

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Beaufort County

Deadra L. Jefferson, Circuit Court Judge

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MAY 21 2014

**S.C. Supreme Court**

DOMINIC GILBERT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002565

---

APPENDIX

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STATE OF SOUTH CAROLINA      COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT            2010-GS-07-02391

STATE OF SOUTH CAROLINA	)	
	)	TRANSCRIPT OF RECORD
-vs-	)	
	)	February 27, 2012
DOMINIC GILBERT,	)	
	)	Charleston, South Carolina
Defendant.	)	

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Meredith Bannon, Assistant Solicitor  
Attorney for the State

Helen Dovell, Esquire  
Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR  
Circuit Court Reporter

1 (February 27, 2012.)

2 THE COURT: All right. Madame Solicitor,  
3 what do you have?

4 MS. BANNON: Thank you, Your Honor, standing  
5 before you is Mr. Dilbert, Mr. Gilbert, and Mr. Green.  
6 All their cases were called for trials this morning, and  
7 a plea agreement has been reached with the state.

8 Mr. Green's represented by Hector Esquivel,  
9 Mr. Gilbert is represented by Helen Dovell, and  
10 Mr. Dilbert is represented by Ms. Margie Wright-Matthews,  
11 and each is pleading to something slightly different,  
12 Your Honor.

13 Mr. Green is charged with attempted murder  
14 and possession of a sawed off shotgun for a negotiated  
15 eight years for ABHAN, and the state is dismissing his  
16 charge of possession of a sawed off shotgun pursuant to  
17 the plea deal. I'm handing the null proesse to the clerk.

18 Mr. Gilbert is pleading straight up to ABHAN  
19 with the sentence handed over to Your Honor.

20 THE COURT: He's pleading down from attempted  
21 murder as well, correct?

22 MS. BANNON: Correct, and the state is also  
23 dismissing possession of a sawed off shotgun charge. The  
24 state requests to reserve the right to ask for more time  
25 than the previous plea offer, and then Mr. Michael

1 Dilbert is pleading to ABHAN for eight years.

2 THE COURT: All right. You're Tremayne  
3 Green?

4 DEFENDANT GREEN: Yes, sir.

5 THE COURT: And you're Dominick Gilbert? In.

6 DEFENDANT GILBERT: Yes, sir.

7 THE COURT: And you are Michael --

8 DEFENDANT DILBERT: Yes, sir.

9 THE COURT: All right. Mr. Green, the  
10 solicitor tells me you are charged with murder and  
11 attempted murder, which is up to 30 years, and a shotgun  
12 charge and that you are being allowed to plead guilty to  
13 assault and battery of a high and aggravated nature.

14 You could get up to 20 years for that. You  
15 want to plead guilty to assault and battery of a high and  
16 aggravated nature?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And then Mr. Dominick Gilbert,  
19 you were also charged with attempted murder, and you had  
20 a shotgun charge. The state will allow you to plead  
21 guilty to assault and battery of a high and aggravated  
22 nature up to 20 years. You want to plead guilty to that  
23 with the shotgun charge being dismissed?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And then, Mr. Michael Dilbert,

1 you are also charged with attempted murder, up to 30  
2 years, and you're being allowed to plead guilty to  
3 assault and battery of a high and aggravated nature. You  
4 could get up to 20 years for that. You want to plead  
5 guilty to assault and battery of a high and aggravated  
6 nature?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Each of you gentlemen have some  
9 rights that you're giving up when you plead guilty,  
10 namely, the right to a jury trial. If you want a jury  
11 trial, while we were prepared to start that this  
12 afternoon, at that point the state then has to present  
13 enough evidence to convince 12 jurors that you are guilty  
14 beyond a reasonable doubt.

15 All 12 have to agree that you're guilty in  
16 order to convict you, and, if convicted, you have the  
17 right to appeal. You can challenge the state's evidence,  
18 put up evidence against you, testify if you want to, and  
19 if you don't want to testify, the judge will instruct the  
20 jury not to hold that against you while they are  
21 deliberating.

22 Do you understand those rights, Mr. Green?

23 DEFENDANT GREEN: Yes, sir.

24 THE COURT: And you wish to waive those  
25 rights and plead guilty?

1 DEFENDANT GREEN: Yes, sir.

2 THE COURT: You understand those rights, Mr.  
3 Gilbert?

4 DEFENDANT GREEN: Yes, sir.

5 THE COURT: And you wish to waive those  
6 rights and plead guilty?

7 DEFENDANT GREEN: Yes, sir.

8 THE COURT: And then, Mr. Dilbert, you  
9 understand those rights that I just told you about?

10 MS. WRIGHT-MATTHEWS: Your Honor, there was  
11 somebody talking at the back door. Our attention got  
12 diverted. It was someone's from his family so I  
13 apologize.

14 Did you understand those rights?

15 DEFENDANT DILBERT: Yes, sir.

16 THE COURT: Did you hear me tell you about  
17 the rights you have?

18 DEFENDANT DILBERT: Yes, sir.

19 THE COURT: And you don't want to have any of  
20 those jury trial rights?

21 DEFENDANT DILBERT: No, sir.

22 THE COURT: You want to give them all up?

23 DEFENDANT DILBERT: Yes, sir.

24 THE COURT: And you want to plead guilty  
25 today?

1 DEFENDANT DILBERT: Yes, sir.

2 THE COURT: All right. Mr. Green, are you  
3 pleading guilty to this charge because you are guilty of  
4 it?

5 DEFENDANT GREEN: Yes, sir.

6 THE COURT: Mr. Gilbert, you're pleading  
7 guilty because you're guilty?

8 DEFENDANT GILBERT: Yes, sir.

9 THE COURT: And, Mr. Dilbert, are you  
10 pleading guilty because you're guilty? Mr. Dilbert,  
11 could I have your attention? Are you pleading guilty  
12 because you're guilty?

13 DEFENDANT GILBERT: Yes, sir.

14 THE COURT: All right. Mr. Green, are you  
15 under the influence of any drugs or alcohol today?

16 DEFENDANT GILBERT: No, sir.

17 THE COURT: Mr. Gilbert, are you under the  
18 influence of any drugs or alcohol today?

19 DEFENDANT GILBERT: No, sir.

20 THE COURT: Mr. Dilbert, are you under the  
21 influence of any drugs or alcohol today?

22 DEFENDANT DILBERT: No, sir.

23 THE COURT: All right. Mr. Green, are you  
24 satisfied with your lawyer?

25 DEFENDANT GREEN: Yes, sir.

1 THE COURT: Do you need to spend any more  
2 time with him?

3 DEFENDANT GREEN: No, sir.

4 THE COURT: How about you, Mr. Gilbert? Are  
5 you satisfied with with your lawyer?

6 DEFENDANT GILBERT: Yes, sir.

7 THE COURT: Do you need to spend any more  
8 time with her?

9 DEFENDANT GILBERT: No, sir.

10 THE COURT: And, Mr. Dilbert, are you  
11 satisfied with your lawyer?

12 DEFENDANT DILBERT: Yes, sir.

13 THE COURT: Do you need to spend any more  
14 tile with her?

15 DEFENDANT DILBERT: Yes, sir.

16 THE COURT: You do?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Well, chat away then. What do  
19 you need to talk about? Go ahead.

20 MS. MATTHEWS: Your Honor, may we step back  
21 here for a second to see what's going on?

22 THE COURT: Go ahead.

23 (Brief recess. )

24 MS. MATTHEWS: Thank you, Your Honor, for the  
25 time.

1 THE COURT: Okay. Do you have all your  
2 issues with your lawyer taken care of?

3 DEFENDANT GILBERT: Yes, sir.

4 THE COURT: Do you need any more time with  
5 her?

6 DEFENDANT GILBERT: No, sir.

7 THE COURT: All right. Mr. Green, other than  
8 the reduction from -- and the charge from attempted  
9 murder to assault and battery of a high and aggravated  
10 nature and the dismissal of the shotgun charge and a  
11 recommendation for a sentence, has anybody promised you  
12 anything or threatened you in any way to get you to plead  
13 guilty?

14 DEFENDANT GILBERT: No, sir.

15 THE COURT: Mr. Gilbert, other than your  
16 reduction in charges and the dismissal of the shotgun  
17 charge, has anybody promised you anything or threatened  
18 you to get you to plead guilty?

19 DEFENDANT GILBERT: Not threatened me, but  
20 kind of like a little sentence.

21 THE COURT: Well, you were told that I  
22 would -- that I had told your lawyer in chambers that we  
23 had had discussions. A previous offer had been made for  
24 eight years. I told her that you had a lot better chance  
25 of getting something close to that than you did on what

1 you would be sentenced to if you were convicted of  
2 attempted murder. Is that pretty much what you  
3 understand?

4 DEFENDANT GILBERT: Yes, sir.

5 THE COURT: That you're -- whatever you get,  
6 you'll get less than the 30 years.

7 DEFENDANT GILBERT: Right.

8 THE COURT: And it would probably be closer  
9 to eight years?

10 DEFENDANT GILBERT: Right.

11 THE COURT: Is that what you understand?

12 DEFENDANT GILBERT: Yes, sir.

13 THE COURT: But nobody promised you anything,  
14 did they?

15 DEFENDANT GILBERT: No, sir.

16 THE COURT: And nobody threatened you, did  
17 they?

18 DEFENDANT GILBERT: No, sir.

19 THE COURT: And they told you I haven't made  
20 up my mind on what the sentence is, but I'm going to  
21 listen to it and the state has said they still want to  
22 argue perhaps for some more time, but I haven't made up  
23 my mind one way or another, but I indicated to your  
24 lawyer that it would probably be closer to eight than it  
25 would be to 30. Is that what you understand?

1                   DEFENDANT GILBERT: Yes, sir.

2                   MS. DOVELL: And, Your Honor, if I may, it's  
3 always been my understanding that a straight up plea is  
4 without recommendations or negotiations. I understand  
5 the state's position, but that's always just been my  
6 understanding.

7                   THE COURT: Okay. Well, that's hopefully  
8 what I meant to convey, is that they're going to  
9 recommend eight years on Mr. Green. Mr. Gilbert has  
10 negotiated a plea for eight years, but your sentence is  
11 whatever I decide it will be.

12                   DEFENDANT GILBERT: That ain't what I was  
13 told.

14                   MS. DOVELL: That's what he just explained to  
15 you, that it's -- he did talk about this, and that's what  
16 he just told me.

17                   THE DEFENDANT: I want a jury trial.

18                   THE COURT: Again, I'm not trying to convince  
19 you one way or another, Mr. Gilbert, I am just trying to  
20 make sure you understand. I'm not saying what I'm going  
21 to give you at this point, I just told your lawyer that  
22 if you had an attempt to get close to eight years, that  
23 you really ought to take it because if you were convicted  
24 of attempted murder, you would probably get close to 30  
25 years. But I don't know what I'm going to sentence you

1 to at this point, and I'm just getting across to you that  
2 there are no promises made to you as to what your  
3 sentence will be. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: At least you indicated that to  
6 me.

