THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2014-000694

Rikam Ikkesh Dozier, #334052 Petitioner,

v.

State of South Carolina, Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA, PLAINTIFF, -vs- RIKAM IKKESH DOZIER, DEFENDANT.	08-GS-32-2826 TRANSCRIPT OF RECORD APRIL 2, 2009. LEXINGTON, S. C.

BEFORE:

HONORABLE R. KNOX McMAHON, JUDGE.

APPEARANCES:

SAMUEL R. HUBBARD, III
Deputy Solicitor,
Eleventh Judicial Circuit
Attorney for the State.

BRADLEY B. HANSEN
Lexington, S. C.
Attorney for Defendant.

RECORDED BY:
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INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

COURT'S EXHIBIT:

DEPUTY CLERK OF COURT: 2008-GS-32-2826, The State vs. Rikam Dozier, indicted for armed robbery. He is pleading as charged. It is signed, properly attested to, true billed, and he is represented by Mr. Bradley Hansen--- Are you court appointed or retained, Mr. Hansen?

MR. HANSEN: Retained.

DEPUTY CLERK OF COURT: ---retained counsel. Raise your right hand, please, sir. Raise your right hand. Do you solemnly swear or affirm the testimony you're about to give shall be the truth, the whole truth and nothing but the truth, so help you God?

RIKAM DOZIER: I do.

WHEREUPON, RIKAM IKKESH DOZER, HAVING BEEN DULY SWORN.

THE COURT: Mr. Hansen, you represent---

MR. HANSEN: It's Rikam, Your Honor.

THE COURT: ---Rikam Dozier?

MR. HANSEN: That is correct, Your Honor.

THE COURT: Have you explained to him the charge in the indictment, the possible punishment and his Constitutional rights including his right to a jury trial?

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

THE COURT: In your opinion, does he understand these things?

MR. HANSEN: Yes, he does, Your Honor.

THE COURT: How does he indicate he wishes to plead, guilty or not guilty?

MR. HANSEN: Guilty in regards to one of the charges against him.

THE COURT: Well, all I have is one indictment for armed robbery. How does he indicate he wishes to plead to armed robbery?

MR. HANSEN: Guilty, Your Honor.

THE COURT: Has the Defendant been ordered to submit to a mental examination to determine his competency to stand trial?

MR. HANSEN: Yes, he has.

THE COURT: All right. And what is the results of that evaluation, Mr. Hansen?

MR. HANSEN: He has been determined to be competent. We have the report.

THE COURT: All right. I have been handed up an evaluation report from the Forensic Division of the State Department of Mental Health on Mr. Dozier. It appears he was evaluated October 14th of 2008 by Dr. Michael Cross and Barbara Christensen. It's a three-page report in which their opinion is stated that he is competent to stand trial. Is there any objections to the Court having this report marked as the Court's exhibit, Mr. Hansen?

MR. HANSEN: None, Your Honor.

THE COURT: Solicitor?

MR. HUBBARD: No, sir, Your Honor.

THE COURT: Would the Solicitor's Office require to place anything further or desire to place anything further on the record concerning Mr. Dozier's competency?

MR. HUBBARD: No, sir, Your Honor. We accept the findings in the report.

THE COURT: And, Mr. Hansen, would you care to place anything further on the record concerning Mr. Dozier's competency?

MR. HANSEN: No, Your Honor.

THE COURT: Have you had any problems communicating with him?

MR. HANSEN: No, I have not, Your Honor.

THE COURT: In your opinion, he is competent?

MR. HANSEN: Yes, Your Honor.

THE COURT: All right. Thank you. Thank you very much. I'll have this marked.

WHEREUPON, COMPETENCY EVALUATION REPORT MARKED INTO EVIDENCE AS THE COURT'S EXHIBIT NO. 1.

COURT REPORTER: You don't need it back, do you, Judge?

THE COURT: No, ma'am.

COURT REPORTER: Okay. Thank you.

EXAMINATION BY THE COURT:

THE COURT: Are you Rikam Dozier?

RIKAM DOZIER: Yes, sir.

THE COURT: All right. And I think it's the following microphone that is actually wired up, Mr. Dozier, but thank you very much for using the microphone. Before I can accept the plea of guilty, it's necessary for me to determine if your plea is being given freely and voluntarily. Therefore, I need to ask you some questions. If you do not understand my questions, let me know. I'll try to explain them to you. At any time you wish to talk to your attorney, please advise me and I will allow you to do so. How old are you, Mr. Dozier?

RIKAM DOZIER: Seventeen.

THE COURT: And how much education do you have?

RIKAM DOZIER: I'm in the tenth grade.

THE COURT: Prior to going to jail, what did you do? What kind of work did you do?

RIKAM DOZIER: None.

THE COURT: Were you a student?

RIKAM DOZIER: Yes, sir.

THE COURT: And where were you a student at?

RIKAM DOZIER: Lexington High School.

THE COURT: In what grade?

RIKAM DOZIER: Tenth.

THE COURT: Today, are you under the influence of any medication, drugs or alcohol?

RIKAM DOZIER: No, sir.

THE COURT: Are you aware of any physical, emotional or nervous problem to keep you from understanding what you're doing today?

RIKAM DOZIER: No, sir.

THE COURT: You heard your attorney, Mr. Hansen, tell me that he's explained to you the charge against you, the possible punishment and your Constitutional rights and that you understand these things. Is that correct?

RIKAM DOZIER: Yes, sir.

THE COURT: I've been handed up an indictment, 2008-GS-32-2826. It has been true billed by the Grand Jury, and it basically reads that Rikam Ikkesh--- Is that---

RIKAM DOZIER: Yes, sir. Ikkesh.

THE COURT: ---Ikkesh Dozier did, in Lexington County, South Carolina, on or about February 27th of 2008, while armed with a deadly weapon, did feloniously take from the person in the presence of a victim, customers or employees of Radio Shack Company located at 736 West Main Street in the Town of Lexington, by means of force or intimidation, U. S. currency and other personal property belonging to the victims and/or Radio Shack with the intent to permanently

deprive the owners of the use of such property in violation of 16-11-338 of the Code of Laws of South Carolina. That's the charge of armed robbery. It appears you are pleading guilty to armed robbery for which you can receive a sentence of not less than ten years and up to thirty years. Do you understand that charge and that particular punishment?

RIKAM DOZIER: Yes, sir.

THE COURT: When you plead guilty, you give up certain important Constitutional rights. First, you give up your right to remain silent, that is, your right against self-incrimination, your right to say nothing at all. Second, you give up your right to have a jury trial, that is, your right to have a jury decide whether or not you are guilty beyond a reasonable doubt. Third, you give up your right to confront and be confronted by the witnesses against you. Do you understand these rights?

RIKAM DOZIER: Yes, sir.

THE COURT: Do you understand that, when you plead guilty, you give up these very important Constitutional rights?

RIKAM DOZIER: Yes, sir.

THE COURT: Is that what you want to do?

RIKAM DOZIER: Yes, sir.

THE COURT: Do you understand, if you plead guilty,

you will not get a jury trial?

RIKAM DOZIER: Yes, sir.

THE COURT: Understanding then the nature of the charge of armed robbery and the potential punishment of not less than ten and up to thirty years, how do you wish to plead, guilty or not guilty?

RIKAM DOZIER: Guilty.

THE COURT: Do you understand that, when you plead guilty, you admit the truth of the charge that has been made against you?

RIKAM DOZIER: Yes, sir.

THE COURT: Did you commit this offense?

RIKAM DOZIER: Yes, sir.

THE COURT: Plea negotiations?

MR. HUBBARD: Your Honor, since this is a conspiracy charge, I told Mr. Hansen I'm not taking a position on the actual sentencing, but I certainly don't oppose the minimum due to the Defendant's age, the minimum sentence. I've discussed that with the victims. I have let Mr. Hansen know that. That is obviously in your discretion, and I can explain the facts and that might explain why I say that.

COURT: All right. Mr. Hansen, has the Solicitor correctly and completely stated the negotiations into the record?

MR. HANSEN: That is correct, Your Honor.

THE COURT: Mr. Dozier, has the Solicitor completely and accurately stated what you understand the negotiations to be?

RIKAM DOZIER: Yes, sir.

THE COURT: Is there anything more to it in your mind as far as the negotiations?

RIKAM DOZIER: No, sir.

THE COURT: And do you understand that's just a recommendation of the attorneys and it's not binding on me and I can still sentence you up to the maximum if I felt it was appropriate?

RIKAM DOZIER: Yes, sir.

THE COURT: Do you still wish to plead guilty?

RIKAM DOZIER: Yes, sir.

THE COURT: Has anyone promised you anything or held out any hope of reward to get you to plead guilty?

RIKAM DOZIER: No, sir.

THE COURT: Has anyone threatened you or used force to get you to plead guilty?

RIKAM DOZIER: No, sir.

THE COURT: Has anyone used any pressure or intimidation to cause you to plead guilty?

RIKAM DOZIER: No, sir.

THE COURT: Have you had enough time to make up your

mind about whether or not you want to plead guilty?

RIKAM DOZIER: Yes, sir.

THE COURT: Are you pleading guilty of your own free will and accord?

RIKAM DOZIER: Yes, sir.

THE COURT: Are you satisfied with the manner in which your lawyer has advised you and represented you?

RIKAM DOZIER: Yes, sir.

THE COURT: Have you talked with your lawyer as often and as long as you feel necessary for him to properly represent you?

RIKAM DOZIER: Yes, sir.

THE COURT: Do you need any more time to talk with your lawyer?

RIKAM DOZIER: No, sir.

THE COURT: Have you understood when you talked with your lawyer?

RIKAM DOZIER: Yes, sir.

THE COURT: Has your lawyer done everything for you you feel like he could've done or should've done?

RIKAM DOZIER: Yes, sir.

THE COURT: Are you telling me you're completely satisfied with your lawyer's services?

RIKAM DOZIER: Yes, sir.

THE COURT: Do you have any complaints you want to

make about your lawyer, the Solicitor or any officers involved in this case?

RIKAM DOZIER: No, sir.

THE COURT: Have you understood my questions?

RIKAM DOZIER: Yes, sir.

THE COURT: Is there anything you would like to ask me about what we've just been over?

RIKAM DOZIER: No, sir.

THE COURT: You understand you have a right to appeal a guilty plea and sentence of the Court and you or your lawyer must do this within ten days?

RIKAM DOZIER: Yes, sir.

THE COURT: All right. Solicitor, if you'll give me the facts, please.

