mistaken identity defense with Applicant, and he believed there were some inconsistencies in the witnesses' statements that he would have brought up had they proceeded to trial. However, Counsel testified that Applicant never denied being the shooter; to the contrary, Applicant told Counsel he fired at Cunningham in self-defense.[1]

The Court finds Counsel's testimony credible as to this issue. The Court finds Applicant's testimony, to the extent it contradicts Counsel's testimony, not credible. Accordingly, the Court finds Applicant has not met his burden of proving Counsel failed to pursue a reasonable investigation. The evidence shows that Counsel went over the discovery with Applicant, considered the mistaken identity issue, and was aware of potential inconsistencies in the witnesses' statements. However, he "quite properly" based his strategic decisions "on information supplied by the defendant": namely, the fact that Applicant admitted he *was* the shooter but claimed to be acting in self-defense. *Strickland*, 466 U.S. at 691. Counsel cannot be blamed for relying on information from his own client to inform his strategic decisions.

Moreover, the Court finds the mere mention of the shooter's wearing a green face mask does not prove that Counsel somehow missed a viable mistaken identity defense. Counsel explained that, despite the mask, the witnesses were confident in their identification of Applicant.

[1] Counsel explained that, based on evidence of Cunningham's character and criminal background, he felt there might be a potentially viable self-defense claim concerning some of the charges. However, he explained that pursuing a self-defense trial strategy would be risky because Applicant would have to testify, and his extensive prior criminal record could potentially come in as impeachment evidence. Counsel also explained that even a successful claim of self-defense as to Cunningham would not excuse Applicant's unlawful possession of a pistol and pointing and presenting a firearm at a bystander. These factors caused Counsel to believe that a plea deal would be in Applicant's best interest; nevertheless, Counsel maintained that it was Applicant's decision to accept the plea deal, and Counsel would have been willing to go to trial if that was what Applicant had wanted to do.

and Cunningham had known Applicant for a long time by both name and sight. Counsel also explained that video surveillance put Applicant at the scene near the time of the shooting and tended to corroborate the victims' account. Finally, the Court observed during the evidentiary hearing that Applicant has a distinctive tattoo over his right eyebrow. Applicant testified that he got this tattoo prior to the date of the incident. It is not likely that an ordinary face mask could have concealed such a distinctive and identifying mark. Accordingly, the Court finds Applicant has not proved that Counsel's failure to more thoroughly investigate the face mask issue robbed him of a viable mistaken identity defense. For these reasons, the Court finds Applicant has failed to prove Counsel's performance was deficient as to this issue, and this allegation is denied and dismissed as meritless.

2. Failure to Challenge Suggestive Identification

Applicant claims that Counsel was ineffective for failing to challenge the admissibility of the eyewitnesses' identifications of him on the grounds that the identification procedure was unduly suggestive. The Court finds this allegation meritless.

At the evidentiary hearing, Applicant claimed law enforcement improperly showed a photograph of him to the eyewitnesses prior to showing them the six-pack lineup. Applicant claimed this information was reflected in a report by one of the investigating officers. Applicant argued that Counsel should have relied on this report to move for suppression of the identification testimony. However, Applicant did not produce the report in question at the evidentiary hearing.

The Court finds Applicant has not met his burden of proof as to this allegation. To prove prejudice from counsel's alleged failure to procure or present evidence, a PCR applicant must present the omitted evidence at the PCR hearing. *Garren*, 423 S.C. at 13, 813 S.E.2d at 711. Mere speculation and conjecture by the applicant is insufficient to support a finding of prejudice. *Id.* at

13–14, 813 S.E.2d at 711; *see, e.g.*, *Palacio v. State*, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding PCR applicant failed to present any probative evidence of prejudice from counsel's failure to obtain certain documents, where "the contents of these documents were never revealed at the PCR hearing.").

Moreover, even if Applicant had met his burden of proving that the identification procedure was unnecessarily suggestive, that alone would not render the evidence inadmissible. "Even assuming an identification procedure is suggestive, it need not be excluded so long as, under all the circumstances, the identification was reliable notwithstanding the suggestiveness." *State v. Turner*, 373 S.C. 121, 127, 644 S.E.2d 693, 696 (2007). As the South Carolina Supreme Court has held,

> the fact that an identification witness knows the accused remains a significant factor in determining reliability. The suggestive nature of a show-up is mitigated by the witness's prior knowledge of the accused. We concur with those jurisdictions that consider the show-up identification procedure, normally considered unduly suggestive, as merely confirmatory. *See State v. Taylor*, 594 N.W.2d 158 (Minn.1999) (holding that the show-up procedure was not suggestive but merely confirmatory where witness previously singled out assailant by nickname and had seen him around her apartment building at least ten times before the show-up took place); *People v. Rodriguez*, 79 N.Y.2d 445, 583 N.Y.S.2d 814, 593 N.E.2d 268, 272 (1992) ("A court's invocation of the 'confirmatory identification' exception is thus tantamount to a conclusion that, as a matter of law, the witness is so familiar with the defendant that there is 'little or no risk' that police suggestion could lead to a misidentification.").