7 THE DEFENDANT: Yes, sir.

8 MS. DOVELL: If I may too, I've explained to  
9 my client it gives me the opportunity to argue for less  
10 than eight.

11 THE COURT: That is true as well.

12 MS. DOVELL: Whereas the other two don't have  
13 that opportunity.

14 THE COURT: She's free to argue for less, the  
15 state is free to argue for more. Okay? All right.

16 Now, Mr. Gilbert, you have reached an  
17 agreement, what we call a negotiated plea with the state,  
18 and your sentence will be eight years. Do you understand  
19 that?

20 DEFENDANT DILBERT: Yes, sir.

21 THE COURT: Has anyone promised you anything  
22 or threatened you to get you to plead to this today?

23 DEFENDANT DILBERT: No, sir.

24 THE COURT: Mr. Green, how old are you?

25 DEFENDANT GREEN: Thirty-two.

1 THE COURT: How far did you get in school?

2 DEFENDANT GREEN: GED.

3 THE COURT: Are you married?

4 DEFENDANT GREEN: No.

5 THE COURT: Did you work before you got  
6 arrested?

7 DEFENDANT GREEN: No.

8 THE COURT: Do you have children?

9 DEFENDANT GREEN: Yeah.

10 THE COURT: How many?

11 DEFENDANT GREEN: Four.

12 THE COURT: All right. Mr. Gilbert, how old  
13 are you?

14 DEFENDANT GILBERT: Twenty-two.

15 THE COURT: How far did you get in school?

16 DEFENDANT GILBERT: Eleventh.

17 THE COURT: Did you work before you got  
18 arrested?

19 DEFENDANT GILBERT: Yes, sir. Actually, the  
20 day before.

21 THE COURT: All right. Are you married?

22 DEFENDANT GILBERT: No, sir.

23 THE COURT: Do you have children?

24 THE DEFENDANT: No, sir.

25 THE COURT: Mr. Dilbert, how old are you?

1 DEFENDANT DILBERT: Nineteen.

2 THE COURT: How far did you get in school?

3 DEFENDANT DILBERT: Eleventh.

4 THE COURT: Did you work before you got  
5 arrested?

6 DEFENDANT DILBERT: Yes, sir.

7 THE COURT: Are you married?

8 DEFENDANT DILBERT: No, sir.

9 THE COURT: Do you have children?

10 DEFENDANT DILBERT: No, sir.

11 THE COURT: All right. In your opinion, does  
12 Mr. Green understand what he's doing here today, waiving  
13 his right to a jury trial and pleading guilty?

14 MR. ESQUIVEL: In my opinion he does, Your  
15 Honor.

16 THE COURT: How about Mr. Gilbert? Does he  
17 understand what he's doing waiving his right to a jury  
18 trial and pleading guilty?

19 MS. DOVELL: Yes, sir.

20 THE COURT: And does Mr. Dilbert understand  
21 what he's doing waiving his right to a jury trial and  
22 pleading guilty?

23 MS. MATTHEWS: My opinion is that he does.

24 THE COURT: I find their pleas are freely,  
25 voluntarily, and intelligently made. What would the

1 state like to tell me about the cases?

2 MS. BANNON: The general facts are on  
3 November 13, 2010, out here in Seabrook, Benjamin Brown,  
4 who is here in the courtroom, he would like to address  
5 Your Honor as well. He was the victim. He was in his  
6 man cave, watching a football game, and got a phone call  
7 from a guy named A.J. who was later determined to be  
8 Mr. Dilbert on the end, asking to buy some weed.

9 Mr. Brown is a drug dealer and he was out,  
10 and a couple minutes later, Mr. Dilbert pulls up in his  
11 dad's Pontiac DeVille, gets out and comes up to the man  
12 cave and again asked for some marijuana, and, again,  
13 Mr. Brown says he's out.

14 At that point, Mr. Gilbert and Mr. Green,  
15 along with Mr. Kelson, who is not pleading, comes running  
16 up around the edge of the shed. Mr. Green and  
17 Mr. Gilbert have sawed-off shotguns. They start shooting  
18 up the shed with birdshot, and they all take off in  
19 Mr. Dilbert's dad's car. A neighbor, Michael Brian, sees  
20 all this go down, calls 911.

21 While law enforcement is responding out to  
22 this area, a Beaufort PD officer sees this car matching  
23 the description with the four black males coming at him,  
24 so he turns around and he tries to stop them, and the car  
25 stops and then it takes off down Salt Creek Road, and

1 very briefly, while they're turning, he can't see the car  
2 and it's a dead end road so the car stops.

3           They get all four guys out. Mr. Dilbert's  
4 the driver; Mr. Gilbert and Mr. Green are in the back.  
5 Mr. Kelson is in the front passenger seat. Mr. Dilbert,  
6 to his credit, does say that he was driving all four of  
7 them, they had been at Mr. Brown's residence, that he  
8 claimed he didn't have any knowledge of about what was  
9 about to go down, and he claimed that Mr. Gilbert and  
10 Mr. Green were the shooters and that when they turned the  
11 corner, they threw the shotguns out the open window.

12           Law enforcement went back, found the two  
13 sawed off shotguns lying in the grass right where that  
14 blind turn was. Law enforcement conducted GSR tests on  
15 all four men, and Mr. Gilbert, Mr. Green, and Mr. Kelson  
16 came back GSR positive. Mr. Dilbert did not. They  
17 conducted DNA tests on the two sawed off shotguns.

18           Mr. Gilbert's DNA was on the trigger, on the  
19 stock, all over one shotgun, and then Mr. Green's DNA was  
20 all over the other shotgun, and Mr. Brown was hit in his  
21 lower right back with the birdshot. He actually still  
22 has the birdshot in his back to this day, and he had to  
23 go to the hospital and receive treatment.

24           THE COURT: So when you make reference to a  
25 man cave, are you speaking of his place of abode?

1 MS. BANNON: No, Your Honor. He has a  
2 trailer, and then out back he had a corrugated metal -- I  
3 guess you would call it a shed, so there is a flat screen  
4 TV, a couple couches, pillows, where he went to watch  
5 TV and possibly deal out of.

6 THE COURT: Okay. What would y'all like to  
7 tell me about Mr. Green?

8 MR. ESQUIVEL: May it please the Court, Your  
9 Honor: Mr. Green has resided here in Beaufort for the  
10 past 11 years. Before that, he lived in Connecticut for  
11 a little bit. He's from Columbia. He's married. His  
12 wife, Annette, is seated back there in the blue. He does  
13 have four girls, ages nine, seven, three, and one.  
14 Obviously, the youngest one was born while he was over at  
15 the detention center.

16 He's never really held down a solid job.  
17 He's held down odd jobs, trying to make ends meet and  
18 trying to support his daughters. We've had this plea  
19 worked out for a little bit of time, barring a little  
20 speed bump this morning. He's admitted his involvement.  
21 He wants to move on with his life.

22 We think your recommendation is reasonable  
23 under all the facts and circumstances and ask that the  
24 state -- that the Court accept the recommendation, Your  
25 Honor.

1           THE COURT: All right. What do you want to  
2 tell me about Mr. Gilbert?

3           MS. DOVELL: Thank you very much, Your Honor.  
4 May it please the Court: Dominick Gilbert, as he says,  
5 is 22 years old. He's a lifelong resident of the  
6 Beaufort area. Most recently he lived in Grays Hill area  
7 before this incident occurred.

8           He's here with his mother, Stacy Alston, and  
9 also with his brother, Bruce Gilbert, who happens to be  
10 his twin brother, not identical, but they're still close.

11           It's been a really long road for Dominick to  
12 get here. It's really difficult when there is somebody  
13 who, shall we say, is not necessarily a worthy victim  
14 because of his own transgressions of the law, and I think  
15 that were this to go to trial, some of the facts might  
16 not be as awful as they sound as far as the shooting at  
17 the shed. I think forensically it would appear that  
18 maybe there was one shot at the shed.

19           Mr. Brown's injuries, while I'm sure they  
20 have affected his life, are not life threatening in any  
21 way. He was released from the hospital hours, I would  
22 say, after he was admitted. Your Honor, a little bit  
23 more about Dominick. He worked construction with his  
24 uncle Ellis Alston, and as he said, he worked up until  
25 the day before this incident, and it was on a Saturday.

1           He is single. He has no children. He has  
2 got a life ahead of him, Your Honor, and I would like to  
3 make the case for you to consider giving him a six-year  
4 sentence, which is what was extended to him last month.  
5 He was originally given an eight-year ABHAN offer last  
6 month that was a six-month offer to try to move this case  
7 along, but as I said, it has been a long road and it has  
8 been very hard for him to stand in front of the Court and  
9 to say that he is guilty.

10           I've enjoyed working with Dominick. He does  
11 have a great life ahead of him. I've actually spoken to  
12 one of his other sisters, Your Honor, his younger sister,  
13 Katrina, and I can tell you that his family does care  
14 very much for him.

15           Your Honor, as far as the facts go, just to  
16 jump back, as far as GSR and DNA, obviously GSR can hop  
17 on to clothing, hands, any surface when it comes into  
18 contact with another surface that has already been  
19 dirtied by GSR, like the back of a police car. DNA can  
20 stay on a weapon for as long as possible.

21           I just throw some of these things out, Your  
22 Honor, because some of the things that could have come to  
23 trial that might have mitigated the circumstances of this  
24 case. I would ask Your Honor to please, please consider  
25 giving Dominick a six-year sentence as he was offered

1 last month, and if his mother or his brother wish to say  
2 anything to the Court, at Your Honor's pleasure.

3 THE COURT: If they would like to, that's  
4 fine.

5 THE WITNESS: Yeah, I would just like to  
6 apologize to Court, and, Mr. Brown, I would like for him  
7 to get that six-year sentence.

8 THE COURT: Okay.

9 THE WITNESS: I'm the mother, and I hate to  
10 see my son going through this. His father is here too,  
11 Bruce Gilbert, and his other brother is here also.

12 I don't know what to say because right now my  
13 heart is full. I just want the best for my son because I  
14 do love him.

15 THE COURT: All right. Thank you. Anyone  
16 else?

17 MS. DOVELL: Would anybody else like to say  
18 anything? Thank you.

19 What would you like to tell me about  
20 Mr. Dilbert?

21 MS. MATTHEWS: Your Honor, Mr. Dilbert is 19  
22 years old. He doesn't have a record. I'm going to tell  
23 you what happened, I know this is negotiated, but from  
24 his standpoint.

25 He knew Lamont. That's who he hung with,

1 that's the gentleman that is going to be going to trial,  
2 Lamont Kelson. Lamont knew Mr. Gilbert. He and Lamont  
3 had been together that day. They ended up picking up  
4 someone that Lamont is related to and that -- and he had  
5 with him Mr. Green.