MR. HUBBARD: Yes, sir. As the indictment reads, this happened February 27th of last year. The store that was robbed is the Radio Shack right up there by the K-Mart on Main Street. It happened right around 1:00 o'clock, maybe a little bit before 1:00 o'clock. The store was open as usual. It was a weekday. There were several customers in the store. Two young men walked in the store wearing masks. One of them pulled out the gun, a knife. And, at that time, a man we believe was Mr. Dozier said, "Everybody put your hands up," and he pulled out what appeared to be a pistol. Your Honor, the co-defendant in this case is

fourteen years old, a guy by the name of Tobias Davis. He had what we believe was a kitchen knife. The weapon used by Mr. Dozier turned out to be a BB-gun spray painted black, and it looked very much like a real pistol to the occupants of the store. They demanded money from both the store manager, took store money and then they took money from the actual patrons in the store. At that time, they turned around and fled. We had one bystander watching in the parking lot who happened to be a PI. He got involved in the pursuit, and law enforcement, the Town police, showed up right away. Deputy Jay Koon and his fellows are back here, Your Honor. They were all involved. They ran towards the Intermediate School on Hendrix Street. They split up. They both live in that area, Your Honor. Mr. Dozier was caught right around the fence area behind the school, and that's where they found the BB-gun. They found one of his shoes. He was wearing the other shoe, so it was very easy to put together who was running. They found a mask; they found a dark sweatshirt with a hood that he had been wearing and some other items. So he was apprehended right away. Then they were able to ascertain who the fourteen-year-old was, and they went and picked him up at his house and arrested him. They searched that house of the co-defendant and found eight hundred and seventy-seven dollars in that house. The store was reporting anywhere

from six to seven hundred dollars being stolen; there may have been more. The patrons in there, there are two that are claiming money was stolen from them. One was the store manager, and his name--- Your Honor, I'm going to pass up a sheet with the name on it because he's Egyptian, and I really don't know how to pronounce his name. But I can give it a stab. It's Aziz Buhasi. He says a hundred and twenty dollars was taken from him. His employee, Zachary Atkinson, says sixty dollars was taken from him. All of the victims have been notified of today's plea, the possibility of sentences. Mr. Buhasi says he wants Your Honor to know that he is suffering from post-traumatic stress syndrome at this point and he does not want to come to court. He did come to our office. He seemed to be a very nice man. He took the job in Lexington because he had heard Lexington was a safe place to work. He had been working in Columbia and thought he would be safer over here. We have not heard anything from Mr. Atkinson other than his request for sixty dollars. Ms. Parkman who was in the store, she is--- She was a patron in the store, and she had her three-year-old daughter in the store at the time. She was very upset. She said--- Now, when they looked at her during the robbery, one of them actually apologized to her. But she said she was very traumatized and she did not wish to be here, but she did type up a letter. She has not

come in and talked to us, Your Honor, but we have talked to her by phone. She talks about her daughter having nightmares. Your Honor, based on our talks with her, actually I think she is the one that is suffering more than her child. Her child was not quite three years old at the time. The child seems to be doing well from everything we've heard about the child. And Ms. Parkman, I think, was very upset because she had her daughter there. She did not know if that was a real gun or not; she assumed it was. Anyway, Your Honor, during the pursuit, I think Probation agents were involved. Everybody just happened to be right there. It was in the middle of the day. Law enforcement for the Town, they always have cars riding up around that area anyway. Some Probation agents happened to be in that area. Everybody got involved, and this man was apprehended very quickly. Initially, he was sent to DJJ because of his age. And, Your Honor, from looking at his background, it's really tough for me to figure out what to do with it. Usually an armed robbery, I don't make any kind of deals whatsoever. He was sixteen years old, and it was a BB-gun as well. In talking to those victims, Your Honor, they didn't care how old that person was; they were traumatized. And I can understand that. I've talked at length with Mr. Buhasi about, you know, the fact that this man's young and he might very well get a minimal sentence. He said,

"That's fine with me. I'm not trying to ruin a man's life, but the Court needs to know my life has been changed." And I just said I would pass that on to Your Honor. He did not want to be here. And, like I said, it took a lot to get him to see me at the courthouse as well. Ms. Parkman, she does not want to come. She just--- The best she could do was type a letter for the Court. And, Your Honor, that's all we have as to the facts.

THE COURT: What happens to young Mr. Davis?

MR. HUBBARD: He was handled in Family Court, Your Honor, and I believe he was committed. But, of course, I think he can only be committed up to the age twenty-one if I'm not mistaken. I'm not much--- I don't have a whole lot to do with Family Court. But he was fourteen at the time, and they went ahead and handled him down there.

THE COURT: Does Mr. Dozier have any prior criminal history?

MR. HUBBARD: I asked our Family Court personnel to see if he had one, and they were not able to find anything. So I don't know if the Town police have had any problem with him, but we have no evidence from DJJ or from my office of having run into him before. This seems to be the first criminal offense he's committed, but he committed a big one.

THE COURT: All right. Thank you. Anything further,

Solicitor?

MR. HUBBARD: No, sir, Your Honor.

THE COURT: I find there is a substantial factual basis for the plea and the Defendant's decision to plead guilty is freely, voluntarily, knowingly and intelligently made and he's had the advice of counsel, a very competent attorney with whom he says he's fully and totally satisfied. The plea is, therefore, accepted. Mr. Hansen?

MR. HANSEN: Thank you, Your Honor. This is always difficult to do in regards to this. Rikam is--- In fact, at the time he committed this offense, he was sixteen years old. I believe the age difference between Mr. Davis, Tobias Davis, and himself is approximately a year and a half so--- This is the first time he's had any brush with the law whatsoever. And, from what I understand, we can extend that to Rikam's family as well. Present in court is his mother, his uncle, his brothers and an aunt; and they're all here to support him. I think it's interesting to note that the co-defendant was the one who was discovered with the money. My client admits to his responsibility in regards to this act, but Rikam was the one who actually apologized during this, during the robbery. He obviously knew that he was wrong in regards to what he was doing even at the time. And he's only expressed regret in regards to what he has done. His

family has been here in Lexington for their entire lives. They've actually moved in order to remove themselves away from some of the victims in regards to it. They didn't want to cause any more additional harm or aggravation to any other people in regards to it. Rikam is--- While he has been incarcerated--and he's been incarcerated since February 27th of 2008--he could've appealed, or he could've sought bond and gotten out. But we didn't do that. The intention was that he recognize what he had done. He wanted to move forward and start serving his time. During the time of the incarceration, he has been a model inmate. He is active in the prison ministry as well as attempting to further his education in any way, shape, manner or form. I know--- This is kind of interesting. Just as a personal note, my son, who is about to serve his third tour in Iraq, happened to be a victim of an armed robbery in Lexington County, and so I've experienced this from both sides in regards to this. I know for a fact that Rikam has a future ahead of him. He is aware of the dramatic nature of what he has done. And, you know, it's one of those situations where, if we could roll back time, he would obviously not make that decision. It's clear to me that he will never make any decision even close to that again. His family understands that; and, more importantly, he understands that. He's very--- If you sit--- If you get an opportunity

to spend any time with him, even a brief opportunity, you can see he's a pretty soft-spoken and gentle person. I think the State mentioned that the co-defendant was the one who brandished the knife first and then my client pulled out a BB-gun, not a gun. Obviously, the psychological impact is enormous, but we would like the Court to take into consideration the fact that it was not a gun in regards to that.

THE COURT: Thank you, Mr. Hansen. Anything you'd like to say, Mr. Dozier?

RIKAM DOZIER: Yes, sir.

THE COURT: All right.

RIKAM DOZIER: I would like to apologize to the family to the stuff I did, Your Honor. In fourteen months I have grown up and been trying to become wise. I'm still young, still got a lot to learn. Even though I know where I'm going, I am still trying to strive and make myself better, Your Honor. I ask the Lord every day that he forgives me. When I was on the street, I didn't see what I seen now, and now I try to see myself to provide and do better. I put my family through so much in fourteen months. I was just trying to get money so I could provide for them, my mother, my mother and my father. I don't know what I was thinking. It was out of character. I knew what I was doing, and it was wrong of me. I put everybody through so much pain, and

I am willing to face the fact that God got a better place for me. I just ask that everybody forgive me.

RIKAM DOZIER: Yes, sir.

THE COURT: And Mr. Davis lived where?

RIKAM DOZIER: 608 Hendrix Street.

THE COURT: 608 what?

RIKAM DOZIER: Hendrix Street.

THE COURT: Hendrix Street? Why weren't you in school at that time?

RIKAM DOZIER: I was, Your Honor. I had got out because I had got in trouble. I was at the alternative school when I got out. I only had to do one class. Then I had got out. That's when I did what I did.

THE COURT: So you got out of school early on that day because you got in trouble at school?

RIKAM DOZIER: No. No, sir, Your Honor. I was at the alternative school. I had to take one class there. And I got out--- When I got out at 10:00 o'clock--- I got out at 10:00 o'clock every day from that class. I had to do one class at the alternative school.

THE COURT: The alternative school? Where was that at?

RIKAM DOZIER: It was at Lexington High School.

THE COURT: They have alternative classes at Lexington High School also?

RIKAM DOZIER: It's on the other side. It's on the side of Lexington High School.

THE COURT: And then what about Mr. Davis? Why wasn't he in school?

RIKAM DOZIER: We both went to the same alternative school.

THE COURT: When you go to alternative school, you get out at 10:00 o'clock in the morning?

RIKAM DOZIER: I did. He got out at 11:00 I think.

THE COURT: 11:00? Did y'all walk from your neighborhood?

RIKAM DOZIER: Yes, sir.

THE COURT: Which way did y'all walk?

RIKAM DOZIER: We walked--- It's a little path that we went through, and then we just walked up the street and then we just keep going straight, and Radio Shack's right there.

THE COURT: So you walked up the street. Now, when you walked up Hendrix Street, did you turn left or did you walk up Gibson Road and turn right? That's what I'm asking you.

RIKAM DOZIER: Walked up Hendrix Street and turned left.

THE COURT: So you came down by the hospital?

RIKAM DOZIER: Yes, sir.

THE COURT: That street that comes right beside the hospital?

RIKAM DOZIER: Yes, sir.

THE COURT: And then, when you come out by the hospital on West Main, then the Solicitor's saying the Radio Shack by the K-Mart. But it's actually in the shopping center where Food Lion's at---

RIKAM DOZIER: Yes, sir.

THE COURT: ---down by the music store or kind of midway down that way. Right?

RIKAM DOZIER: Yes, sir, across the street over there. Yes, sir.

THE COURT: And, when y'all walked, you had the spray-painted BB-gun.

RIKAM DOZIER: Yes, sir.

THE COURT: And Mr. Davis had the kitchen knife?

RIKAM DOZIER: Yes, sir.

THE COURT: Did he go get that from his house?

RIKAM DOZIER: Yes, sir.

THE COURT: What kind of knife was it?

RIKAM DOZIER: I can't remember, to tell the truth.

THE COURT: Well, where did you get the mask from?

RIKAM DOZIER: It was his.

THE COURT: It was his? Was it two masks?

RIKAM DOZIER: No, sir.

THE COURT: Sir?

RIKAM DOZIER: No, sir.

THE COURT: Just one of you had a mask?

RIKAM DOZIER: One of us had a mask and one had a little bandana.

THE COURT: Who had the mask?

RIKAM DOZIER: I did, sir.

THE COURT: And you say you got it from Mr. Davis.