State v. Liverman, 398 S.C. 130, 141–42, 727 S.E.2d 422, 427–28 (2012). Here, there was no question that Cunningham and Applicant had known each other for a considerable time before the altercation at issue occurred. Furthermore, as already discussed, Applicant has a distinctive tattoo above one eye, rendering the possibility of misidentification exceedingly unlikely. Even if there had been evidence to support Applicant's claim that the photographic lineup procedure was unduly

suggestive, it is not probable that the evidence would have been suppressed. Accordingly, the Court finds this allegation meritless.

3. Misadvice as to Sentencing

Applicant claims that Counsel was ineffective for erroneously advising him that he would receive a suspended sentence and would only have to do about seven years. Applicant also claims Counsel initially told him that he would be required to serve only 65% of his sentence; however, during the plea proceeding, Counsel suddenly advised Applicant that he would be required to serve 85%. Applicant claims he was surprised by this information, but Counsel told him he had no choice but to go forward with the guilty plea. The Court finds these allegations meritless.

At the evidentiary hearing, Counsel testified that the solicitor initially was unwilling to offer less than a negotiated fifteen-year sentence for a plea. Counsel testified that Applicant wanted a suspended sentence, so Counsel contacted the solicitor and suggested a negotiated twenty-year sentence, suspended to ten years with probation. However, the solicitor opposed Counsel's suggestion. Counsel testified that he had emails detailing his plea negotiations with the solicitor and that he discussed these emails with Applicant. Counsel clarified that he never told Applicant he would receive a suspended sentence. The transcript reflects that Applicant pleaded guilty in exchange for a recommended range of zero-to-fifteen years; Applicant ultimately received a sentence of thirteen years. (Plea Tr. p.2, lines 16–18; p.30, lines 16–20).

Counsel also testified that he always knew Applicant would be required to serve 85% of his sentence. Although Applicant asked about the possibility of serving only 65% of his sentence, Counsel testified he repeatedly told Applicant it would be 85%.

The Court finds Counsel's testimony credible, and Applicant's contrary testimony not credible, as to this issue. Moreover, the Court notes the following exchange appears in the transcript of the plea proceeding:

THE COURT: Mr. Hisker, you're representing Mr. Stewart on these charges. The ABHAN charges would each carry up to 20 years, but I hear that there's a cap of 15 years, and I'm assuming that it's understood that all sentences would run concurrently; is all that correct?

MR. HISKER: Yes, Your Honor.

THE COURT: All right. You've reviewed with Mr. Stewart then the ramifications of these pleas, the elements of these offenses and all his Constitutional rights?

MR. HISKER: Yes, Your Honor, I have.

THE COURT: And you agree with his decision to plead guilty?

MR. HISKER: Yes, I do.

THE COURT: I believe that these are *85 percent offenses*, they're also classified, I think, as violent and serious. You've gone over those ramifications, as well?

MR. HISKER: Yes, Your Honor, I have.

. . . .

THE COURT: Mr. Stewart, I'm told that you want to plead guilty to three counts of assault and battery of a high and aggravated nature. You understand that *that charge carries up to 20 years but in this case the State is recommending a cap of 15 years*. The way I take this recommendation is essentially I will not exceed a 15-year active sentence. I can be anywhere from zero to 15, but your

exposure is capped at 15. *Do you understand that?*

[APPLICANT]: *Yes, sir.*

. . . .

THE COURT: Now, Mr. Stewart, *you understand that these crimes are classified as 85 percent offenses, meaning, that whatever time I give you, for example, if I gave you ten years, you'd have to do eight and a half years, 85 percent of ten years before you could hope to be released from prison. You understand that?*

[APPLICANT]: *Yes, sir.*

(Plea Tr. pp. 3–5) (emphasis added).

This exchange corroborates Counsel's testimony that he accurately explained the sentencing consequences of the plea to Applicant. It also proves that, at the time Applicant entered his guilty plea, he was informed by the plea court that the charge he was facing carried a sentence of up to twenty years; that, pursuant to the plea agreement, the State was recommending a cap of fifteen years; and that he would be required to serve 85% of his sentence. Applicant, under oath, indicated that he understood these things. This Court finds that the record conclusively refutes Applicant's claim that he entered his guilty plea without understanding the sentencing consequences.