6 He's the driver. It is his father's vehicle.  
7 He did a lot of work on that vehicle to have it, and  
8 he -- they did something stupid. It was a suggestion for  
9 him to go and get -- to buy drugs where he had bought  
10 marijuana before from Mr. Brown.

11 His testimony, if he was called to testify  
12 would have been that he gave Mr. Brown the \$10. There  
13 was another gentleman in this shed, the drug shed, and  
14 that person was getting it ready, and that's when this  
15 whole matter took place.

16 He apologizes sincerely to the Court. He's  
17 only 19 years old. He does not have a record. He is the  
18 one who cooperated with police, and I'm not so sure why  
19 it's been difficult regarding negotiating and why the bar  
20 has been set so high as it relates to him.

21 I tried to get it not negotiated but upon  
22 recommendation because out of this entire matter of all  
23 the people standing up here, he's the only one that  
24 cooperated and does not have a record and did not have  
25 GSR on him at all, and it's never been suggested that

1 he's anything except for hand of one, hand of all, and  
2 that's why he's here today.

3           You know what, he still said I'm going to  
4 take my punishment. His mother came in, afterwards,  
5 after we had done all the negotiations, and he keeps  
6 trying to console me, Your Honor, because this kid is a  
7 good kid. He did wrong. He admits he shouldn't have  
8 done what his daddy always told him not to, had these  
9 guys in the car. He did wrong.

10           His father is here, along with his mother,  
11 and I think they had about 15 people this morning, but I  
12 think there are the three here. If his mom and dad -- I  
13 know it's negotiated, but if his mom and dad wants to say  
14 anything, I would like -- because this victim was the  
15 dad's friend, knew him.

16           THE COURT: Okay. Yes, sir. Would you like  
17 to say something?

18           THE WITNESS: Yes. I just want you to know  
19 that is my son, and he never had got in trouble. He was  
20 working until all this happened, and on the day had a job  
21 offered to him, and I just want y'all to have mercy on  
22 him because, like I say, he don't even have a criminal  
23 record, and I --

24           THE COURT: Didn't get a chance to hear from  
25 Mr. Brown, if he wanted to speak.

1 MS. MATTHEWS: Mr. Brown is over there in the  
2 plat shirt.

3 MS. BANNON: Mr. Brown?

4 THE WITNESS: Mr. Brown requests that I read  
5 his statement.

6 MS. BANNON: This is our victim advocate.

7 THE WITNESS: Your Honor, I'm happy to know  
8 that justice will finally be served on the ones that  
9 committed this awful crime upon me. Your Honor, I was  
10 shot and at the time didn't know if one of the bullets  
11 would be a fatal shot and end my life.

12 At the time the shooter, Gilbert, was looking  
13 in my face and while pulling the trigger he was laughing  
14 as though my life was a joke to him. I feel he should be  
15 given a sentence of more than eight years. With the  
16 others, I think they should also be responsible for  
17 restitution of property that was damaged during this act  
18 of violence.

19 My anger is toward Gilbert because of how  
20 senseless this was. I still have three pellets in my  
21 back and still going to the doctor. So, Your Honor, I'm  
22 asking that you take my viewpoint into consideration when  
23 you make your decision.

24 Thank you.

25 THE COURT: All right. Thank you.

1 Mr. Green, do you want to say anything?

2 DEFENDANT GREEN: Yes.

3 THE COURT: Go ahead.

4 DEFENDANT GREEN: I do. Your Honor, I feel  
5 as if I'm innocent. I mean, I probably got the worst  
6 record of anybody in here, I'm admitting that, but don't  
7 be like you just -- you ain't know what was going on and  
8 so innocent about the situation. As far as Dilbert's  
9 standpoint, you know what I'm saying, he's trying to make  
10 everybody just seem so bad and so -- you know what I  
11 mean, like he ain't have nothing to do that.

12 Shit, we're up here pleading guilty to that  
13 now, but, I mean, it's just the fact that it's just a  
14 bunch of bull crap, man, but for the simple fact I'm  
15 going to take my eight years and go do it, but how can a  
16 man shoot you in your back when he looking you in your  
17 face? Then Dilbert were behind there like he -- I'm just  
18 ready to go, man.

19 THE COURT: Mr. Gilbert, would you like to  
20 say anything?

21 DEFENDANT GILBERT: No, sir.

22 MS. DOVELL: I would like to respond to  
23 Mr. Brown, if I may. Like Green pointed out, it is  
24 interesting how you can look someone in the face and get  
25 shot in the back, especially when the forensics support

1 there was one shot in the cartridge, or the shell did not  
2 match the gun that was supposedly handled by my client.

3 I feel it's necessary for me to stand up for  
4 my client like this because I feel it's obvious that  
5 Mr. Brown does have a beef with Mr. Gilbert, and I think  
6 that bias is part of the reason why he is taking the plea  
7 today, Your Honor, because Mr. Brown feels so strongly  
8 about this and because he's willing to testify to certain  
9 facts.

10 Your Honor, I just have to tell you that  
11 Mr. Brown may not be the most reliable of people, and  
12 like Mr. Brown, Mr. Gilbert is up here taking  
13 responsibility, and I think that speaks a lot for him.

14 THE COURT: Mr. Dilbert, would you like to  
15 say anything?

16 DEFENDANT DILBERT: I just want to say I  
17 apologize to Mr. Brown. I just want to apologize to you,  
18 my mother, and my father. I apologize for disappointing  
19 you. I know my act was reckless and stupid. I just want  
20 to tell you that I still love you, and, Ms. Margie, I  
21 want to thank you for everything you could do for me, and  
22 that's it.

23 THE COURT: All right. Well, one of the  
24 problems that you have is that you folks are kind of  
25 living in a world that, you know, it may make sense to

1 you, but it doesn't make sense to a lot of us, and going  
2 out and using firearms and dealing in drugs, or what  
3 seems like silly little trifling amounts, \$10, but I  
4 don't know what went on that day. I suppose maybe a jury  
5 could sort it out, maybe not, figure out whose more  
6 culpable than not, but the bottom line is that when you  
7 hear the kind of facts that I heard, they could easily  
8 support a conviction of attempted murder, and the fact of  
9 the matter is that each of you all have been well served  
10 by lawyers who got the solicitor to come around to see  
11 this case in a little more favorable light to you.

12           That doesn't excuse your behavior. I still  
13 find it incomprehensible that people view firearms and  
14 dealing drugs and these sorts of things, but people do  
15 so. You bear the consequences, whether you are just  
16 hanging out with the wrong crowd like it sounds  
17 Mr. Dilbert might have been, or maybe you were more  
18 culpable, like Mr. Green and perhaps Mr. Dilbert.

19           I don't know. I can't sort those things out,  
20 but you got the benefit of the bargain by coming in and  
21 pleading guilty and limiting your exposure down to a lot  
22 less than what you probably would get had you been  
23 convicted, because I'm telling you, based on what I heard  
24 in chambers and just what I heard again on these facts  
25 alone, if you were convicted of attempted murder, you

1 would probably be facing a minimum of 20, maybe even  
2 closer to 30, depending on how the testimony got played  
3 out and what kind of records were involved.

4           So I know eight years seems like a long time,  
5 but it's a lot less time than you were exposed to, so at  
6 this point, everybody gets fed the same. It's going to  
7 be eight years for each. I think, Mr. Green and  
8 Mr. Gilbert, I've had written down here get credit for  
9 471 days. Mr. Dilbert gets credit for 121 days, so  
10 everybody will get the appropriate amount of credit, and  
11 good luck to each of you.

12

- - -

13

(Whereupon, the proceedings were concluded.)

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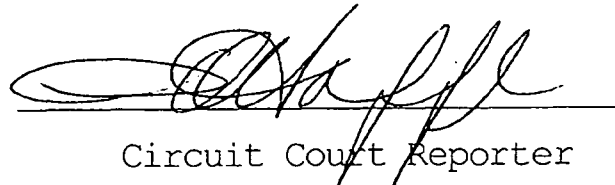
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25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 27th of February 2012.

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

August 29, 2012



Circuit Court Reporter

FORM 5

2012-CP-07-2600

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA )

County of Beaufort )

Dominic Gilbert #350007 )

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

v. )

State of South Carolina )

APPLICATION FOR

POST-CONVICTION RELIEF

12 JUL 16 PM 4:45

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention EVANS Correctional Institution (610 Highway 9 West, Bennettsville, SC 29512)
2. Name and location of Court which imposed sentence Beaufort County Criminal General Session Court
3. Name(s) of co-defendant(s) (if any) Lamont Kelson, Michael Dilbert and Tremaine Green
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Indictment Numbers: (Unknown) Charges:
  - (b) Attempted Murder, Attempted Arm Robbery, Poss. of Saw off Shot-g

(c) \_\_\_\_\_

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

(a) (Sentence date): 2-27-12

(b) (Terms) Recommended Sentence of 8 years Violent; Nolle Prose

(c) Attempted Arm Robbery and Poss. of Saw-Off Shotgun; Guilty Plea to (ABHAN)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

NO

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

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

(a) I was incompetent of the Appeal process to withdraw Plea.

(b) The Sentence was not in accordance with plea agreement terms.

(c) \_\_\_\_\_

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

- (a) U.S. Constitution 14<sup>th</sup> Amendment
- (b) U.S. Constitution 6<sup>th</sup> Amendment
- (c) S.C. Rules of lawyer Professional Conduct

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

- (a) Denial of fundamental fairness essential to concept of Justice
- (b) Ineffective inadequate representation
- (c) Fraud, Dishonest, and Deceit.

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_
- (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? \_\_\_\_\_

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?

YES

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

(a) which grounds have been presented:

- i. Due Process Violation
- ii. Ineffective Counsel
- iii. Pruf. 1.3 (Diligence) SCACR

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

- i. State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869 (1997)
- ii. Strickland v. Washington, 460 U.S. 168, 104 S.Ct. 2052 (1984)
- iii. In RE De Pau (S.C. 2002) 350 S.C. 265, 565 S.E.2d 305

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? N/A
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (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. Helen Roper
  - ii. Beaufort County Public Defenders Office  
Address: (Unknown)
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. At the Initial Plea hearing
  - ii. During Plea Sentencing Phase
  - iii. \_\_\_\_\_

- 19. State clearly the relief you seek in filing this application: I'm seeking that my Plea be vacated for instruction to New Trial and conviction Overturned based on erroneous deprivation of my right to trial, which my counsel used deceit in terms of Plea agreement
- 20. Are you now under sentence from any other court that you have not challenged?  
NO

STATE OF SOUTH CAROLINA            )  
 County of Beaufort                    )

VERIFICATION

I, Dominic Gilbert, 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.

Dominic Gilbert

SWORN to and subscribed before me this 11  
 day of July, 2012.  
[Signature]  
 Notary Public (L.S.)

My Commission Expires: 8-18-18

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

I, Dominic Gilbert, 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.