RIKAM DOZIER: Yes, sir.

THE COURT: What did the mask look like?

RIKAM DOZIER: Like a mask you pull over your face that have the eyes and the mouth cut out.

THE COURT: And you were raised in that area?

RIKAM DOZIER: Yes, sir.

THE COURT: And you were very familiar with that shopping center.

RIKAM DOZIER: Yes, sir.

THE COURT: And Mr. Davis was too.

RIKAM DOZIER: Yes, sir.

THE COURT: Who spray painted the gun?

RIKAM DOZIER: I did. I spray painted the gun.

THE COURT: Why were you following a fourteen-year-old around, Mr. Dozier?

RIKAM DOZIER: I wasn't thinking, Your Honor, to tell you the truth. I wasn't thinking at all.

THE COURT: When you talk--- When you talk now, you're very intelligent.

RIKAM DOZIER: It's a mistake that people make. You got to live and learn, sir.

MR. HANSEN: If I may clear up something?

THE COURT: Yes, sir.

MR. HANSEN: Also, in regards to that gun, the gun was actually spray painted at Mr. Davis' house. It was stored there as well. He--- It is amazing. When I first met him, I had the same impression you do, Your Honor, in regards to he seems way more too intelligent to be able, to be following around someone. But I also understand the nature that some people that are fairly soft-spoken generally tend to be followers as opposed to leaders. And clearly Rikam is a follower in that sense. And that's one of the reasons why I investigated whether, the competency of him, and that was one of the things I wanted to make sure, because that was a red flag to me that he was following someone of a younger age, whether he was competent. And that was a request that I made in regards to making sure that there wasn't any issues in regards to that because that, that did seem a little bit strange to me. But I think that he just is a soft-spoken person who wants to be accepted. And, as we've seen before, he's been accepted by the wrong crowd. He's made bad decisions. But he wants to own his mistake,

and he owns it. He understands that this isn't any responsibility in regards to Mr. Davis. He made all the decisions. And, obviously in regards to it, he was willing to be authentic in owning his actions in regards to what he had done because he--- From the get-go, he wasn't trying to, you know, wanting to get off. It was more about, "I need to do my--- What I did, I need to pay for it. And, if there's actual consequences to our action, we reap what we sow." So he seems to understand that very clearly, and we'd ask for leniency in the sentencing.

THE COURT: All right. Does anyone else want to address the Court?

MR. HANSEN: Yes, Your Honor. We have Nathaniel Coleman, Rikam's uncle.

THE COURT: All right, Mr. Coleman, I'll be glad to hear from you.

MR. COLEMAN: I just want to say that I just hope that this crime does not reflect the way that Rikam is because that, because it does not. Rikam has been a very fine nephew. And, yes, yes, he did something wrong. But I do not want this to hinder, hinder him the rest of his life. Excuse me a little bit. I'm kind of nervous.

THE COURT: That's all right. You're doing fine, Mr. Coleman.

MR. COLEMAN: And I see that the crime was wrong, the

thing he did was wrong, and I kind of feel responsible a little bit because I haven't been there for him like I should be because I am his uncle and everything. And so I do want you to know that I just ask--- This is not Rikam. This is not the normal Rikam thing. Everybody who knows him loves him because he is a well-rounded student and person and, you know, people like him and love him and just--- That's all I have to say.

THE COURT: Thank you, Mr. Coleman. Anyone else, Mr. Hansen?

MR. HANSEN: Your Honor, I'd just like to clarify. I know exactly what he was trying to say. I want to make sure the Court understands. This doesn't--- This act, we hope, would not define Rikam as an individual. He made one bad decision. It was horrendous, and it is dramatic and it impacted a number of people's lives. But he's also made wonderful decisions throughout his sixteen years, and that Rikam still exists. And I think that we're all trying to hold on to that Rikam and giving him an opportunity to be of service to the, to this community.

THE COURT: Anyone else, Mr. Hansen?

MR. HANSEN: His mother.

THE COURT: Yes, ma'am. Your name, please?

MS. DOZIER: My name is Jean Dozier.

THE COURT: All right, Ms. Dozier, I'll be glad to

hear from you.

MS. DOZIER: I want to say that what Rakim did, like my brother said, it doesn't reflect his character. Rikam is very respectful to his elders and others. We have moved because I wanted my son to get out of that environment. And that is all. That just don't define his character. It's not him, and I know he has learned his lesson.

THE COURT: Thank you. Thank you, Ms. Dozier. Anyone else, Mr. Hansen?

MR. HANSEN: Not concerning--- Would you like to hear from his brother?

THE COURT: Yes, sir. And your name, sir?

RICKY DOZIER: Ricky Dozier.

THE COURT: All right, Mr. Dozier, I'll be glad to hear from you.

RICKY DOZIER: Like he said, he messed up. I know he messed up. I been in trouble before, too. I always try to tell Rakim not to follow other people, because he always followed me, you know. I played football in high school he played football. I ran track; he ran track. He tried to play basketball; it didn't work out. So he figured he had nothing else better to do than follow after other people. So I just want him to know that I love him and will be there for him and everything will be all right.

THE COURT: Thank you. Thank you very much, young

man. Anything further, Mr. Hansen?

MR. HANSEN: Nothing further, Your Honor. Thank you.

THE COURT: All right. Thank you. Solicitor, there's no restitution. Correct?

MR. HUBBARD: No, Your Honor, there is not because there's not a probation. We can't place him on probation. This is not suspendible. I wanted to go ahead and pass that up.

THE COURT: Well, I thought they recovered the money from Mr. Davis' house, it had been recovered.

MR. HUBBARD: Actually there was actually money taken from the individuals as well.

THE COURT: I understand that. But, if you add that up, you're saying six or seven hundred dollars from Radio Shack, and you've got eight seventy-seven. That's a hundred and twenty. If you do the math---

MR. HUBBARD: I understand that. One of the things was, with Radio Shack, we never got really a line-item breakdown of what was taken. It was just kind of an estimate, a fairly quick one. And these are just what the two individuals said they were owed. Your Honor, they also understand that, with this sentence, that the prospect of getting this money is slim to none. Radio Shack hasn't asked for anything either because they got their money back or insurance, so---

MR. HANSEN: We would be glad to volunteer to pay any restitution whatsoever.

THE COURT: Thank you. Solicitor, as I understand the law, he could have been charged with three separate accounts. Is that right?

MR. HUBBARD: Yes, sir, Your Honor.

MR. HANSEN: Yes, Your Honor.

THE COURT: He could have been charged with robbing Mr. Buhasi, Mr. Atkinson and Ms.--- Did we leave out Ms. Parkman?

MR. HUBBARD: She claimed nothing, but it also would be the robbery of the Radio Shack itself.

THE COURT: All right. So that would be the three.

MR. HUBBARD: Yes, sir.

THE COURT: He could've been facing a minimum of thirty years and a maximum of up to ninety years?

MR. HUBBARD: Yes, sir.

THE COURT: All right. 08-GS-32-02826, the State vs. Rikam Dozier, the charge of armed robbery, the Defendant having entered a plea of guilty, the Defendant is committed to the State Department of Corrections for a concurrent term of fifteen years. He is to be given credit for time served since 27 February of '08. And no contact with any of the victims whose names will be attached to the order. Good luck to you, Mr. Dozier.

MR. DOZIER: Thank you.

THE COURT: Thank you.

WHEREUPON, HEARING CONCLUDED.

C E R T I F I C A T E

I, the undersigned CAROLE R. SHEALY, Official Court Reporter for the Eleventh 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 cause, relative to appeal, in the Court of General Sessions for Lexington County, South Carolina, on the 2nd day of April, 2009.

I do further certify that I am neither of kin, counsel or interest to any party.

April 30, 2010.

Carole R. Shealy

CAROLE R. SHEALY

WITNESSES

Lexington Police Dept.
Roy Hill
Law Enforcement Case #:

SRH

ARREST WARRANT NUMBER

I626642

ACTION OF GRAND JURY

TRUE BILL

Donald Keesha
Foreperson of Grand Jury
Date: 7-2-08

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-32-2826

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2008

THE STATE
vs.

Rikam Ikkesh Dozier

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

32

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

At a Court of General Sessions, convened on SEPTEMBER 2008, the Grand Jurors of Lexington County present upon their oath:

That **Rikam Ikkesh Dozier** did in Lexington County, South Carolina on or about February 27, 2008, while armed with a deadly weapon, to wit: a firearm and/or a knife, or while alleging either by action or words that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of the victims, customers and employees of the Radio Shack Company located at 736 West Main Street in the Town of Lexington, by means of force or intimidation, U. S. currency and/or other personal property belonging to the victims and/or Radio Shack, with the intent to permanently deprive the owners of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws (1976), as amended.

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

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

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
CRIMINAL CONSPIRACY

§ 16-17-0410

At a Court of General Sessions, convened on SEPTEMBER 2008, the Grand Jurors of Lexington County present upon their oath:

That **Rikam Ikkesh Dozier** did in Lexington County, South Carolina on or about February 27, 2008, unlawfully and willfully, knowingly and feloniously unite, combine, conspire, confederate, agree, and have a tacit understanding with Tobias Davis for the purpose of accomplishing the criminal act of Robbery or Armed Robbery, in violation of Section 16-17-410 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.

ASSISTANT SOLICITOR

BAIL set by

Judge _____

on 3-19-08

Type and Amount: OSA- Appearance

Name of Surety _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

_____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

_____ _____

_____ _____

_____ _____

WITNESSES

Name: _____
Address: _____
_____
Telephone: _____

Name: _____
Address: _____
_____
Telephone: _____

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Telephone: _____

Name: _____
Address: _____
_____
Telephone: _____

CODEFENDANTS

_____

_____

FILED

WITNESSES

Lexington Police Dept.
Ray Hill

Law Enforcement Case #:

SRH

ARREST WARRANT NUMBER

I626646

ACTION OF GRAND JURY

TRUE BILL

Donald [illegible]
Foreperson of Grand Jury
Date: 9-2-08

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-32-2827

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2008

THE STATE
vs.