The Court finds Applicant has not met his burden of proving either deficiency or prejudice as to this allegation. Accordingly, the Court finds this allegation meritless.

4. Involuntary Guilty Plea

Finally, Applicant claims he wanted to proceed to trial, but Counsel told him he had no choice but to enter a guilty plea. The Court finds this allegation meritless.

Counsel, at the evidentiary hearing, testified that Applicant wanted to accept the plea deal.

Counsel testified that, if Applicant had wanted to go to trial instead, he would have honored Applicant's wishes. The Court finds Counsel's testimony credible, and Applicant's contrary testimony not credible, as to this issue.

In addition, there was a thorough plea colloquy in this case where the plea court explained, in detail, that Applicant had the right to plead not guilty and proceed to a jury trial instead of entering a guilty plea. The plea court patiently explained the rights Applicant would be waiving by pleading guilty, and Applicant repeatedly stated that he understood those rights and was freely and voluntarily waiving them in order to enter his guilty plea. (Plea Tr. pp.11–18).

The Court finds Applicant has failed to present any "valid reasons why he should be allowed to depart from the truth of his statements." *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874. Accordingly, the Court finds Applicant has not met his burden of proving that his guilty plea was not freely, voluntarily, and intelligently entered.

[conclusion and signature on following page]

CONCLUSION

Based on the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Accordingly, this application must be denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to 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). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 17th day of March, 2026.

THE HONORABLE COURTNEY CLYBURN POPE
Presiding Judge
Eighth Judicial Circuit

Aiken, South Carolina

TRUE COPY
BY: Shandal Boggs
ABBEVILLE COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
Filed March 20 A.D. 2026
at 2:00 o'clock P M
Shandal Boggs
Clerk of Court

WITNESSES

Ware Shoals Police Department

WARRANT NUMBER

2020A0120300219

Foreman of the Grand Jury

Date: 5-17-2021

VERDICT

TRUE BILL

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

May Term, 2021

Indictment # 2021GS01-0392

THE STATE

vs.

LAMARCUS ALEXANDER STEWART, II

INDICTMENT FOR

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR: 3410

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

FILED IN COMMON PLEAS
Grand Jury

174

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

INDICTMENT FOR

ATTEMPTED MURDER
§16-03-0029

At a Court of General Sessions, convened on the 7th day of May, 2021, the Grand Jurors of Abbeville County present upon their oath:

The defendant, Lamarcus Alexander Stewart II, on or about September 6, 2020, in Abbeville County, South Carolina, did unlawfully, with malice aforethought, and with the intent to kill, attempted to kill Brock Elizabeth Durbin. All in violation of 16-03-0029, Code of Laws of South Carolina (1976, as amended).

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

Micah E. Black
Assistant Solicitor

WITNESSES

Ware Shoals Police Department

WARRANT NUMBER

2020A0120300220

Foreman of the Grand Jury

Date: 5-7-2021

VERDICT

TRUE BILL

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

May Term, 2021

Indictment # **2021GS01-0393**

THE STATE

vs.

LAMARCUS ALEXANDER STEWART, II

INDICTMENT FOR

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR: 3410

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

TRUE COPY

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

INDICTMENT FOR

ATTEMPTED MURDER
§16-03-0029

At a Court of General Sessions, convened on the 7th day of May, 2021, the Grand Jurors of Abbeville County present upon their oath:

The defendant, Lamarcus Alexander Stewart II, on or about September 6, 2020, in Abbeville County, South Carolina, did unlawfully, with malice aforethought, and with the intent to kill, attempted to kill Taliaferro Mial Cunningham. All in violation of 16-03-0029, Code of Laws of South Carolina (1976, as amended)

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

Micah E. Black
Assistant Solicitor

WITNESSES

Ware Shoals Police Department

WARRANT NUMBER

2020A0120300221

Foreman of the Grand Jury

Date: 5-7-2021

VERDICT

TRUE BILL

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

May Term, 2021

Indictment # 2021GS01-0394

THE STATE

vs.

LAMARCUS ALEXANDER STEWART, II

INDICTMENT FOR

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR: 3410

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

FILED BY Sharon Boggs

178

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

INDICTMENT FOR

ATTEMPTED MURDER
§16-03-0029

At a Court of General Sessions, convened on the 7th day of May, 2021, the Grand Jurors of Abbeville County present upon their oath:

The defendant, Lamarcus Alexander Stewart II, on or about September 5, 2020, in Abbeville County, South Carolina, did unlawfully, with malice aforethought, and with the intent to kill, attempted to kill Minor [redacted] All in violation of 16-03-0029, Code of Laws of South Carolina (1976, as amended)