Dominic Gilbert  
*Applicant*

SWORN or affirmed to and subscribed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Notary Public*

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2012-CP-07-2600
	)	
Dominic J. Gilbert, # 350007,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

---

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 16, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted at the January 2011 term of the Beaufort County Grand Jury for attempted murder (2011-GS-07-2391) and possession of a sawed off shot gun (2010-GS-07-2392). The Applicant was represented by Helen Roper Dovell, Esquire.

On February 27, 2012, the Applicant pled guilty to assault and battery of a high and aggravated nature. The remaining weapons charge was *nolle prossed*. Applicant was sentenced by the Honorable Roger M. Young, Sr. to confinement for a period of 8 years. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Beaufort County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina

Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective inadequate representation.
2. Denial of fundamental fairness essential to the concept of justice.
3. Fraud, dishonesty, and deceit.

## III.

The Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

#### IV.

The Respondent submits that the Applicant's remaining allegations are without merit because the applicant has failed to specifically set forth the grounds upon which his application is based in accordance with S.C. Code Ann. §17-27-50. The respondent moves for summary dismissal pursuant to South Carolina Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

#### V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the allegation of ineffective assistance of counsel and the remaining allegations be summarily dismissed.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON  
Assistant Attorney General

By: Ash R. Wilson  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

February 25, 2013.

STATE OF SOUTH CAROLINA )

COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS

2012-CP-07-2600

DOMINIC J. GILBERT, #350007 )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL


STATE OF SOUTH CAROLINA, )

Respondent. )

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

**John M. Tatum, III, Esquire**  
**P.O. Box 1107**  
**Beaufort, South Carolina 29901**

DATED this 25<sup>th</sup> day of February, 2013

  
 \_\_\_\_\_  
 Angela Bennett, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
 ) FOURTEENTH JUDICIAL CIRCUIT  
COUNTY OF BEAUFORT ) CASE NO.: 2012-CP-07-02600

DOMINIC GILBERT, )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 STATE OF SOUTH CAROLINA. )  
 )  
 )

**PCR HEARING**

held before the Honorable Deadra L. Jefferson  
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit  
in the Beaufort County Courthouse  
Beaufort County, South Carolina  
on Friday, August 30, 2013, Commencing at 9:30 a.m.

---

SUSAN "MIA" PERRON, CVR-CM-M  
Circuit Court Reporter - 9th Judicial Circuit  
Post Office Box 31865  
Charleston, South Carolina 29417-1865  
1-706-231-6028

---

COPY

## APPEARANCES OF COUNSEL

FOR THE PLAINTIFF: John M. Tatum, Esquire  
Harvey & Battey  
Post Office Box 1107  
Beaufort, South Carolina 29901

FOR THE STATE: Ashleigh R. Wilson, Esquire  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

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-----  
EXHIBITS

[None]

Dominic Gilbert v. the State  
PCR Hearing  
August 30, 2013

PROCEEDINGS

1  
2 THE COURT: This is Dominic J. Gilbert versus  
3 the State of South Carolina, 2012-CP-07-2600. It is  
4 before the Court on an application for Post Conviction  
5 Relief filed July 16th of 2012. The return was filed  
6 -- I have a return dated February 25th of 2013. He  
7 pled guilty to assault and battery of a high and  
8 aggravated nature. His remaining charges were nol-  
9 prossed. He was sentenced by Judge Young to a period  
10 of eight years. He did not file a direct appeal. He  
11 alleges ineffective -- inadequate representation,  
12 denial upon the mental fairness essential to the  
13 concept of justice, and fraud, dishonesty and deceit.  
14 He is represented by Mr. Tatum.

15 Is that correct?

16 MR. TATUM: Yes, Your Honor.

17 THE COURT: And the State is represented by  
18 Ms. Wilson.

19 Is the applicant ready to go forward?

20 MR. TATUM: Your Honor, before we begin, my  
21 client has requested that I make a motion for  
22 continuance.

23 THE COURT: Okay. Based on?

24 MR. TATUM: Your Honor, to articulate what he  
25 told me, he said this morning -- we met over in the

Dominic Gilbert v. the State  
PCR Hearing  
August 30, 2013

1 jail, and he had left some documents that he needed to  
2 provide to me, to discuss with me, in his jail cell  
3 and was not allowed to get those documents back from  
4 the cell. He was brought over here. I didn't -- I  
5 did not -- wasn't present for that. But that's what  
6 he's articulated to me, Your Honor.

7 THE COURT: What documents --

8 MR. TATUM: Documents relating --

9 THE COURT: -- that would be germane to this  
10 proceeding?

11 MR. TATUM: -- to his preparation for this  
12 hearing.

13 THE COURT: Well, he's not representing himself.  
14 You're representing him.

15 MR. TATUM: That's correct.

16 THE COURT: Are you prepared to go forward?

17 MR. TATUM: I am, Your Honor.

18 THE COURT: Okay. Then I really have not --  
19 cannot discern anything that would be the basis of a  
20 continuance, especially on a case that is now over a  
21 year old. And so if there's something, once he gets  
22 back, that he needs to provide to you and you feel the  
23 need to ask the Court to supplement the record, I  
24 certainly would entertain that. But I can't -- I'm  
25 hard-pressed to think of what he would have left in

Dominic Gilbert v. the State  
PCR Hearing  
August 30, 2013

1 his cell that would have been germane to these  
2 proceedings.

3 MR. TATUM: Okay, Your Honor.

4 THE COURT: Has he been able to articulate to  
5 you exactly what papers he's talking about? Because  
6 it's a forty-five minute drive to the jail and I don't  
7 think there's anything inappropriate in them denying a  
8 request to go back.

9 MR. TATUM: It was in his cell over here. It  
10 wasn't -- he indicates --

11 THE COURT: It's going to take forty-five  
12 minutes to get from there to here.

13 MR. TATUM: He indicates it was documents that  
14 he had prepared to discuss with me. That's all I was  
15 able to discern.

16 THE COURT: Okay. Well, we'll move forward with  
17 the hearing. If he gets back and there's something  
18 that he wants to make you aware of, I'm certain he can  
19 do that, and if you feel that it's something that's  
20 needed to supplement the record, you can advise the  
21 Court of that.

22 MR. TATUM: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 Are you ready to proceed?

25 MR. TATUM: I am, Your Honor.

Dominic Gilbert v. the State  
PCR Hearing  
August 30, 2013

1 THE COURT: You may call your first witness.

2 MR. TATUM: I would call Dominic Gilbert.

3 THE COURT: Sir, you can testify at counsel  
4 table. Raise your right hand to be sworn.

5 [Whereupon, Mr. Gilbert is duly sworn by the  
6 Court as follows: do you swear or affirm the  
7 testimony you give will be the truth]

8 THE WITNESS: Yes, ma'am.

9 THE COURT: You can put your right hand down,  
10 sir.

11 State your full name for the record.

12 THE WITNESS: Dominic Jaron Gilbert.

13 THE COURT: And that's with a J, your middle  
14 name; correct?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Okay. You may proceed.

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FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

Dominic Gilbert v. the State  
PCR Hearing  
August 30, 2013

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DOMINIC J. GILBERT,  
Having Been First Duly Sworn,  
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. TATUM:

Q. Dominic, you were arrested and charged out of an incident that occurred in 2010; is that correct?

A. Yes, sir.

Q. And you were charged with what at that time?

A. One count of attempted murder, one count of attempted armed robbery, and one count of possession with a sawed-off shotgun.

Q. And in February of 2012, you entered into a guilty plea to assault and battery of a high and aggravated nature, or ABHAN, as it's commonly known; is that correct?

A. Yes, sir.

Q. And who was your lawyer in this case?

A. Helen Dovell. Roper.

Q. She was known as Helen Roper at that time; is that correct?

A. Yes, sir.

Q. Did you have any discussions with your attorney, prior to the guilty plea, about whether or not to go to a jury trial?

Dominic Gilbert v. the State  
PCR Hearing  
August 30, 2013

1 A. Yes, sir.

2 Q. How would you describe your attitude with regard  
3 to pleading guilty? Would you -- is it fair to say that  
4 you were reluctant to go forward with a jury trial -- with  
5 a guilty plea?

6 A. No, sir.

7 Q. You were not reluctant to go forward with a jury  
8 plea [phonetic]?

9 A. Oh. Yes, sir. Yes, sir.

10 Q. Okay. And what was your lawyer's advice  
11 regarding a guilty plea?

12 A. She told me that there would be -- she told me I  
13 should take the guilty plea. I told her I wanted to go to  
14 trial, go through with a jury trial, but she insisted that  
15 I take the guilty plea.

16 Q. Did she, in fact, bring in other people to  
17 discuss the guilty plea with you?

18 A. Yes, sir.

19 Q. And was anyone from your family brought in?

20 A. Yes, sir.

21 Q. Who from your family was brought in to discuss  
22 this with you?

23 A. My mother, my twin brother.

24 Q. Were any other attorneys brought in to discuss  
25 it with you?

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1 A. Yes, sir.

2 Q. And, ultimately, what did you decide with regard  
3 to the guilty plea?

4 A. Come again?

5 Q. What did you decide with regard to the guilty  
6 plea prior to February of 2012?

7 A. To go through with it.

8 Q. Now, during the guilty plea proceedings there  
9 was a point where you stop everything and requested a jury  
10 trial; is that correct?

11 A. Yes, sir.

12 Q. In fact, you said in open court, I want a jury  
13 trial, did you not?

14 A. Yes, sir.

15 Q. And at that point, everybody in the courtroom  
16 knew that you wanted a jury trial; is that correct?

17 A. Yes, sir.

18 Q. And that was a pretty unusual and extraordinary  
19 thing to happen, wasn't it?

20 A. Yes, sir.

21 Q. Did any of your co-defendants request a jury  
22 trial in the middle of a guilty plea?

23 A. No, sir.

24 Q. You were the only one that did that; right?

25 A. Yes, sir.

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1 Q. And was your lawyer aware of your unhappiness  
2 with the guilty plea during that period?

3 A. Yes, sir.

4 Q. Did your lawyer at any time before, during or  
5 after your guilty plea advise you of your right to appeal  
6 the guilty plea?

7 A. No, sir.

8 Q. Did you ever ask your lawyer whether or not you  
9 could appeal the guilty plea?

10 A. Yes, sir.

11 Q. Did you ask her -- at what point?

12 A. I asked her in the beginning during guilty  
13 pleas, and after the guilty plea.

14 Q. And would you have appealed the guilty plea had  
15 you known you had the right to appeal it?

16 A. Yes, sir.

17 Q. Is there anything else that you wish to tell the  
18 Court about your case?

19 A. Yes, sir.

20 I would just like to say that if I was aware of  
21 the facts that -- and the circumstances there, I could  
22 have withdrawn my guilty plea. During guilty pleas,  
23 after, I most definitely would have -- I most definitely  
24 would have, just due to the fact that forensic of my case  
25 could prove otherwise that I was not guilty of the crime.