Rikam Ikkesh Dozier

NP

CDR #: 0049

Indictment for

CRIMINAL CONSPIRACY

§ 16-17-0410

DONALD V. MYERS, SOLICITOR

[illegible]
[illegible] P.O.C.
[illegible]
[illegible]

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington) IN THE COURT OF GENERAL SESSIONS
STATE VS.) 10-30 yrs.
Rikam Ikkesh Dozier) INDICTMENT/CASE#: 2008GS3202826
AKA:) A/W#: 16266-12
Race: B Sex: M Age: 17) Date of Offense: 2-27-2008
DOB: 11-30-1991 SS#: 000-00-0000) S.C. Code §: 16-11-0330(A)
Address: 514 Gibson Road) CDR Code #: 0139
Lexington SC 29072)
DL#: SID#:)

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

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS GUILTY TO: Armed Robbery
in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST: _____ 15294 RiRam Dozier _____ 70242
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. SINCE 2-7 FEB 08
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
§ 35.13 (Public Def. Prob)	$500	$
§ 73.3, 1B TP (Law Enforce. Funding)	$25	$ 25
§ 33.7, 1B TP (Drug Court Surcharge)	$100	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
§ 90.11 TP (SCCJA Surcharge)	$5	$ 5
TOTAL		$ 130

_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling _____
Random Drug/Alcohol testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____
NO CONTACT WITH VICTIMS
NIKKI MOORE ET ATTACHED

☐ Appointed PD or appointed other counsel. § 35.13 TP Requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk
Court Reporter: C Patterson

PRESIDING JUDGE: _____
Judge Code: 2 4 1 1 4 1 5
Sentence Date: 2-HIKE 09

SCA-213 (03/2009)

DISPOSITION SHEET

NAME OF DEFENDANT Rikam Ikkesh Dozier

WARRANT/TICKET NUMBER(S) I-626643 + I626646

CHARGE(S) Kidnapping + Conspiracy

ARRESTING AGENCY Lex. Town P.D.

[X]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
DISMISSED	PTI	JUDICIALLY DISMISSED	REMANDED	DISMISSED AT PRELIMINARY	FAIL TO APPEAR	RESTORE	OTHER

REASON Pled to Armed Robbery

SOLICITOR

DATE: 4/2/09

White Copy –Clerk of Court

Yellow – Detention Facility

C

FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Lexington)
)
Rikam Ikkesh Dozier)
Full name and prison number (if any) of Applicant.)
#334052)
v.) APPLICATION FOR
)
State of South Carolina) POST-CONVICTION RELIEF

2010CP3201122

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 Lee Correctional Institution
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Tobias Davis
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: (consecutive numbers)
   (a) 1-626042
   (b) 1-626046
   (c) 1-626043
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) April 2, 2009
   (b) "

Revised 3/2003

(c) April 2, 2009

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

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

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

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

2010CP3201122

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) Counsel was ineffective who represented the Applicant

(b) _____ "

(c) _____ "

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

(a) _____ See Attached Petition - Ineffective Assistance of Counsel, 5th, 6th, 14th Amendment violations, Subject Matter Jurisdiction; Due Process Violations

Revised 3/2003

(b) See attached petition

(c) ____

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

(a) See attached petition

(b) ____

(c) ____

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

2010CP3201122

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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?

NO

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

2010CP3201122

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

i. N/A

ii. N/A

iii. N/A

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) Counsel was incompetent constitutionally ineffective in assistance

(b) ____

(c) ____

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

(a) your arraignment and plea? ✓

(b) your trial, if any? N/A

(c) your sentencing? ✓

Revised 3/2003

(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. Bradley B. HANSEN

ii. N/A

iii. N/A

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

i. plea / sentencing

ii. N/A

iii. N/A

2010CF320122

19. State clearly the relief you seek in filing this application:
SENTENCE AND CONVICTION VACATED, NAME, DNA ETC REMOVED FROM ANY derogatory files, ORDER EXPUNGING RECORD, ALL monies paid out RETURNED

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of Lexington)

VERIFICATION

ORIGINAL

I, Rikam Dezier, 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.

Rikam Dezier

SWORN to and subscribed before me this 7
day of 1/1 , 2 .

(L.S.)
Notary Public

My Commission Expires:

2010CP3201122

FILED
2010 MAR 10 P 12:11
BETTY J. MORRIS
CLERK OF COURT
LEXINGTON, SC

Revised 3/2003

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

I. Rikam Dozier, 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.

Rikam Dozier
Applicant

SWORN or affirmed to and subscribed before me this 9 day of May, 2010.

Notary Public

My Commission Expires: 5/10/13

2010CF3201122

FILED
2010 MAR 10 P 2:41
BELLA S. DARLING
CLERK OF COURT
LEON COUNTY, FL

Revised 3/2003

State of South Carolina
County of Lexington

Court of Common Pleas
11th Judicial Circuit

ORIGINAL

Rikam Ikkiesh Dozier
#331052
Applicant

Case No.

vs.

Petition for Review
Pursuant to Filing Post
Conviction Relief Application

State of South Carolina et al.,
Respondent(s)

2010CP3201122

To: The Court of Common Pleas,
The S.C. Attorney General et al.,

Here comes the applicant, in the above captioned matter, and do hereby humbly submit the following:

The applicant seeks to file motion pursuant to Post Conviction Relief. He will list the issues he at present seek review, and officially notify the parties that the litigation for these issues will follow once a case number is assigned, such case number

be forwarded to the applicant, thereupon the applicant will either supplement and/or amend the proceedings accordingly. Inasmuch, the issues presently sought to be placed before the Court are:

(1) Did the trial court err, and was the applicants 5th, 6th, 14th Amendment Rights of the U.S. Constitution, as well as Article IV § 2, and his Due Process Rights violated, by the indictment(s) of South Carolina, as constructed (which include all relevant 33 states), possessing a structural constitutional error and/or defect, in that the language and/or charge, contained therein, which did create and/or form conclusive presumption(s), that took away the applicants presumption of innocence, and automatically shift the burden of persuasion to the defendant in regard to the crucial elements of dispute?

2010CP3201122

(2) Did the trial court err, and was the applicants 5th, 6th, 14th Amendment Rights of the U.S. Constitution, as well as Article IV § 2, and his Due Process Rights violated, as well as Rules of Court, to include Rules of Criminal procedure, as well as the Court lacking Subject Matter Jurisdiction, and/or was prohibited from enacting and/or invoking its Subject Matter Jurisdictionary powers, Due to the

"PROCEDURAL DEFECT", IN THAT THERE WAS NO WRITTEN ORDER OF CONTINUANCE OBTAINED IN PURSUANT TO ARTICLE V § 4 of the South Carolina Constitution?

(3) Did the trial court err, and was the applicants 5th, 6th, 14th Amendment Rights of the U.S. Constitution, as well as Article I § 2, and his Due Process Rights violated, by the indictment for Kidnapping's failure to properly and or sufficiently allege how the Kidnapping took place in the body of the charging instrument?

(4) Did the trial court err, and was the applicants 5th, 6th, 14th Amendment Rights of the U.S. Constitution, as well as Article I § 2, and his Due Process Rights violated, by the indictment for Arm Robbery's failure to properly and or sufficiently allege material elements and or averments, in the body of the charging instrument?

2010CP3201122

(5) Did the trial court err, and was the applicants 5th, 6th, 14th Amendment Rights [redacted] of the U.S Constitution, as well as Article I § 2, and his Due Process Rights violated, by the indictments failure to properly and or sufficiently allege the Code and or Subsection the Applicant is alleged to have violated, in the body of the charging

INSTRUMENT?

(6) Did the trial court ERR, and was the Applicants 5th., 6th., 14th AMENDMENT Rights of the U.S. Constitution, as well as Article I§ 2, and his Due Process Rights violated, to include Rules of Court, and or Rules of Criminal Procedure, due to the "procedural Defect", in that the prosecuting Agents acted as sole witnesses on the warrants and or indictments?

(7) Did the trial court ERR, and was the Applicants 5th., 6th., 14th. AMENDMENT Rights of the U.S. Constitution, as well as Article I§ 2, and his Due Process Rights violated, by the trial court allowing constructive amendment of the indictments at the Applicants trial and or plea hearing?

2010CP3201122

(8) Did the S.C. Supreme Court in State v. Gentry ERR, and abused their discretionary powers, and in such, the trial court did ERR, and lacked Subject Matter Jurisdiction, and or was pro-hibited from rendering and or invoking its Subject Matter Jurisdictionary "powers", due to the indictment defects and or errors contained within the issues presented, in violation of the Applicants 5th, 6th, 14th Amendment Rights of

the U.S. Constitution, as well as Article I § 2, and the Laws of Due Process?

(9) Did the trial court err, and was the applicants 5th, 6th, 14th amendment Rights of the U.S. Constitution, as well as Article I § 2, and his Due Process Rights violated, by the prosecuting body making reference to various statements made, thus entering such testimony into the court record in violation of the statutes?

(10) Was counsel inept and constitutionally ineffective, in violation of the applicants 5th, 6th, 14th amendment Rights of the U.S. Constitution, and the laws of Due Process, by erroneously advising the applicant to plea guilty, giving rise to a guilty plea that was not freely, knowingly, voluntarily, or intelligently given?

2010CP320122

Respectfully Submitted
Rikam Ikkesh Dozier
Rikam'
Dozier

February 20, 2010

Dear Clerk of Court,

Please return to me a clocked stamped copy of all documents with the assigned case number as expeditiously as your time permits. Thank you in advance for your kind assistance

Respectfully
Rikam Dozier

2010CP3201122

FILED
2010 DEC 10 P 12:35
RICHLAND COUNTY
CLERK OF COURT
FAMILY COURT

State of South Carolina
County of Lexington

Rikam Ikkesh Dozier
#334052
Applicant

vs.

State of South Carolina et al,
Respondents

Court of Common Pleas
11th Judicial Circuit

ORIGINAL

Case No. _____

Proof of Service

FILED
2010 MAR 10 P 12:35
BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

To: The Court of Common Pleas et. al,

I, Rikam Dozier, the applicant in the above captioned matter, do hereby certify, that I have mailed and or served a copy of a PCR application and Petition for Review Pursuant to filing Post Conviction Relief Application; on the Court of Common Pleas, by U.S mail postage prepaid by depositing it in the institution mail box on March 2, 2010.

2010CP3201122

Respectfully
Rikam I. Dozier

March 2, 2010

Rikam Dozier

5 pg left

HENRY MCMASTER
ATTORNEY GENERAL

May 14, 2010

The Honorable Beth Carrigg
Lexington County Clerk of Court
205 East Main Street
Lexington, South Carolina 29072

Re: Rikam Dozier #334052 v. State of South Carolina
Case #2010-CP-32-01122

Dear Ms. Carrigg:

Enclosed please find the original Return in the above-captioned case, Rikam Dozier #334052 v. State, for filing in your office.

Sincerely,

A. West Lee
Assistant Attorney General

AWL/las

Enclosures

cc: William H. Edwards, Esquire w/enclosures

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

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
		2010-CP-32-01122
Rikam Dozier #334052,	)	
	)	
Applicant,	)	
	)	
vs	)	PROOF OF SERVICE BY MAIL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, Lisa A. Suber, who being first duly sworn, states:

1. That I am an employee of the Office of the Attorney General.

2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.

3. That I have this day served a copy of the State's Return of the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

William H. Edwards, Esquire
Post Office Box 5709
West Columbia, South Carolina 29171

DATED this 14th day of May, 2010

Lisa A. Suber
LISA A. SUBER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
	)	2010-CP-32-1122
	)	
Rikam I. Dozier, #334052,	)	
Applicant,	)	
	)	
v.	)	**RETURN**
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 10, 2010, 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 Lexington County Clerk of Court. The Applicant was indicted at the September 2008 term of the Lexington County Grand Jury for Criminal Conspiracy (2008-GS-32-2827), and Armed Robbery (2008-GS-32-2826). He was represented by Bradley Hansen, Esquire. On April 2, 2009, the Applicant pled guilty to Armed Robbery. He was sentenced by the Honorable R. Knox McMahon to confinement for a period of fifteen (15) years. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

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

1. Ineffective assistance of counsel;
2. Involuntary Guilty Plea
3. Due Process Violations
4. Subject Matter Jurisdiction

III.