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

Micah E. Black
Assistant Solicitor

180

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)
STATE)
VS.)
LAMARCUS ALEXANDER STEWART, II)
AKA: LAMARCUS ALEXANDER STEWART, II)
Race: Black Sex: M Age: 33)
DOB: [redacted])
Address: [redacted])
City, State, Zip: [redacted])
DL#* [redacted] SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021GS01-0392

A/W#: 2020A0120300219
Date of Offense: 09/06/2020
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

*CDL Yes ☐No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Assault and Battery of a High and Aggravated Nature (ABHAN)

In violation of § 16-03-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. (Cap of 15)

ATTEST:

David M. Stumbo, Solicitor SC Bar # 72105 Defendant Attorney for Defendant SC Bar # 68623

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 13 (Thirteen) days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years

and/or to pay a fine of $____; provided that upon the service of ____ days/months/years/Time Served and or payment

of $____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

The sentence shall run
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2021-GS-01-393 & 394

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
350 days/months (Since Dec. 15 2020)
☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

TRUE COPY
Amanda Boggs
ABBEVILLE COUNTY CLERK OF COURT

SPECIAL CONDITIONS:

STATE VS. LAMARCUS ALEXANDER STEWART, II INDICTMENT/CASE#: 2021GS01-0392

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total $_____ plus 20% fee: _____ $_____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:		$
Fine may be pd. in equal consecutive weekly/monthly pmts. of $ _____ Beginning _____		
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/Deputy Clerk: Chastity Copeland
Court Reporter: Digital

Presiding Judge: [signature]
Judge Code: 2159
Sentence Date: 11-30-21

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STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)
STATE)
VS.)
LAMARCUS ALEXANDER STEWART, II)
AKA: LAMARCUS ALEXANDER STEWART, II)
Race: Black Sex: M Age: 33)
DOB: [redacted])
Address: [redacted])
City, State, Zip: [redacted])
DL#* [redacted] SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021GS01-0393

A/W#: 2020A0120300220
Date of Offense: 09/06/2020
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

*CDL Yes ☐No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Assault and Battery of a High and Aggravated Nature (ABHAN)

In violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. (Cap of 15)

ATTEST:

David M. Stumbo, Solicitor 72105 SC Bar # Defendant Attorney for Defendant 68623 SC Bar #

WHEREFORE, the Defendant is committed to the ☑ State Department of Correction ☐ County Detention Center;

for a determinate term of 13 (Thirteen) days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years

and/or to pay a fine of $____; provided that upon the service of ____ days/months/years/Time Served and or payment

of $____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

The sentence shall run
☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2021-GS-01-392 & 394

☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
350 (days/months (Since Dec. 15, 2020)
☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

TRUE COPY
Shanda Boggs
ABBEVILLE COUNTY CLERK OF COURT

SPECIAL CONDITIONS:

STATE VS. LAMARCUS ALEXANDER STEWART, II INDICTMENT/CASE#: 2021GS01-0393

☐ PTUP after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total $_____ plus 20% fee: _____ $_____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:		$
Fine may be pd. in equal consecutive weekly/monthly pmts. of $ _____ Beginning _____		
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/Deputy Clerk: Chasity Copeland
Court Reporter: Dispose 2

Presiding Judge: J. J.
Judge Code: 2159
Sentence Date: 11-30-21

SCCA/217 (07/2021)

184

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)
STATE)
VS.)
LAMARCUS ALEXANDER STEWART, II)
AKA: LAMARCUS ALEXANDER STEWART, II)
Race: Black Sex: M Age: 33)
DOB: [redacted])
Address: [redacted])
City, State, Zip: [redacted])
DL#* [redacted] SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021GS01-0394

A/W#: 2020A0120300221
Date of Offense: 09/06/2020
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

*CDL Yes ☐No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Assault and Battery of a High and Aggravated Nature (ABHAN)

In violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. (cap of 15)

ATTEST:

David M. Stumbo, Solicitor 72105 SC Bar # Defendant Attorney for Defendant 68623 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 13 (thirteen) ~~days/months~~ years/Time Served ☐ Youthful Offender Act not to exceed ____ years

and/or to pay a fine of $____; provided that upon the service of ____ days/months/years/Time Served and or payment

of $____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

The sentence shall run
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2021-GS-01-393 ; 2nd ~~394~~ 392

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
350 days/months (Since Dec. 15, 2020)
☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

TRUE COPY
Shandai Boggs
ABBEVILLE COUNTY CLERK

SPECIAL CONDITIONS:

STATE VS. LAMARCUS ALEXANDER STEWART, II INDICTMENT/CASE#: 2021GS01-0394

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

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Clerk of Court/Deputy Clerk: Charlotte Copeland
Court Reporter: Bj Lee

Presiding Judge: Judge Code: 2159
Sentence Date: 11-30-2021

SCCA/217 (07/2021)