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1 That would be it.

2 MR. TATUM: Thank you, Your Honor.

3 THE COURT: Any questions for the witness?

4 MS. WILSON: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. WILSON:

7 Q. Mr. Gilbert, about how many times did you meet  
8 with Ms. Dovell before you pled guilty?

9 A. During that day?

10 Q. Just throughout the whole time she represented  
11 you.

12 A. I mean, I talked to her like -- over like  
13 fifteen months, I probably saw her like five times.

14 Q. And did she go over the discovery that she  
15 received from the State with you?

16 A. Part of it.

17 Q. Did she talk to you about defenses that she  
18 could present for you if you went to trial?

19 A. Yes. Yes, ma'am.

20 Q. Did you give her any witnesses or people to  
21 investigate?

22 A. Yes, ma'am.

23 Q. Did she -- when she got any plea offers from the  
24 State, did she discuss those with you?

25 A. Yes, ma'am.

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1 Q. Was it your decision to plead guilty?

2 A. Kind of sort of.

3 Q. What do you mean by that?

4 A. Since I first met her, I told her that I don't  
5 want to seek a plea. I told her, since day one, that I  
6 don't think I would ever take a plea. So that was it.

7 Q. Did you tell -- did you tell the Court, when you  
8 pled guilty, that you hadn't been threatened or coerced to  
9 plead guilty?

10 A. Ma'am?

11 Q. Did you tell -- when the Court asked you had you  
12 been threatened to plea guilty, did you tell them you  
13 hadn't been threatened?

14 A. I told him -- I told him that I wasn't  
15 threatened but I was kind of where I got a lesser plea.

16 Q. Did you tell them that you hadn't been promised  
17 anything to plead guilty?

18 A. No, ma'am.

19 Q. Do you recall telling the Court that you wanted  
20 to plead guilty?

21 A. I told him I wanted to plead guilty after the  
22 fact that they persuade me to take one after I told them I  
23 wanted a jury trial.

24 Q. Did you tell the Court that you were actually  
25 guilty?

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1 A. Yes, ma'am.

2 Q. Do you recall waiving your constitutional rights  
3 during the guilty -- during the guilty plea? Do you  
4 recall the Court telling you that you had a right to a  
5 jury trial, a right to remain silent, and a right to  
6 confront the witnesses against you? Did you tell the  
7 Court you wanted to waive those?

8 A. After the fact that I told him I wanted a guilty  
9 -- I mean, a jury trial, yes.

10 Q. Did you tell the Court that you were satisfied  
11 with Ms. Dovell's representation?

12 A. Yes.

13 Q. And today you're saying that you wanted to  
14 withdraw your plea because the forensics proved you were  
15 not guilty; is that correct?

16 A. Yes, ma'am.

17 Q. Was your DNA found on the weapon?

18 A. I don't -- I don't recall.

19 MS. WILSON: Okay. Thank you.

20 THE COURT: Any redirect of the witness?

21 MR. TATUM: No redirect, Your Honor.

22 THE COURT: You can call your next witness or  
23 you may rest.

24 MR. TATUM: That's our case, Your Honor.

25 THE COURT: Okay. The State may proceed.

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MS. WILSON: Yes, Your Honor. The State would call Helen Roper Dovell.

THE COURT: If the witness would come to the stand to be sworn.

MS. DOVELL: Good morning, Judge Jefferson.

THE COURT: Good morning.

[Whereupon, Ms. Dovell comes forward]

THE COURT: Raise your right hand.

[Whereupon, Ms. Dovell is duly sworn by the Court as follows: do you swear or affirm the testimony you give will be the truth]

THE WITNESS: I do.

THE COURT: If you would have a seat for us, please, and state your full name for the record, spelling your last name for the court reporter.

THE WITNESS: Yes, ma'am.

THE COURT: You're welcome.

[Whereupon, Ms. Dovell takes the witness stand]

THE WITNESS: My name is Helen Rose Roper Dovell. My last name is spelled D-O-V-E-L-L.

THE COURT: You may proceed.

MS. WILSON: Good morning, Ms. Dovell.

THE WITNESS: Good morning, Ms. Williams.

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HELEN R. DOVELL,  
Having Been First Duly Sworn,  
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILSON:

Q. How long have you been practicing law?

A. Been practicing law for close to nine years.

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

A. The past approximately six years has been  
criminal defense.

Q. And were you appointed or retained to represent  
Mr. Gilbert?

A. I'm an assistant public defender so I was  
appointed to represent him.

Q. And how many times do you recall meeting with  
him before he ultimately pled guilty?

A. Honestly, I would have to count the number back  
through my notes. I would say it was probably somewhere  
between six to ten times.

Q. And did you file Brady or Rule 5 motions on his  
behalf?

A. I did.

Q. And did you review the discovery material that  
you received of him?

A. I did.

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1           But if you would allow me to expand a bit on  
2 that. I filed a supplemental Rule 5 to request the DNA  
3 evidence, like all of the charts, grafts, everything about  
4 the DNA, so I could hire a DNA expert. I don't believe  
5 that I provided Mr. Gilbert with all of that raw data but  
6 I don't believe he actually asked me for it, either. To  
7 be quite honest, I had to have an expert explain it to me  
8 and I just did not believe that Mr. Gilbert would have  
9 understood like every single thing that was in them. And  
10 it's quite a lot of information.

11           Q. And can you tell us what else was in the Rule 5  
12 discovery that you received from the State?

13           A. I received an incident report. I received  
14 numerous videos and audio. Pursuant to my supplemental  
15 Rule 5, I received all of the DNA information. Is there  
16 something in particular you would like me --

17           Q. No. That's all right.

18           A. Okay.

19           Q. Prior to trial -- or prior to Mr. Gilbert  
20 pleading guilty, did you discuss with him the elements of  
21 the charges and what the State had to prove?

22           A. I did.

23           Q. And did you discuss his version of the facts  
24 with him?

25           A. Absolutely.

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1 Q. And did you discuss any possible defenses that  
2 you could present at trial?

3 A. I did.

4 Q. And what are those defenses that you could have  
5 presented?

6 A. Well, depending on what the facts were, if there  
7 -- if it could have come out at trial that the alleged  
8 victim in the case had presented a weapon of some sorts,  
9 he could have filed a self-defense -- self-defense as a  
10 defense. But that would have been the only defense I  
11 could think of besides his testifying and tell the jury  
12 his version of the facts in the hopes they would believe  
13 his version.

14 Q. Could you characterize the State's evidence  
15 against Mr. Gilbert?

16 A. Strong.

17 Q. Did he give any statements or anything?

18 A. He did not. Off the top of my head, I don't  
19 believe he did.

20 Q. Did he give any -- give you any potential  
21 witnesses or leads to investigate?

22 A. He did.

23 Q. Okay. And did you investigate those persons?

24 A. I did.

25 Q. And what kind of -- what did your investigation

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1 entail in this case?

2 A. Mr. Gilbert had given me the name I believe of a  
3 cousin, or some sort of a family member, where he was  
4 staying earlier that day. He gave me the man's name. I  
5 think it was a Mr. Green. And I had my investigator, Rick  
6 Chapman, follow up with Mr. Green. I believe that we were  
7 able to reach him at one point in time and Mr. Green  
8 stated that he was no where and didn't know nothing. We  
9 attempted to contact him again and we could not locate  
10 Mr. Green. And I believe that was his name, but I'm not  
11 one hundred percent sure.

12 Q. Did you, as a part of your investigation, review  
13 all the discovery and did you have to talk to any officers  
14 or any other witnesses or anything like that?

15 A. I did not -- I don't recall if I spoke directly  
16 with all of the deputies involved. I may have spoken with  
17 one of the investigators. I did retain a crime scene  
18 expert to go over what the alleged victim had given as the  
19 facts, as compared with all of the evidence found at the  
20 scene, like whether there were bullet holes in the shed,  
21 where the alleged victim was shot, where there were shell  
22 casings on the ground on the alleged victim's property, et  
23 cetera, so that he could -- he could reconstruct the crime  
24 scene as best as he could.

25 Q. And did you think that testimony would have been

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1 useful at trial? the testimony from that expert?

2 A. It would have been useful to impeach the victim  
3 in some ways. I do not believe that his testimony would  
4 have exonerated the defendant in that what he would have  
5 been able to testify to would not have placed the  
6 defendant somewhere else.

7 Q. And do you recall when you entered into plea  
8 negotiations on Mr. Gilbert's behalf?

9 A. I do.

10 Q. Was it early on in the process, or closer to  
11 preparing for trial?

12 A. Early on in the process, I received a plea offer  
13 from the State and the plea offer at first was actually  
14 what he -- the sentence that he received.

15 I remember several -- I think it was maybe the  
16 month before Mr. Gilbert decided to plead guilty, he was  
17 given an offer to plead to assault and battery high and  
18 aggravated for a negotiated six years. My client  
19 indicated that he wanted to think about it at the time,  
20 maybe talk to his mom -- I called his mom to see if she  
21 could speak with him, et cetera -- and, ultimately, he  
22 decided that he did not want to take that offer.

23 Q. And after he decided that he didn't want to --  
24 he rejected that plea offer, did you start preparing for  
25 trial?

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1           A.    I had been preparing for trial sort of along the  
2 way. But I continued to prepare for trial, yes. I was  
3 prepared to go forward with trial on the day that he  
4 pleaded guilty.

5           Q.    And on the day he pled guilty -- and you're  
6 saying that that's when -- that was going to be the day he  
7 started his trial; is that correct?

8           A.    That's correct.

9           Q.    And so when did the conversation turn from  
10 proceeding to trial to pleading guilty?

11          A.    I spoke with Dominic after I had met with the  
12 judge in chambers and spoke with the other attorneys who  
13 were representing the co-defendants, et cetera. It was my  
14 understanding that -- knowing what I knew about the facts  
15 of the case, if he had proceeded to trial I believe he --  
16 and if he was found guilty of attempted murder, he  
17 probably would have been sentenced more towards the higher  
18 end of closer -- somewhere closer to thirty years than  
19 closer to eight years.

20                    If we had proceeded to trial, I told Dominic  
21 that I think it's possible that he could have been found  
22 guilty of a lesser included offense of ABHAN anyway, to  
23 begin with, that he might not have been found guilty of  
24 attempted murder. But regardless of that, it was my  
25 understanding that while I could not promise him exactly

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1 what a judge would sentence him to, that he would probably  
2 receive a sentence of about eight years. And that is what  
3 I relayed to him at that time. I did have him speak with  
4 both of my bosses, Traci Campbell and Gene Hood. I did  
5 have his mom and his brother speak with him about it.

6 And I will admit that I did everything that I  
7 could to try to convince him of the wisdom of taking the  
8 plea offer. Now, if he felt that that was threatening or  
9 coercive, I can't say. But I was prepared to go to trial.  
10 I did my very best to relay everything to him, because I  
11 was very concerned about his being sentenced to a harsher  
12 penalty -- a harsher sentence if he were found guilty at  
13 trial.