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.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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

V.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v.

Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VII.

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

VIII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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By: _____
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May 14, 2010.

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) 2010-CP-32-01122

RIKAM DOZIER)
APPLICANT)
vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA)
RESPONDENT)

November 15, 2012
Lexington, South Carolina

B E F O R E:

HON. EDGAR W. DICKSON, Judge.

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

AMIEE J. ZMROCZEK, ESQ.
Attorney for the APPLICANT

KAREN C. RATIGAN, ASSISTANT ATTORNEY GENERAL
Attorney for the STATE

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

EXHIBITS

Applicant's

MS. RATIGAN: Your Honor, the next case is Rikam Dozier versus State.

May it please the Court. The docket number on that case is 2010-CP-32-1122. Mr. Dozier was indicted for armed robbery and criminal conspiracy. He was represented on those charges by Bradley Hansen.

On April 2, 2009, he pled guilty to armed robbery. The conspiracy charge was nol prossed. Judge McMahon gave him a sentence of 15 years in prison. He did not file an appeal.

The State's ready to proceed. It's my understanding we're going to go ahead and take Mr. Hansen's testimony at this time.

THE COURT: That's my understanding as well.

Are you calling Mr. Hansen?

MS. RATIGAN: Yes, Your Honor.

Do you want to call him?

MS. ZMROCZEK: No, no, you can call him. But I was just going -- Judge, we put yesterday, and we may want to have it marked as an appellate's or plaintiff's exhibit, but I want to make sure you still had it up there. I think that's it right there, with all the attachments. We can just mark it as one exhibit. They're referenced in there.

THE COURT: Are these the exhibits?

MS. ZMROCZEK: Yes, sir. And they're all referenced in the memo. If we can just mark the memo.

THE COURT: Yes, ma'am.

(WHEREUPON, APPLICANT'S Exhibit No. 1 was marked for identification only.)

MS. RATIGAN: We're going a little bit out of order, Your Honor. The State calls Mr. Hansen.

THE COURT: Mr. Hansen, if you'd come up here, please, sir.

BRADLEY HANSEN, after having duly affirmed, testified as follows:

THE CLERK: Have a seat and state your name for the record, please.

THE WITNESS: Bradley Hansen, H-A-N-S-E-N.

DIRECT EXAMINATION

BY MS. RATIGAN:

Q Let me know if you can't understand my beautiful speaking voice this morning.

Do you recall representing Mr. Dozier on these charges?

A Yes, I do.

Q Were you retained in this case or were you appointed?

A I was retained.

Q Okay. And did you file the usual Brady and Rule 5 motions in this case?

A Yes, I did.

Q Did you receive discovery from the Solicitor's office?

A Yes, I did.

Q Did you review those materials with Mr. Dozier?

A Yes, I did.

Q And what did you receive in discovery, do you remember?

A It was a packet. It's been three years. I've probably had a thousand cases since then.

Q Incident, supplemental report, things of that nature?

A Exactly.

And I would like to clarify that I was retained by Mr. Dozier specifically to negotiate a plea as opposed to proceeding to trial or to remove the charges, I guess would be the way I would put it.

Q That was the understanding you had with him?

A That was in the written contract.

Q So once you took the case it was in a plea posture, it was never going to trial while you were representing him?

A That's correct.

Q Did you explain to Mr. Dozier the sentencing range that he was facing on these charges?

A Yes, I did.

Q Did Mr. Dozier tell you kind of his version of what had happened that day?
A Yes.
Q And did you engage in plea negotiations with the State?
A Yes, we did, lengthy plea negotiations.
Q And did they come to you with an offer at some point?
A Yes, they did.
Q And what was that offer?
A Originally, if I recall, there was a first solicitor -- and I'd have to review my notes -- there was a first solicitor and they were trying to move forward on the kidnapping charges, the conspiracy charges as well as several counts of armed robbery. They took a harsh stance, then Mr. Hubbard took over and we saw some movement. Eventually we got all the charges dropped except for the armed robbery, I believe.
Q And that was when that second solicitor came on board?
A No. The first solicitor was a female -- I'd have to refer to my notes. Hubbard came in somewhere towards the -- I would say middle to end of my representation and that's where we saw some movement.
Q When you say charges dropped, you're talking about the -- I believe you mentioned a kidnapping?

A Several kidnapping charges, I believe.
Q Did the State ever make you an offer of a specific sentencing range?
A Not until the very end.
Q When did they make you an offer of a specific sentence?
A We had been in negotiation and I believe the -- prior to our plea, the prior court date I believe was in front of Judge Keesley and they made an offer and I decided, I hope wisely, to wait until -- or to discuss it with Mr. Dozier and wait to see who the next judge would be during the next court, the next date, and that was, I believe, Judge McMahon, and they offered 10 to 30 years.
Q Okay.
A And they specifically agreed that they would not object to the minimum on the single one count of armed robbery.
Q So the offer was to plead just to the one count of armed robbery, dismiss everything else, and just have it be 10 to 30?
A Yes, with the stipulation that they would not object to a minimum sentence for Mr. Dozier.
Q And did you explain this offer to Mr. Dozier?
A Yes, I did.
Q And the plea was the first week of April. About how

far in advance of the plea did you get this offer, do you remember?
A It had to be at the prior court date, I believe.
Q Would you say it's fair to say Mr. Dozier had a bit of time to think about whether or not he was going to --
A Definitely. I believe it was at least a month to six weeks.
Q Obviously this was more than three years ago, but do you recall whether or not Mr. Dozier wavered at all at the plea with his decision to go forward?
A No. I represent -- I work for the Christine Legal Center and we practice law maybe a little bit differently than any attorney in this courtroom. We ask whether our clients did it, and we -- specifically, Mr. Dozier and I had direct and open communications in regards to that. And then it's the idea of moving towards a -- once there's an admission and the client is aware of what that means, the admission of guilt is trying to attempt to find a fair and just punishment that is fair to the client and that's where we were moving towards. So he was aware of that. At the very beginning, he admitted to me his part in the incident.
Q But, again, on the day of the plea, did he appear to waver?
A Not at all.

Q Did he ever -- obviously we haven't heard his testimony yet, but I'm going to just ask some general questions.

Did he ever indicate to you during the plea that he was confused about anything?

A No.

Q Did you ever promise him he would receive a certain sentence if he pled guilty that day?

A No, I didn't.

Q Did he contact you at any point after the plea to say he was dissatisfied with the way the plea had gone or he had been surprised by something?

A I think either -- I think I met with Rikam after the sentencing and I believe I met with his mother, and they were dissatisfied with the result or the decision of the judge as well as I was dissatisfied.

Q They were dissatisfied with the sentence?

A Exactly, the sentence, in regards to that the State didn't object to a minimum sentence. We asked for leniency. It's a first time offender. We were in front of Judge McMahon and I certainly expected that the judge would accept the minimum sentence. He did not, and he gave Mr. Dozier 15 years rather than ten.

Q But, again, did you ever promise Mr. Dozier he'd get that minimum?

A No, I did not.

MS. RATIGAN: That's all I have, Your Honor.

THE COURT: All right.

Yes, ma'am, your witness.

MS. ZMROCZEK: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q Mr. Hansen, how much criminal law do you practice?

A Currently or then? And I'm licensed in two jurisdictions, in Illinois as well as in South Carolina.

Q How much South Carolina criminal law did you practice back then?

A I'd say a fair amount.

Q Okay. How many trials did you do?

A Once again, Illinois, South Carolina?

Q South Carolina.

A At that time, 2009, I would imagine 20 or so.

Q Okay. You said you received discovery?

A Yes.

Q And let's clarify something. You said on direct that Mr. Dozier was charged with all these kidnapping and things like that, but that's not correct, is it? He was charged, he was indicted -- or excuse me -- he was

arrested on arrest warrants for one count of armed robbery, one count of kidnapping, and one count of criminal conspiracy; is that correct?

A It's been awhile so I would say yes, in regards to if I recall the State in regards to their initial position was that they were threatening to include additional charges for each one of the -- do you want me to go into the details of the act?

Q No, not really. My question was this, when Mr. Dozier came to you?

A Yes.

Q It's because he was arrested?

A Yes.

Q He was arrested on three warrants, correct?

A Yes, I believe so.

Q And that's the only warrants that have ever issued in this case?

A That's correct.

Q Just the three?

A Yes, that's correct.

Q Okay. And then he was indicted on two of those warrants, correct?

A I don't recall.

Q Okay. If I showed you the indictments and told you that --

A I'll let the indictments speak for themselves, yeah.
Q So if he was -- he was only indicted on one count of armed robbery and one count of criminal conspiracy?
A Correct.
Q And we'll come back to that.
When you looked through discovery, did you see statements from Mr. Dozier?
A I believe so.
Q And how old was Mr. Dozier at the time that this incident occurred?
A I believe he was 16.
Q So he was a minor?
A Correct.
Q But because of the nature of his charges it was waived to general sessions?
A Correct.
Q Did you ever ask the solicitor to have it -- as the statute says, did you ever ask the solicitor to have a hearing to have it waived back down to family court?
A Specifically, I had communications in regards to that, yes.
Q And you asked him to do that?
A Yes.
Q And do you have any written communication or did you tell Mr. Dozier about any of those?

A I spoke with Mr. Dozier, I spoke with I think it was the first solicitor at that time.
Q Okay. But there's no written documentation of that?
A No, there is not.
Q And did they say no or what was the --
A Yes, they refused.
Q Okay. And you did not file any motions with the Court?
A That is correct. I mean, besides my discovery.
Q I meant in regards to this specific issue.
A That specific incident.
Q But you did have Mr. Dozier evaluated, correct?
A Yes. I filed a motion in regards to having him mentally evaluated.
Q And why did you file that motion?
A Concern in regards to his capacity at the time.
Q Because he was 16?
A Yes, and any incidental mental issues.
Q And he had never been arrested before?
A That's correct.
Q And when you received that report back, and I believe you handed it up to the judge, but didn't it say that he didn't understand what he was fully charged with?
A I believe there was specific elements in regards to the report that they referenced that.

Q Okay.
A But that it also stated other things that --
Q Okay. Didn't it in fact state that he, Mr. Dozier, your client, he named his three charges and he estimated a possible 15-year sentence as a maximum conviction?
A I will let the document speak for itself.
Q But you never raised that issue during the plea?
A That's correct.
Q You just told the judge that he understood everything?
A I don't believe I told the judge. I believe Mr. Dozier told the judge he understood everything.
Q Okay. Even though you knew that he'd been evaluated and he didn't understand the nature of what he was facing?
A At that time. I mean, that was in communication -- I wasn't present at his interview.
Q Okay.
A I can only go on with what I communicated and what he told me he understood.
Q Okay. So let's go to the pre-negotiations. You're writing letters back and forth with Mr. Hubbard, the solicitor?
A Actually, yes, letters and a lot of phone calls.
Q Communication?
A Yes.

Q And he said numerous times, and you wrote in your letters, not object to serving the minimum ten-year sentence?
A Correct.
Q And you provided those letters to Mr. Dozier as well?
A I believe so, yes.
Q Okay. During the sentencing hearing, Judge McMahon referenced how he was facing 30 to 90 years, but that wasn't correct?
A That -- I believe it was correct in regards that -- I don't know how Judge McMahon got the information, but -- where it came from, but that was one of the issues was that the State could have brought additional charges for each act in regards to each of the individuals that was in the incident, and that part of the agreement was that they were not bringing up any -- they weren't going to indict Mr. Dozier on any more of these charges.
Q Okay. Have you had a chance to read the two counts that he was indicted on?
A Back then, definitely, yes.
Q Okay. In those two counts when he was indicted and he was never indicted on the kidnapping charge?
A Correct.
Q Although it was presented to the Grand Jury, he was not indicted on that?

A Correct.
Q So they didn't even find enough evidence?
A Correct.
Q But you allowed the judge to weigh that into his consideration and didn't correct him, that he was only indicted on two counts that carried a maximum of 35 years?
A If I didn't correct the judge, that would be -- I'll let the transcript speak for itself.
Q And the transcript speaks for itself, certainly. So you wouldn't disagree with what the transcript said?
A Not at all.
Q And so if he was only indicted with two counts, that was 35 years and not 90 years or over 90 years?
A Clearly.
Q So when you mailed the letter to Mr. Dozier advising him not to appeal and you said he was facing over 90 years, that might have been incorrect?
A I don't know if I wrote a letter to him advising him not to appeal. I'd have to review the letter. I clearly informed him of his right to appeal.
MS. ZMROCZEK: May I approach, Your Honor?
THE COURT: Yes.
MS. ZMROCZEK: It's Plaintiff's Exhibit E.
THE WITNESS: If you could point to where I state not appeal.

BY MS. ZMROCZEK:

Q No, no. And I'll rephrase the question.

When you were advising him of his right to appeal, did you incorrectly advise him that he was facing over 90 years or did you tell him he was facing 90 years?

A I said -- may I read the sentence?

Q Absolutely.

A You are facing 10 to 30 years and as noted by Judge McMahon, you could have been charged with three separate armed robbery charges and at least four kidnapping charges, thus totaling potential sentences well in excess of 90 years.

Q Okay. So it's your understanding if he read this, he -- I mean you wanted him to be aware that he could have been facing 90 years?

A Correct.

Q Or over 90 years.

But he wasn't facing over 90 years; is that correct?

A I never stated that he was facing 90 years.

Q And never corrected the judge when the judge stated or misstated that he could have been or was facing that amount?

A I believe I answered that question before.

MS. ZMROCZEK: All right. Beg the Court's

indulgence.

THE COURT: Take your time.

(Pause.)

BY MS. ZMROCZEK:

Q And the last question I have is, during the guilty plea when the solicitor had raised that he had concerns about Mr. Dozier's age, at that point -- if it's not in the transcript, I think you would agree it's not in the transcript -- you never again raised his competency or his age concerns at that time?

A I don't believe so, but I'm sure I must have referenced during my statements his youthful status and his criminal background, his family background, educational background, everything that is mentioned, you know, within the transcript to give any reason for the Court to rule more leniency on my client.

Q And you said that he had a co-defendant and his co-defendant if you remember was a juvenile, correct?

A Yes, was I believe a year and a half to two years younger than Mr. Dozier.

Q And do you remember what Mr. Dozier's role was in the crime, was he the leader or the follower?

A This is kind of interesting because Mr. Dozier was older than this individual, but during the negotiations and from the information that I was supplied, no one

really controverted that, that it appeared that Mr. Dozier was following this younger person as a follower as opposed to a leader. And I think we at least during our plea I mentioned that specific issue in regards to that he was following and that I believed the co-conspirator brandished a knife prior to any action of Mr. Dozier. And I tried to impart on the Court that while Mr. Dozier was the elder conspirator, he was not the primary conspirator.

MS. ZMROCZEK: Thank you. I have no further questions.

THE COURT: Anything on redirect?

MS. RATIGAN: No, Your Honor. We'd ask Mr. Hansen be excused.

THE COURT: Any objection?

MS. ZMROCZEK: No objection.

THE COURT: Thank you, Mr. Hansen.

THE WITNESS: Thank you, Your Honor.

THE COURT: I know we've got another matter.

MS. ZMROCZEK: Your Honor, I'll move him back.

(A break was taken while other court proceedings were had.)

THE COURT: All right. We're ready to go back on the record with Mr. Dozier.

MS. RATIGAN: Yes, Your Honor.

THE COURT: All right. Ms. Zmroczek, are you

ready to call your next -- am I mispronouncing it badly?

MS. ZMROCZEK: No, not badly at all. It's Zmroczek.

THE COURT: Zmroczek.

MS. ZMROCZEK: In Poland it's likely Zmroczek, so I think you're closer.

Your Honor, at this time we call Rikam Dozier.

THE COURT: Mr. Dozier.

RIKAM DOZIER, after being duly sworn, testified as follows:

THE CLERK: Have a seat. State your name for the record, please.

THE WITNESS: Rikam Dozier.

DIRECT EXAMINATION

BY MS. ZMROCZEK:

Q Spell your last name.

A D-O-Z-I-E-R.

Q Thank you. Mr. Dozier, obviously you've introduced yourself to the Court. How old are you now?

A Twenty.

Q You're 20 years old?

A Yes.

Q And when do you turn 21?

A November 30.

Q How many times have you been arrested in your life?

A None. Well, prior to this, none.
Q Prior to this zero. And then you were arrested. Do you recall when that was?
A February 27, 2008.
Q And how old were you at the time?
A Sixteen.
Q And with whom were you arrested?
A Tobias Davis.
Q And how old was Mr. Davis?
A Fourteen.
Q And were you bonded out, were you taken to jail?
A I was taken home -- DJJ.
Q So you were at DJJ. Were you served with arrest warrants?
A I was served with three.
Q Do you recall what they were?
A Armed robbery, kidnapping, and conspiracy.
Q All right. Were you ever served or charged or receive any other warrants besides those three?
A No, ma'am.
Q Were you ever told that you would be charged or receive more than those warrants?
A No, ma'am.
Q Did you seek an attorney?
A I didn't, but my mother did.

Q And who is that attorney?
A Mr. Hansen.
Q Do you recall how many times you spoke with Mr. Hansen?
A We spoke twice.
Q Did he come out to DJJ or did you go to --
A He came out to DJJ twice.
Q Were you ever out of DJJ?
A No.
Q So you were in there the whole pretrial time.

Did you ever discuss with Mr. Hansen if this case would ever go to trial or would it just be a plea?
A We discussed a plea.
Q Did you ever tell Mr. Hansen that you had talked to the police?
A Yes, I did.
Q Were your parents present when you spoke with the police?
A No, ma'am.
Q And you were 16 at that time?
A Yes, ma'am.
Q But all your discussions with Mr. Hansen would be to negotiate a plea?
A Yes, ma'am.
Q What do you recall about Mr. Hansen discussing your

charges in general sessions, which is big court, versus family court?

A I asked him one time about -- I didn't understand about family court, I didn't know what it was called at the time, but there was a person that was at DJJ, he showed me a piece of paper about a juvenile, the guideline thing, and I asked him could I be sentenced under the guidelines, and he said no.

Q He just told you no?

A He told me no because he said I was in general sessions and he's saying that they didn't offer that to me.

Q Okay. And those were the only discussions you had with him?

A (Witness nodding.)

Q Do you recall that he sent you to be evaluated?

A Yes.

Q And you may or may not recall. Do you recall what you told them about the charges that you were facing and the time?

A They asked me several questions about could I count money and spell my name backwards and stuff like that. And then they asked me did I understand the charge that I was going to receive, and I said the maximum sentence's 15 years.

Q Where would you have gotten that information?
A I got that from Mr. Hansen.
Q Because you had never been arrested before so you weren't familiar with it?
A No, I wasn't familiar at all.
Q Okay. When he sent you letters, and we submitted the letters to Court, what was your understanding from the letters and from the conversations with your attorney of the time that you would receive in general sessions court?
A Since that I wasn't going to be able to receive the juvenile time, I was told by my lawyer that he was working out a deal with the solicitor, which was Mr. Hubbard, for ten years and not for them -- that's what the deal was. He asked me to accept the plea. I had several papers that was in the motion asking me, telling me the deadline and such and such before they tried to put it to trial.
Q So your understanding was ten years?
A Ten years.
Q But then do you recall when you stood up in front of the judge and the judge asked you a bunch of questions about whether you understood the plea or not and you understood that you could get a range of time, did you answer to the judge that you did understand that?
A Yeah, but I was 17 at the time and I was going with what my counsel said, what he told me to say.

Q And he told you again that what?
A He told me that that's what I needed to accept because that's the only thing they was giving me.
Q Okay. And you heard Mr. Hansen testify that you all met or discussed a possible appeal afterwards; is that correct?
A The day after. It was the day after I received my time. We didn't -- we discussed appeal, but he said that it wasn't in my best interest because he said -- we was talking face-to-face and he said at the most I could lose five years because the minimum sentence was ten years and he said at the max, he said they can take me back and give me additional charges. That's what he said the day after we met.
Q Would you have appealed if it meant that you could get five less years?
A Yes, ma'am.
Q And not facing 90 years?
A Yes, ma'am.
Q And you've never had any other attorney or any other conversations or you'd never been represented by an attorney before this?
A No, ma'am.
Q So what was your understanding of what your attorney was telling you that you believed? What did you believe

about it?
A I just believed that since we sat down and talked since he said that if I sit and wait, which I did wait for a year and two months because I got sentenced April 2nd, that it was in my best interest to sit and wait and work out a good plea deal. And the plea deal that he's telling me, that I was in knowledge of, he said ten years, and that was it.
Q What did you -- from his understanding -- from your understanding of what he told you, what did you think you could be facing?
A From what he told me, from my understanding was 90 years at the max.
Q Ninety years at the max. Is that why you chose not to appeal?
A Yes, ma'am.
MS. ZMROCZEK: I may have a few more questions for you, but please answer any questions that the Assistant Attorney General may have.
THE COURT: Ms. Ratigan, your witness.
MS. RATIGAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. RATIGAN:
Q Mr. Dozier, I believe you said your mom hired Mr. Hansen to do the plea for you?