14 Q. So, ultimately, when he pled was it a straight-  
15 up plea?

16 A. It was a straight-up plea.

17 The State had agreed to reduce the attempted  
18 murder charge to assault and battery high and aggravated,  
19 and dismiss the sawed-off shotgun charge if he pleaded  
20 guilty. But there was no recommendation or negotiation  
21 from the State.

22 Q. And did you inform him of the consequences of  
23 his plea before he pled guilty?

24 A. I did.

25 Q. And did you talk to him about his right to a

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1 jury trial, right to remain silent, and his right to  
2 confront the witnesses against him?

3 A. I did.

4 Q. And did he ever indicate he didn't understand  
5 something?

6 A. He did not indicate that he did not understand.

7 Q. And do you recall a time during his guilty plea  
8 where he said he wanted to go to trial and I guess as a  
9 result of that y'all stood down?

10 A. Yes.

11 Q. Okay. And can you kind of go through with us  
12 your discussions with him during that period?

13 A. I honestly don't remember what we talked about.  
14 If I -- I honestly don't remember what I told him. If I  
15 told him anything, it was probably, well, if you go to  
16 trial, you don't get the benefit of the offer and you'll  
17 probably receive a harsher penalty. I can only guess that  
18 that was what I had advised him. Or if he didn't  
19 understand a question that the judge had asked, then I  
20 would have rephrased. But, honestly, I don't remember  
21 what my conversation was.

22 Q. But, ultimately, after that conversation he  
23 still chose to plead guilty; is that correct?

24 A. He did.

25 Q. Do you recall any issue with the forensics in

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1 this case?

2 A. How do you mean issue?

3 Q. Do you think -- do you think that it was  
4 something that could have been challenged at trial?

5 A. I believe that the way that the incident  
6 occurred could have been challenged. As far as there  
7 being any evidence such as DNA or forensics which would  
8 have stated that my client was not involved in any way,  
9 no. As far as I could tell, and as far as my experts had  
10 indicated, while you can't always challenge DNA evidence,  
11 you can always challenge a crime scene, it appeared more  
12 likely than not that my client was, in fact, involved in  
13 some way, shape or form. What we could have challenged is  
14 how the incident may have occurred.

15 Q. Do you remember, during the guilty plea  
16 proceedings, Judge Young advising Mr. Gilbert that he had  
17 the right to appeal? Do you recall that?

18 A. I don't remember. But looking back at the  
19 transcript, it appears that Judge Young did not advise  
20 him, on the record, of the right to appeal.

21 Q. Okay. Do you have a copy of the transcript  
22 before you?

23 A. I do. I have it right here.

24 [Whereupon, Ms. Dovell reviews documents]

25 Q. [Ms. Wilson] Can you -- you can review your

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1 transcript. But it's your recollection that he didn't?  
2 He didn't advise him of his right to appeal; is that  
3 correct?

4 A. I remember looking at the transcript and  
5 noticing, upon my review, that he did not, in fact, advise  
6 him on the record.

7 Q. Did you -- do you recall advising Mr. Gilbert of  
8 his right to appeal?

9 A. I do not recall whether or not I did. I've  
10 reviewed my notes and I don't see anything that indicates  
11 that I did advise him of that. However, it is my practice  
12 to advise my clients of their right to appeal.

13 Q. And had you done so and he requested an appeal,  
14 is it your general practice to file one?

15 A. Yes.

16 Q. And did you think that there were any  
17 meritorious issues for appeal in this case --

18 A. I do not.

19 Q. -- the guilty plea?

20 Q. I'm sorry. Can you --

21 A. I do not.

22 MS. WILSON: Thank you.

23 THE COURT: Any questions for the witness?

24 MR. TATUM: Thank you, Your Honor.

25 THE COURT: You're welcome.

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CROSS-EXAMINATION

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BY MR. TATUM:

Q. Ms. Dovell, you were the attorney for the applicant at his guilty plea on February 27<sup>th</sup> of 2012; that's correct?

A. Yes, sir.

Q. And you were deeply involved in the plea negotiations that surrounded this; is that --

A. I was.

Q. Okay. Can you tell me what the maximum sentence he was facing at that point in time?

A. On the attempted murder it would have been a thirty-year maximum sentence, along with it being a violent and most serious offense.

Q. So you felt very strong with regard to Mr. Gilbert pleading guilty. Would that be a fair characterization?

A. It would be.

And, in fact, I forgot to mention the possession of a sawed-off shotgun. I don't recall whether or not it carries ten years or fifteen years, but that would have been an additional -- additional time he was exposed to under his original charges. Although he was originally charged with attempted armed robbery, that was dismissed at a preliminary hearing and the State did not present it

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1 to the grand jury.

2 Q. In fact, it's fair to say, thought, that Dominic  
3 was very reluctant to plead guilty. Is that a fair  
4 characterization?

5 A. That is fair.

6 Q. Okay. And you brought in his mother?

7 A. I did.

8 Q. His brother?

9 A. I did.

10 Q. Gene Hood, the public defender?

11 A. I did.

12 Q. All to speak to him about the guilty plea; is  
13 that correct?

14 A. I did.

15 Q. Okay. Did you bring in any other lawyers or  
16 family members to discuss it with him?

17 A. Not that I recall. There may have been other  
18 attorneys in the room, but I don't recall them  
19 specifically speaking to Mr. Gilbert.

20 Q. And eventually on that day he was convinced to  
21 plead guilty; is that correct?

22 A. That's correct.

23 Q. All right. But reluctantly?

24 A. Reluctantly.

25 Q. In fact, during the guilty plea proceeding, did

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1 not Mr. Gilbert interrupt the proceeding, stop the  
2 proceeding, and say, I want a jury trial?

3 A. I believe so.

4 Q. That's fairly unusual for a defendant to do  
5 that; isn't that correct?

6 A. It happens more times than you would think, but  
7 it is not -- it is unusual.

8 Q. Did any of his other co-defendants do it?

9 A. I think that at one point Mr. Dilbert had to  
10 stand down and speak with his attorney, Marjorie Bright  
11 McKey.

12 Q. Did they ask for a jury trial at that point?

13 A. I don't believe so.

14 Q. So he was the only one of the co-defendants that  
15 asked for a jury trial?

16 A. But actually his -- one of his other co-  
17 defendants was not going to plead guilty that day. I  
18 can't remember -- Mr. Kelson. Mr. Kelson decided that he  
19 was going to go to trial, actually, and so he was not part  
20 of the plea at the time that Mr. Gilbert, Mr. Dilbert, and  
21 Mr. Green pleaded guilty.

22 Q. No other codefendant during that guilty plea  
23 proceeding stopped the proceedings and said, I want a jury  
24 trial, did they?

25 A. No, sir.

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1 Q. All right. Now, is there any written record in  
2 your file, anywhere, that you told Mr. Gilbert of his  
3 right to appeal the guilty plea?

4 A. There is not.

5 Q. Do you have any direct recollection, direct  
6 recollection, of your telling Dominic of his right to  
7 appeal the guilty plea?

8 A. I do not.

9 Q. All right. Do you remember telling Mr. Gilbert  
10 that you were going to tell the Court that he was in the  
11 car but didn't shoot a shotgun?

12 A. I don't recall. I believe that that probably  
13 would have been the case that we presented at trial.

14 MR. TATUM: Nothing further, Your Honor.

15 THE COURT: Any redirect?

16 MS. WILSON: Briefly, Your Honor.

17 THE COURT: You may proceed.

18 REDIRECT EXAMINATION

19 BY MS. WILSON:

20 Q. Ms. Dovell, ultimately, did you feel Mr.  
21 Gilbert's plea was entered freely and voluntarily?

22 A. I did.

23 MS. WILSON: Thank you.

24 THE COURT: Ma'am, you may step down.

25 THE WITNESS: Thank you, Your Honor.

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1 THE COURT: You're welcome.

2 [Whereupon, Ms. Dovell is excused and exits the  
3 witness stand]

4 THE COURT: Anything further from the State?

5 MS. WILSON: Nothing further from the State,  
6 Your Honor.

7 THE COURT: Any rebuttal testimony from the  
8 applicant?

9 MR. TATUM: No rebuttal, Your Honor.

10 THE COURT: Be glad to hear any argument, if you  
11 desire. If you don't, it's not mandatory.

12 MR. TATUM: Thank you, Your Honor.

13 Your Honor, the South Carolina case of Weathers  
14 v. State, 319 S.C. 59, 459 S.E.2nd 838, says that  
15 there's a constitutional right to be advised of the  
16 right to appeal a guilty plea if extraordinary  
17 circumstances exists.

18 Now, extraordinary circumstances are not clearly  
19 defined in that case, but one of the definitive things  
20 that they say in that case is that if the defendant  
21 requests and asks about his right to appeal a guilty  
22 plea, that under those circumstances that's  
23 extraordinary circumstances that require him being  
24 informed of his right.

25 In this case Mr. Gilbert has stated on the

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1 record that he did ask his attorney whether or not he  
2 had a right to appeal his guilty plea. In addition,  
3 from the totality of the circumstances in which the  
4 gentleman stopped in the middle of the trial and asked  
5 for a jury trial -- in the middle of the plea and  
6 asked for a jury trial gives rise to what we take the  
7 position is extraordinary circumstances that would  
8 give rise to a right to be informed of his right to  
9 appeal the guilty plea. His lawyer was on notice and  
10 should have made him aware of that right. She has  
11 testified that she has no recollection of it and that  
12 she has no written information in her file reflecting  
13 that. So we take the position that under Weathers  
14 that Mr. Gilbert should be granted his petition.

15 Thank you, Your Honor.

16 THE COURT: You're welcome.

17 Ms. Wilson?

18 MS. WILSON: May it please the Court, Your  
19 Honor.

20 THE COURT: Yes, ma'am.

21 MS. WILSON: The State would just request that  
22 you deny this application for Post Conviction Relief.

23 With regard to advice to Mr. Gilbert about  
24 pleading guilty, Your Honor, it's the State's position  
25 that Ms. Dovell provided credible testimony that while

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1 she didn't recall advising, had he done so she would  
2 have -- she would have filed a notice of appeal on his  
3 behalf. And, Your Honor, she also gave testimony that  
4 she didn't feel that there were any meritorious issues  
5 for appeal, which is key in counsel's advice to a  
6 client about his right to appeal.

7 We just request that you deny this application.

8 [Whereupon, the Court reviews documents]

9 - - - - -

10 COURT'S FINDINGS

11 THE COURT: I've reviewed the transcript in this  
12 matter. I've also considered the testimony of the  
13 applicant as well as his plea attorney.

14 Based on what has been presented to the Court, I  
15 make the following findings of fact and conclusions of  
16 law regarding this matter. Based on the Strickland  
17 standard, I find that Mr. Gilbert has failed to meet  
18 his burden of proof by a preponderance of the  
19 evidence. I do not find his testimony credible in any  
20 manner. I find Ms. Dovell's testimony credible on the  
21 issues.