A Yes, ma'am.
Q And was it your understanding that you hired him to plead guilty and not go to trial?
A Yes, ma'am.
Q And so you wanted him to talk to the State about a possible plea deal?
A Yes, ma'am.
Q When you were at DJJ and he came to meet with you, did you all go over the State's evidence, the statements and police reports and things like that?
A Yes, ma'am.
Q And did you tell Mr. Hansen what had happened that day?
A Yes, ma'am.
Q And when he met with you, did he tell you the maximum sentence that you could get on these charges, do you remember?
A Yes, ma'am.
Q What was it he told you at the time you were meeting with him?
A He said that I was charged with three separate armed robberies, three kidnappings, and conspiracy, and he said the max I could get was 90 years, and he was trying to work his way down.
Q And when you went to court that day, you knew you

were going to plead guilty?
A Yes, ma'am.
Q And what kind of sentence did you expect to receive? Did you know if there was a plea deal?
A From my knowledge what my lawyer tells me, he said it was a plea deal to 10 years.
Q So when you went to court that day, you thought the State had made an offer for you to get a 10-year sentence?
A Yes, ma'am.
Q Do you recall anyone during the plea talking about a plea agreement for ten years?
A No, ma'am.
Q And why didn't you either talk to Mr. Hansen or talk to the judge about, you know, hey, I thought I was here for a 10-year plea deal? Why didn't you bring it up to the Court?
A Because I was 17 at the time and I didn't have no understanding of what was going on. I was going off my counsel, what he tells me. So that's what he said, that's what I was going off of.
Q And why was it that you wanted to file an appeal from the guilty plea?
A Because I felt that I was sentenced too harsh.
Q So it wasn't that the judge made any kind of mistake, you just thought you got too much time; is that fair to

say?
A Well, I can say both.
Q Okay. What did you think the judge had doe incorrectly? What kind of legal error did the judge make?
A From my --
MS. ZMROCZEK: Your Honor, I'm going to object. Obviously he doesn't know -- I mean obviously he doesn't know what kind of legal error, so I would object that this is out of his range of knowledge.
THE COURT: And I'll note your objection on the record. If he feels like he can answer it, I'll let him answer it and note your objection. If he can't answer that, that's perfectly --
MS. RATIGAN: I'll phrase it a little differently.
THE COURT: Okay.
BY MS. RATIGAN:
Q So you wanted to appeal because it was too harsh of a sentence. Was there anything else that happened in court that day on the record that you wanted to appeal?
A I really can't understand what you basically trying to say.
Q Okay. You just didn't like the outcome, you just didn't like the way things went at the hearing, that's why you wanted to file an appeal?

A Yes, ma'am.
Q And your testimony is that Mr. Hansen kind of dissuaded you from filing an appeal because he mentioned 90 years as being a possibility?
A Yes, ma'am.
MS. RATIGAN: Beg the Court's indulgence.
THE COURT: Take your time, Ms. Ratigan.
(Pause.)
MS. RATIGAN: That's all I have.
MS. ZMROCZEK: I just have a few follow-up questions.
THE COURT: Okay. Yes, ma'am.

REDIRECT EXAMINATION

BY MS. ZMROCZEK:
Q Did Mr. Hansen ever advise you that you could file a motion to reconsider the sentence?
A He sent me a paper saying that I could appeal, but he said that he wouldn't be my appeal lawyer.
Q Okay. But he never -- did he ever mention the words "reconsider the sentence"?
A No.
Q Okay. Are you aware of what sentence your co-defendant got?
A He was sentenced to 36 -- I think it was a 3654, but he's going home turning 18.

Q As a juvenile?
A As a juvenile.
Q He went home at 18?
A Yes.
Q And you were never given any explanation other than no about why you weren't waived down to family court, correct?
A Correct.

MS. ZMROCZEK: I have no further questions.

THE COURT: Anything on recross?

MS. RATIGAN: Nothing, Your Honor.

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

Ms. Zmroczek, do you have any other witnesses?

MS. ZMROCZEK: I do not, Your Honor, just a few brief closing remarks.

THE COURT: All right. Let me hear from you, please, ma'am.

MS. ZMROCZEK: Thank you, Your Honor.

And you received a copy of our memo along with the case law.

THE COURT: Yes, ma'am.

MS. ZMROCZEK: And, Your Honor, this is a case where not only was the attorney who testified that he was judge shopping and trying to make these deals, he

testified that this client was facing all of these charges and all of these warrants, and that's just simply not true. It's not backed up by the evidence, Your Honor. He has facing three charges, one of which he was not even indicted for, although it was presented to the Grand Jury. He was facing two counts, a total max of 35 years. He claims that he asked that the case be waived down, but it wasn't. He claims that he had concerns about the client's understanding at his young age and had him evaluated and that he passed the evaluation, but I don't know if anyone read the evaluation becuase at the end he said he understood he was facing 15 years.

Mr. Hansen's representation of Mr. Dozier was ineffective and he was prejudiced, Your Honor, by it because he chose not to have the sentence reconsidered or appealed. He didn't even know that he could ask the sentence be reconsidered. He was never allowed or never given any other explanation or taken in front of a court to say no, we're not going to waive him down. The statute specifically says if the solicitor chooses or if the solicitor is asked, he can waive these charges down.

Your Honor, there are two recent Supreme Court cases that came out in March that specifically apply Strickland to guilty pleas. The Supreme Court has noted that the majority of what we do now in courts are guilty

pleas and that Strickland was typically applied to trials but now has been extended to the conduct of attorneys during guilty pleas.

Your Honor, we believe that Mr. Dozier has had ineffective assistance of counsel and was prejudiced by that, and it's our position that he be given a 10-year sentence that it was his understanding that he receive.

THE COURT: Okay. Thank you, ma'am.

Ms. Ratigan.

MS. RATIGAN: Thank you, Your Honor.

The State obviously has no evidence to present, so I just want to formally rest on the record.

I will just make a couple of mercifully brief remarks.

The State would argue Mr. Dozier hasn't met the two-prong test under Strickland versus Washington. First of all, in terms of error, I don't think Lafler versus Cooper and Missouri versus Frye come into play here. Both cases deal with either plea offers not being conveyed or being improperly conveyed. Mr. Hansen testified there was never a specific offer of time. There was an offer to dismiss a charge and have the State not object to seeking the minimum sentence and that the State's offer was 10 to 30, which Your Honor knows really isn't an offer, that's the sentencing range for armed robbery. Mr. Dozier has

not put forth any evidence today that there was ever a plea offer for a 10-year sentence. I don't believe he's satisfied his obligation in proving that one was not properly explained to him. He testified he understood the sentences he was facing. He chose that day to plead guilty. The plea record is very detailed in terms of explaining the charge, the minimum and maximum sentence he was facing. He stated his guilt. The State pursuant to the agreement did not oppose the minimum sentence. He stated he was satisfied with Mr. Hansen. He understood the questions of the Court. All this information was before the judge. The plea was accepted as knowing and voluntary. The State would argue Mr. Dozier hasn't proven any prejudice. He knew going in. There's no recommendation actually. If you look at the sentence sheet, the box for "no recommendation" is checked. So we believe it's a voluntary plea and Mr. Dozier's not met the burden of proof that Mr. Hansen was ineffective.

THE COURT: Thank you, ma'am.

What I'll do is let me just read over the trial brief and read over the record, the exhibits, and transcript, and I'll get back to you all with my decision.

Thank you all very much. Appreciate it.

(The proceedings were concluded.)

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

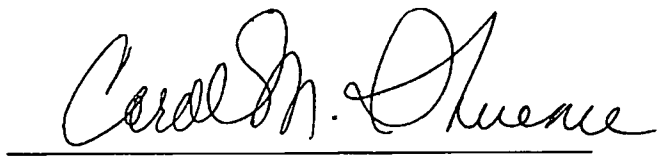
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

I, CAROL M. THUEME, RPR, Official Court Reporter for the 11th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Lexington County, South Carolina, on the 15th day of November, 2012.

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

June 12, 2014



CAROL M. THUEME, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
Rikam I. Dozier #334052	)	
Applicant,	)	
	)	
v.	)	APPLICANT"S TRIAL BRIEF
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

STATEMENT OF THE CASE

On February 27, 2008, Applicant, Rakim I. Dozier (hereinafter referred to as "Dozier"), was served with arrest warrants for the charges of Armed Robbery (I-626642), Kidnapping (I-626643), and Criminal Conspiracy (I-626646) attached hereto and incorporated herein by reference as Exhibit A. Dozier was indicted at the September 2008 term of the Lexington County Grand Jury for Armed Robbery (2008-GS-32-2826) and Criminal Conspiracy (2008-GS-32-2827) attached hereto and incorporated herein by reference as Exhibit B. Dozier was never indicted on the charge of Kidnapping. Dozier was represented by Bradley Hansen, Esq. (hereinafter referred to as "Counsel") of the Christian Legal Center, LLC. On April 2, 2009, Dozier plead guilty to Armed Robbery. Dozier was sentenced by the Honorable R. Knox McMahon to imprisonment for a period of fifteen (15) years.

Dozier filed a timely motion for Post Conviction Relief in this Court on March 10, 2010. Dozier's petition for relief made claims based on ineffective assistance of counsel, Fifth, Sixth, and Fourteenth Amendment violations, subject matter jurisdiction, and due process violations. Applicant is now limiting his claim for relief to the following cognizable claims: violation of his

Sixth Amendment and Fourteenth Amendment rights to his effective assistance of counsel and subject matter jurisdiction based on the aforementioned violations.

STANDARD OF REVIEW

Ineffective assistance of counsel pre-trial

Dozier bears the burden of proving the allegations for a Post Conviction Relief case. *Butler v. State*, 268 S.C. 441, 334 S.E.2d 813 (1985). Dozier's application asserts a claim of ineffective assistance of counsel which must be examined under the standard established in *Strickland v. Washington*, 466 U.S. 668 (1984) (holding that to establish a claim of ineffective assistance of counsel, a PCR applicant must meet a two prong test by showing (1) that counsel's performance was deficient, i.e., it fell below an objective standard of reasonableness, and (2) that counsel's error was prejudicial, meaning that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different).

The Sixth Amendment right to counsel is violated where an applicant can show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. In this case, if not for the ineffective assistance of counsel at trial, Dozier would have not entered into his guilty plea, which rendered his guilty plea involuntary. To meet this standard, an applicant must demonstrate that "counsel's performance was deficient" and that "the deficient performance prejudiced the defense." *Id.* at 687; *accord Custodio* v. *State*, 373 S.C. 4, 9, 644 S.E.2d 36, 38 (2007). Stated differently, the applicant first "must show that counsel's representation fell below an objective standard of reasonableness," which must be judged under "prevailing professional norms." *Id.* at 687-88. Judicial scrutiny of counsel's performance is highly deferential and not subject to the distorting effects of hindsight, and counsel may reasonably choose from a wide range of acceptable

strategies. *Strickland*, 466 U.S. at 689 (1984); *Burket* v. *Angelone*, 208 F.3d 172 (4th Cir. 2000). In assessing whether counsel's counsel was reasonable, "a court must indulge a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance" and "might be considered sound trial strategy." (citation omitted) *Id.* at 689. A sound strategy, however, cannot be found when a decision made by counsel is invalid under an objective standard of reasonableness. *Roseboro* v. *State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995).