22 I find most persuasive the plea transcript. And  
23 I'll make a couple of observations in that regard. It  
24 is clear that his plea was voluntary. And that is  
25 substantiated at page 3, lines 18 through 24; that he

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1 understood and waived his constitutional rights, those  
2 being his right -- including his right to trial by  
3 jury, and that he did that voluntarily. That is at  
4 page 4, lines 15 through 21, page 5, lines 2 through  
5 4, and 8 through 25, as well as page 6, line 1. He  
6 told the Court that he was pleading guilty because he  
7 was guilty, at page 6, lines 6 through 13; he was not  
8 under the influence of any drugs, alcohol or other  
9 intoxicants, or any mental disabilities. That is  
10 corroborated at page 6, lines 17 through 19. He also  
11 advised the Court that he was satisfied with the  
12 services of his attorney. And that is at page 7,  
13 lines 4 through 9. And the Court gave him and asked  
14 him if he wanted additional time to speak with his  
15 attorney. He indicated -- and that is at page 8,  
16 lines 1 through 6. He also confirmed with the Court  
17 that he was not subject to any promises or threats, at  
18 page 8, lines 6 through 18. There's a further  
19 colloquy with the Court where it was made clear, and  
20 he was clear and corroborated, that he was pleading in  
21 exchange for a reduction in charge and that the  
22 reduction in sentence or sentence exposure was, in  
23 fact, an inducement to him pleading guilty, at page 8,  
24 lines 19 through 20, page 8, lines 21 through 25, and  
25 page 9, line 1 through 12; that he was not subject to

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1 any promises or threats, at page 9, lines 3 through --  
2 13 through 18; and the Court made no promises to him  
3 and he was clear as to his exposure.

4 And that is a particularly interesting colloquy  
5 and I think dispositive of most of the issues in this  
6 case. At page 9, lines 19 through 25 and page 10,  
7 line 1, as well as page 10, which I will get to,  
8 regarding his assertion that he wanted a jury trial,  
9 while it's been represented through questioning that  
10 this is something extraordinary or unusual, it is not.  
11 It happens quite frequently.

12 And it is apparent from the totality of this  
13 colloquy of this guilty plea, which is the  
14 contemporaneous record of what took place on that day,  
15 that he did not, in fact, want a jury trial. When he  
16 said I want a jury trial was a knee-jerk reaction and  
17 it only came in his thought process, apparent from the  
18 record, when he thought he could get more than eight  
19 years, in other words, that he thought -- when he  
20 wasn't clear about what it was he thought he had been  
21 promised as an inducement to plead guilty.

22 So in my estimation, based on this record, it  
23 was not a realistic request for a jury trial, it was  
24 more of a if I'm not going to get what I want, I want  
25 a jury trial, or what I thought I was going to get, I

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1 want a jury trial. And through the colloquy with the  
2 Court it was made abundantly clear that, in fact, he  
3 did not want a jury trial.

4 And just as an additional observation, it  
5 clearly, based on this record, was not in his best  
6 interest to go to a jury trial. I do not find  
7 anything inappropriate or unethical in Ms. Dovell's  
8 treatment of him in trying to assert to him what she  
9 thought was in his best interest, because as a lawyer  
10 that is her responsibility. It's not her  
11 responsibility to tell him what he wanted to hear, but  
12 what was in his best interest. And as a person of his  
13 tender age, to be facing thirty years, where he had an  
14 opportunity to get something much less, I do not find  
15 it inappropriate that she would have someone of  
16 greater experience, that being Ms. Campbell and her  
17 other supervising attorney, to speak with him, as well  
18 as to have his family appeal to his reason.

19 So I do not find anything appropriate [sic] in  
20 her having taken that tact with him. So I do not --  
21 it is not unusual for a defendant to say during a  
22 colloquy that, I want a jury trial. That happens all  
23 the time. It happens a whole lot more often than you  
24 would think. And oftentimes recesses are taken for a  
25 myriad of reasons. Sometimes people don't understand

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1 the question and they say they want a jury trial  
2 sometimes in the middle of a colloquy. They think  
3 they really want a jury trial until they realize,  
4 again, that they are losing the benefit of a  
5 significant bargain and they change their mind.

6 So it's not unusual at all for someone to assert  
7 during a plea colloquy that they want a jury trial.  
8 But, again, in the context of this case, it was in  
9 reaction to him thinking he wasn't going to get what  
10 he thought he was going to get, in other words, a  
11 promise of a sentence. He thought there was a  
12 possibility -- apparently from that record, he thought  
13 he was going to get something more significant and  
14 made a knee-jerk comment, I want a jury trial, then.  
15 And after consultation with his lawyer and with the  
16 Court, it is clear he didn't really want a jury trial.

17 It is clear from the record that there was  
18 significant evidence against him, that being the GSR  
19 that was found on the sawed-off shotgun. His DNA was  
20 on the trigger, the stock, and on the stock of the  
21 gun. But even in light of that, his lawyer still  
22 argued substantial mitigation on his behalf during the  
23 plea, as she asked the Court to give him less than the  
24 eight-year sentence and asked for six years. And that  
25 was at pages 18 and 19.

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1           What is interesting, and I think probably  
2           persuasive -- well, I don't know if it was persuasive  
3           to the Court, because Judge Young indicated he was  
4           just going to feed everybody out of the same spoon,  
5           which is almost what you're left to do when you have  
6           multiple participants. And from the elocution of the  
7           facts, it is clear that there was a gentleman -- one  
8           of the co-defendants, who was the least culpable, who  
9           got the same sentence as Mr. Gilbert and the other  
10          codefendant. And from this elocution of the facts, it  
11          is clear that Mr. Gilbert had a great degree of  
12          culpability in these -- in these events as they took  
13          place. Whether it was under the hand of -- one hand  
14          of all theory or otherwise, he had significant  
15          culpability and significant evidence against him.

16                Now, as it regards the right to an appeal, it is  
17          correct the record does not reflect that the Court  
18          asked him whether he wanted to appeal his guilty plea.  
19          I do find, however, persuasive Ms. Dovell's testimony  
20          that while it was not in her notes, that it would have  
21          been something that she ordinarily would have advised  
22          a client of and that if he had, in fact, asked for an  
23          appeal that she would have, in fact, filed one for  
24          him. But that is really not the standard. The  
25          standard is not whether she advised him of it and

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1 whether she should have done it. The issue is whether  
2 it would have been meritorious. I am finding more and  
3 more attorneys, especially on guilty pleas, not  
4 advising their clients of an appeal because they know  
5 it's not going to prevail and so it's really an  
6 exercise in futility. It is very rare, if ever, that  
7 you are going to be successful in an appellate  
8 challenge of a guilty plea.

9 And so while -- even if I were to view -- to  
10 take his testimony credible that he told her to file  
11 an appeal and she didn't, that's not dispositive.  
12 What is dispositive is whether he would have prevailed  
13 or whether there would have been some meritorious  
14 issue that he could have prevailed in an appeal. And  
15 based on this record, even if she had filed an appeal,  
16 it would have ended in an Anders brief to the Court,  
17 asking for a dismissal, because I don't know how  
18 appellate counsel -- there's nothing in good faith  
19 they could have argued as a grounds for an appeal from  
20 this record.

21 So based on what has been presented to the  
22 Court, and as well as the trial transcript, the Court  
23 denies the application for Post Conviction Relief.

24 Ms. Wilson is directed to provide the Court with  
25 a proposed order within fifteen days of today. I'm

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1 giving her leave to make any other findings of fact  
2 and conclusions of law consistent with the record.  
3 She should also provide Mr. Tatum with a copy of that  
4 order by the same means that she provides it to the  
5 Court, which would be by e-mail.

6 Mr. Tatum, if there are any changes or other  
7 recommendations that you would like included in that  
8 order, you should make Ms. Wilson aware of it so that  
9 y'all can work that out before I sign a final order.  
10 But Ms. Wilson will tell you I don't ever sign  
11 anything the way it's presented to me. I generally  
12 rewrite them. So I use that more as a templet than  
13 anything else.

14 So if you need anything that you feel you want  
15 added to the order, just let her know and I'm sure  
16 she'll accommodate you by adding anything you feel may  
17 have been -- that you feel needs to be included.

18 MR. TATUM: Thank you, Your Honor.

19 THE COURT: Thank you very much.

20 [WHEREUPON, HEARING CONCLUDES AT 10:22 A.M.]

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C E R T I F I C A T E


STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing held before the Honorable Deadra L. Jefferson, on Friday, August 30, 2013.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 11th day of November, 2013.

  
\_\_\_\_\_  
Mia Perron, CVR-CM-M  
Circuit Court Reporter  
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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COPY

STATE OF SOUTH CAROLINA )  
 COUNTY OF BEAUFORT )  
 DOMINIC GILBERT, #350007, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

2013 NOV 14 PM 3:02  
 BEAUFORT COUNTY, S.C.  
 CLERK OF COURT

IN THE COURT OF COMMON PLEAS  
 2012-CP-07-2600

**ORDER OF DISMISSAL**

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	John M. Tatum, III, Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Plea Counsel:	Helen Roper Dovell, Esquire
Date of Hearing:	August 30, 2013
Court Reporter:	Susan "Mia" Perron

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 16, 2012. The Respondent made its Return on February 25, 2013. An evidentiary hearing into the matter was convened on August 30, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by John M. Tatum, III, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant's plea counsel, Helen Roper Dovell, Esquire, testified at the hearing. This Court had before it the guilty plea transcript, the records of the Beaufort County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and the Respondent's Return thereto.

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### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. The Applicant was indicted at the January 2011 term of the Beaufort County Grand Jury for Attempted Murder<sup>1</sup> (2010-GS-07-2391) and Possession of a Sawed Off Shotgun<sup>2</sup> (2010-GS-07-2392). Helen Roper Dovell, Esquire, represented the Applicant. The Applicant pled guilty to Assault and Battery of a High and Aggravated Nature (ABHAN)<sup>3</sup> a lesser included offense of Attempted Murder. The State *nolle prossed* the weapons charge in exchange for the Applicant's guilty plea. On February 27, 2012, the Honorable Roger M. Young, Sr. sentenced the Applicant to eight (8) years confinement. The Applicant did not appeal the conviction or sentence.

### ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective inadequate representation.
2. Denial of fundamental fairness essential to the concept of justice.
3. Fraud, dishonesty, and deceit.

At the evidentiary hearing, the Applicant alleged the following:

1. Ineffective assistance of counsel.
  - a. Counsel failed to advise the Applicant of his right to appeal.
2. Involuntary guilty plea.

<sup>1</sup> Attempted Murder is a violent, most serious felony punishable by imprisonment for not more than thirty (30) years, none of which sentence may be suspended, nor probation granted. S.C. CODE ANN. § 16-3-29 (2010).

<sup>2</sup> Possession of Unlawful Weapons, such as a Sawed Off Shot Gun, is a felony punishable by not more than ten (10) years imprisonment or a maximum fine of ten-thousand dollars (\$10,000), or both. S.C. CODE ANN. § 16-23-260 (1993).

<sup>3</sup> Assault and Battery of a High and Aggravated Nature is a violent, serious felony punishable by imprisonment for not more than twenty (20) years. S.C. CODE ANN. § 16-3-600(B)(2) (2011).

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This Court finds all allegations other than those raised at the evidentiary hearing were abandoned by the Applicant because he failed to present any argument or testimony in support of those arguments.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

#### Summary of the Testimony

The Applicant was present at the hearing and testified he was originally charged for Attempted Murder, Attempted Armed Robbery, and Possession of a Sawed Off Shotgun. He testified he was represented by Helen Roper Dovell, Esquire. The Applicant testified he met with counsel over five (5) times over a period of fifteen (15) months prior to pleading guilty. He testified they discussed possible defenses and potential leads and witnesses. He testified he went over part of the discovery with his attorney.

The Applicant testified he spoke with counsel about going to trial. He testified he wanted to go to trial, but counsel advised him to plead guilty. He testified that after speaking with counsel about the State's plea offer, he discussed the plea offer with his mother, brother, and another attorney and that none of his co-defendants had requested a trial. The Applicant testified he ultimately decided to plead guilty although his attorney was aware of his unhappiness with his plea deal. He testified it was "kind of sort of" his decision to plead guilty. The Applicant

testified he recalled telling the plea court he was guilty, waiving his constitutional rights, and telling the court he was satisfied with his attorney's representation. He also testified that he requested a jury trial during the course of his guilty plea.

The Applicant testified counsel did not advise him of his right to appeal. He testified he asked counsel to appeal his case before, during, and after pleading guilty. The Applicant claimed that he would have appealed had he known he could have withdrawn his plea during the colloquy and that he wanted to withdraw his guilty plea because the forensics in his case proved he was not guilty. At the hearing, the Applicant claimed that he did not tell the plea court that he had not been promised anything to plead guilty.

Helen Roper Dovell, Esquire, also testified at the hearing. She testified she has been practicing law for nine (9) years and has spent six (6) of those years in criminal defense. She testified she was appointed to represent the Applicant as an Assistant Public Defender. Counsel testified she met with the Applicant six (6) to ten (10) times prior to his plea. She testified she filed Brady and Rule 5 motions on the Applicant's behalf as well as a supplemental Rule 5 motion in order to discover the DNA evidence. She testified she filed the supplemental Rule 5 to also obtain a DNA expert. She testified she reviewed all the discovered material with the Applicant but did not provide him all the raw DNA data because she doubted the Applicant would understand the data without the help of an expert. Counsel further testified that she did not understand the raw DNA data without the assistance of the expert explaining it to her.

Counsel testified she discussed with the Applicant the elements of the charge and what the State was required to prove, range of penalty, the Applicant's version of the facts, and possible defenses including self-defense, which would have been the Applicant's only defense, but only if evidence the alleged victim was armed became admissible. She further testified that

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self-defense was not really a viable defense available to the Applicant. She testified the State had strong evidence against the Applicant. She testified that she investigated all witnesses and leads given to her. Counsel testified she felt strongly the Applicant would be convicted at trial.

Counsel testified she hired an expert to explain the DNA evidence in the case. She further testified that she hired a crime scene expert to reconstruct the crime scene. She testified she could have challenged the way the incident occurred, but the DNA did not exculpate the Applicant and the expert's testimony at trial would not have exonerated the Applicant. The Applicant tested positive for GSR and his DNA was present on the shotgun's trigger and stock. (Tr. 15:1-25). She further testified that the information could have been useful to impeach the victim in some ways but was limited because it did not exonerate the Applicant. She further testified that the expert's testimony more likely than not would inculcate the Applicant. Counsel testified that the Applicant did not give a statement, but that the State's evidence against the Applicant was strong. Counsel testified her investigation of the case included speaking with the Applicant's cousin, Mr. Green. She testified her investigator spoke with Mr. Green, who said he did not know anything about the incident. She further testified that after this interview, the investigator could not find him even after extensive efforts.

Counsel testified she entered into plea negotiations on behalf of the Applicant early on in the case. She testified she discussed a plea offer with the Applicant to plead to Assault and Battery of a High and Aggravated Nature for a six (6) year sentence and he said he would "think about it," which plea offer he ultimately rejected. She testified the Applicant was then offered a plea to Assault and Battery of a High and Aggravated Nature. She testified she tried to convince the Applicant that pleading guilty was in his best interest. Counsel testified if the Applicant went to trial and was found guilty, he likely would have been sentenced to approximately thirty (30)

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years imprisonment served at eighty-five (85) percent and received a most serious strike. Counsel testified the Applicant spoke with her bosses (other public defenders), his mom, brother, and family members before pleading guilty. Counsel testified that she did everything she could to have the Applicant see the "wisdom" of the plea offer because she was concerned about him receiving a higher sentence if convicted. She testified, however, that she was preparing for trial all along in the event the Applicant wanted to proceed with a jury trial.

Counsel testified before the Applicant pled guilty, she informed him of the consequences of his plea and his constitutional rights. She testified the Applicant always indicated he understood his rights as she explained them to him. Counsel testified she recalled the Applicant wanting to stand down at his guilty plea to discuss requesting a jury trial, the Court giving them leave to discuss the issue, but that the Applicant ultimately still decided to plead guilty. She testified she felt the Applicant's plea was entered freely and voluntarily. Counsel testified she did not recall advising the Applicant of his right to appeal. She testified it is her general practice to advise her clients of their rights to appeal and that if her client requests an appeal, it is her general practice to file a notice of appeal on their behalf. Counsel testified the Applicant had no meritorious issues for appeal.

#### Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application by a preponderance of the evidence. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant 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

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adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. See id. at 117–18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its “‘reasonableness under prevailing professional norms.’” Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel’s deficient performance must have prejudiced the applicant such that “‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” Id. at 117–18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

This Court finds counsel’s testimony to be credible and finds the Applicant’s testimony not credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions.

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APJ

During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, range of punishment, the Applicant's constitutional rights, the Applicant's version of the facts, and possible defenses or lack thereof.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that trial counsel was not ineffective for failing to file an appeal for the Applicant. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). They instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. "[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both

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because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings.” Id.

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving trial counsel was ineffective for failing to file an appeal on his behalf. Counsel provided credible testimony that it was her general practice to discuss with clients their right to appeal and to file a notice of appeal upon request. She also provided credible testimony that the Applicant had no meritorious issues to raise on appeal and that his appeal likely would have been dismissed pursuant to an Anders brief. Anders v. California, 386 U.S. 738, 741–42, 87 S. Ct. 1396, 1398–99 (1967). This Court finds the Applicant was not prejudiced by counsel’s performance because counsel had no constitutionally imposed duty to consult with the Applicant about an appeal after his guilty plea. See Roe, 528 U.S. at 479–80, 120 S. Ct. at 1036. This Court finds the Applicant failed to carry his burden of proving he had meritorious issues for appeal or that he demonstrated to counsel an interest in appealing his guilty plea. Therefore, the Court finds this allegation is without merit.

#### Involuntary Guilty Plea

This Court finds that the Applicant’s guilty plea was entered freely and voluntarily. When the applicant has plead guilty, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 52, 106 S. Ct. 366, 366 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Lockhart, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)).

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To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999)).

Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (quoting State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 73-74, 97 S. Ct. 1621, 1629-30 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347, 350 & n.1 (4th Cir.1975), *overruled on other grounds*, United States v. Whitley, 759 F.2d 327, 331 (1985).

This Court finds that this allegation is without merit and the Applicant failed to carry his burden of proving that his guilty plea was involuntarily made. This Court finds and the record reflects the applicant was adequately advised of the waiver of his constitutional rights by both counsel and the plea judge. The record reflects the Applicant was advised of the following: the potential sentence he was facing (Tr. 3:18-24) and his constitutional right to a jury trial (Tr. 4:15-21, 5:2-4, 5:8-25, 6:1, 13:16-19). The Applicant also told the court he was guilty (Tr. 6:6-13) and that he was not threatened or coerced into pleading guilty, nor was he promised anything for his plea. (Tr. 8:15-9:18). The Applicant told the Court he was not pleading because of any promises (Tr. 9:19-25, 10:1). The Applicant also stated that he was not under the influence of drugs or alcohol at the time of his plea (Tr. 6:17-19). The Applicant's plea was voluntary (Tr. 3:18-24). The Applicant was satisfied with the services of his attorney (Tr. 7:4-9). Further that he had adequate additional time to consult with his attorney (Tr. 8:1-6). The Applicant was also advised by the Court that he was pleading straight-up to Assault and Battery of a High and Aggravated Nature. (Tr. 3:18-24). It is apparent from the plea colloquy with the court that the Applicant's request for a jury trial only came about as a reaction when he anticipated that the plea court may have sentenced him to more than eight (8) years. (Tr. 10:1-25). Applicant's counsel argued mitigation on his behalf and requested a six (6) year sentence of the court. (Tr. 18:1-25; 19:1-25). However, the circumstances of this case were particularly egregious as reflected in the victim's representation that the Applicant laughed in his face as he shot him (Tr. 22:12-23). This Court finds the Applicant's guilty plea was entered freely and voluntarily with a full understanding of the consequences of his plea.

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof. Therefore, all other allegations are hereby denied and dismissed.

### CONCLUSION

Based on the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations occurring before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

#### **IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

12  
12-11-13  
[Signature]

AND IT IS SO ORDERED this 8<sup>th</sup> day of November 2013

DL Jefferson  
The Honorable Deadra L. Jefferson  
Presiding Judge

Charleston, South Carolina  
At Chambers

RECEIVED  
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S.C. SUPREME COURT

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DOCKET NO. 2010GS0702391

**The State of South Carolina**

County of Beaufort

COURT OF GENERAL SESSIONS

January Term 2011

THE STATE

vs.

Dominic Gilbert

Indictment for

Attempted Murder

SC Code: 16-03-0029  
CDR Code:3410

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

WITNESSES

B. Chapman/BCSO

ARREST WARRANT NUMBER

J348961

ACTION OF GRAND JURY

FILED

*Brett Work*

Foreperson of Grand Jury

JAN 27 2011

Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

INDICTMENT,  
2010GS0702391

At a Court of General Sessions, convened on January 27, 2011, the Grand Jurors of Beaufort County present upon their oath:

**Attempted Murder**

That in Beaufort County on or about November 13, 2010, with malice aforethought, Dominic Gilbert did attempt to kill and murder Benjamin Brown by means of Shotgun, and that Benjamin Brown on November 13, 2010; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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

  
\_\_\_\_\_  
Solicitor