If an applicant meets the first prong of showing deficiency in counsel's performance, an applicant must then establish prejudice by showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694 (1984). It is insufficient to show only that the errors had some conceivable effect on the outcome of the proceeding, because virtually every act or omission of counsel would meet that test. *Id.* at 693. An applicant bears the "highly demanding" and "heavy burden" in establishing actual prejudice. *Williams* v. *Taylor*, 120 S.Ct. 1495, 1513-14 (2000). Prejudice is established if "but for counsel's errors there is a reasonable probability the result at trial would have been different." *Johnson* v. *State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

Ineffective assistance of counsel-guilty plea

Dozier is collaterally attacking his guilty plea conviction by challenging the voluntariness of his guilty plea. An applicant "who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing (1) that counsel's representation fell below an objective standard of reasonableness and (2) that there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty but would have insisted on

going to trial." *Wolfe* v. *State*, 326 S.C. 158, 485 S.E.2d 367 (1997); *accord Hill* v. *Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 303 (1985); *Roscoe* v. *State*, 345 S.C. 16, 546 S.E. 2d 417 (2001); *Carter* v. *State,* 329 S.C. 355, 360, 495 S.E.2d 773, 775 (1988); *Richardson* v. *State*, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993).

The U.S. Supreme Court significantly expanded the right to counsel in a pair of decisions issued in March 21, 2012, that established defendants' right to the effective assistance of a lawyer during plea negotiations.

The Supreme Court recently recognized a new right of defendants to effective assistance of counsel during the plea-bargaining process. *Lafler v. Cooper*, 132 S. Ct. 1376 (2012); *Missouri v. Frye*, 132 S. Ct. 1399 (2012). The right to effective assistance of counsel at the plea bargaining stage was already well established before these two companion decisions. *See Padilla v. Kentucky*, 130 S.Ct. 1473 (2010) and *Hill v. Lockhar,* 474 U.S. 52, 58 (1985). But those decisions involved the issue of whether ineffective assistance of counsel caused the defendants to *accept* the offer of a guilty plea, thereby waiving their right to a trial. Justice Kennedy acknowledged that special difficulties arose where application of the *Strickland* test was sought in cases where counsel's deficient performance is alleged to have resulted in the rejection or lapse of a plea, that were not present in cases where the claim related to advice to accept a plea. In the latter cases, Justice Kennedy noted that the plea is taken in open court and the judge and counsel can establish on the record that the plea is based on an informed and intelligent decision by the defendant. As Justice Kennedy noted, "[t]his affords the States substantial protection against claims that the plea was the result of inadequate advice." *Frye,* 132 S.Ct. at 1406. Where a plea offer has lapsed or been rejected, however, "the prosecution has little or no notice that something may be amiss and perhaps no capacity to intervene in any event." *Id.* at 1407. The

Court noted in *Hill* that "the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.'" 474 U.S. at 56. Justice Alito noted in his concurring opinion in *Padilla*, that "incompetent advice distorts the defendant's decision making process and seems to call the fairness and integrity of the criminal proceeding itself into question." 130 S. Ct. at 1493 (J. Alito, concurring).

ANALYSIS OF THE LAW

Ineffective assistance of counsel-pretrial

The first error where counsel was ineffective was when he failed to ask the solicitor to have the case remanded to the family court. South Carolina Code Annotated Section 63-19-20 (2008) states that ". . . a person sixteen years of age who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor." Furthermore, S.C. Code Ann. Section 63-19-1210 (3) states that "... when an action is brought in a circuit court which, in the opinion of the judge, falls within the jurisdiction of the family court, he may transfer the action upon his own motion or the motion of any party." Counsel should have asked the solicitor to have the case remanded to the family court and allow it to hear the case. There is nothing in the record that indicates counsel attempted to speak with the solicitor to have the case remanded to family court. Additionally, counsel should have argued that Mr. Dozier's case fell within the jurisdiction of the family court. Successfully establishing the jurisdiction of the family court would have allowed counsel to then have the case transferred to family court on his own motion.

There is sufficient evidence on the record which indicates Dozier's age and competency were a concern. The most concerning evidence is in the transcript where Mr. Hubbard states that

"Initially, he (Dozier) was sent to DJJ because of his age. And, Your Honor, from looking at his background, it's really tough for me to figure out what to do with it." *See* Tr. p. 15 lines 16-21 attached hereto and incorporated herein by reference as Exhibit C. Additionally, there is evidence in the record to support that the co-defendant, Tobias Davis, was the leader of the armed robbery despite being a year and a half younger than Dozier. The co-defendant was the one discovered with the money. *See* Tr. p. 17 lines 18-20. The co-defendant was the one who initially pulled the first weapon at the location of the armed robbery. *See* Tr. p. 12 lines 21-22. Interestingly, all of the money from the armed robbery was discovered at the house of the co-defendant. *See* Tr. p. 13 lines 21-25. Finally, Mr. Hansen stated multiple concerns he had regarding Dozier's age and competency (*see* Tr. page 24 lines 7-25) yet he neglected to try and have the case heard by the family court. Despite all this evidence, Counsel never asked to have the case originally heard in family court or remanded to the family court. Dozier understands that the Circuit Court had jurisdiction over this case, but it could have and should have been remanded to the family court based on the facts and circumstances of this particular case.

Failure of Counsel to speak with the solicitor about having the case remanded to family court, and Counsel's failure to attempt to have the case transferred to family court was unreasonable and deficient representation by Counsel. This unreasonable and deficient representation was prejudicial to Dozier because had the case been remanded to the family court, Dozier could only have been imprisoned until he reached twenty-one (21) years of age. As a result of counsel's actions, Dozier was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution.

Ineffective assistance of counsel-guilty plea

Dozier also argues that his guilty plea was not knowing, voluntary and intelligent. "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." *Roddy v. State,* 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" *Hill* v, *Lockhart,* 474 U.S. at 56, 106 S.Ct. 366 (quoting *North Carolina v. Alford,* 400 U.S. 25, 31, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)). *Holden v. State*, 393 S.C. 565, 572-73, 713 S.E.2d 611, 615 (2011). Counsel's failure to speak with the solicitor about having the case remanded to family court, and counsel's failure to attempt to have the case transferred to family court did not allow Dozier to make a knowing, voluntary, and intelligent guilty plea because the above alternative courses of action were not given to Dozier. Furthermore, there is a significant amount of evidence on the record that indicates Dozier was inaccurately informed by Counsel and the Court of the potential amount of time he could be imprisoned. *See* Exhibit D. Lastly Counsel was also ineffective for failure to investigate the admissibility of the statements made at the time of the arrest, and Dozier was prejudiced because he could not consider the impact this may have on trial. In *Premo v. Moore*, after Moore pleaded guilty on advice of counsel, he alleged that trial counsel was ineffective in advising him to plead guilty without first moving to suppress his statements to the police. 131 S. Ct. at 738.

In the mental health report, Exhibit D, Dozier named his three charges and estimated a possible fifteen year sentence if given a maximum conviction. Dozier also stated that he knew that his attorney would be the best source of legal information in his case. Clearly, Dozier did not appreciate the seriousness of his charges and was inaccurately informed of his maximum sentence.

Additionally, the Court misstated the potential minimum and maximum imprisonment Dozier could be facing (Tr. p. 29 lines 8-17) and Counsel failed to object to this misstatement by the Court. Dozier was only indicted for one count of Armed Robbery and one count of Criminal Conspiracy. All victims were considered in the indictment for Armed Robbery. As such, Dozier was only facing a minimum of 10 years and a maximum of 35 years. The fact that Counsel failed to object to the inaccurate statements of Mr. Hubbard and the Court amounted to deficient and unreasonable representation. The fact that the judge considered a potential minimum of 30 years imprisonment and a maximum of 90 years imprisonment was extremely prejudicial to Dozier.

Also, it is the position of Dozier that Counsel should have once again argued that this case should have been heard in the family court. Failure to make this argument yet again was the result of deficient and unreasonable representation which was extremely prejudicial to Dozier. Had the case been heard by the family court, Dozier could have only been imprisoned for seven years or until he reached the age of twenty-one (21). Also, instead of serving any potential time at DJJ, Dozier is currently serving his sentence of fifteen years in a level one security prison. For the reasons mentioned above, Dozier was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, Sections 3 and 14 of the South Carolina Constitution.

Ineffective assistance of counsel-correspondence with Dozier

The most concerning error Mr. Hansen made in his correspondence with Dozier regarding his decision on whether or not to appeal when he told Dozier that "As I have stated to you, I do not suggest that you file an appeal, at best, you could have five years reduced off your sentence, at worst, you could have additional charges filed against you." "And, as the Judge noted, 'you really could have been charged for, at least, three armed robberies and face a sentence between 30 and 90 years.'" *See* Exhibit E. This was a clear misrepresentation to Dozier as he was only indicted on one count of Armed Robbery and one count of Criminal Conspiracy. As such, Dozier was only facing a minimum of 10 years and a maximum of 35 years imprisonment. Due to this misrepresentation, Dozier was unable to make a knowing, voluntary, and intelligent plea and the determination on whether or not to appeal. As clearly stated by the recent Supreme Court decisions attached hereto and incorporated herein by reference as Exhibit F.

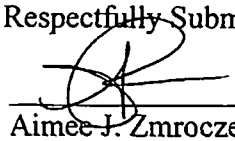
Finally, it was Dozier's understanding that by pleading to this Armed Robbery that he would receive the minimum sentence. This was mention in correspondence by his counsel. *See Attached* Exhibit G dated December 8, 2008, H dated January 16, 2009, and I dated March 25, 2009.

Conclusion

Applicant, Rakim I. Dozier, was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by

Article I, Sections 3 and 14 of the South Carolina Constitution. The claims are supported by facts described above in regarding trial counsel's performance during trial and plea which was both unreasonable and prejudicial under *Strickland* v. *Washington*, 466 U.S. 668 (1984) and its prodigy and should be remanded to the circuit court for reconsideration.

Respectfully Submitted,



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ajzlawfirm@gmail.com
Counsel for Applicant

Lexington, South Carolina.
Dated: November 14, 2012.

ARREST WARRANT

I-626642

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LEXINGTON

THE STATE
against

RIKAM IKKESH DOZIER
Address: 514 GIBSON RD.
LEXINGTON SC 29072
Phone: 808-6916 SSN:
Sex: M Race: B Height: 5-10 Weight: 145
DL State: DL#:
DOB: 11/30/1991 Agency ORI#: SC0320400
Prosecuting Agency: TOWN OF LEXINGTON POLICE
Prosecuting Officer:
Offense: ARMED ROBBERY
Offense Code: 0139
Code/Ordinance Sec. 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
. The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant RIKAM IKKESH DOZIER on 02-27-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
JOHN RAKOWSKY, MUNICIPAL JUDGE
111 MAIDEN LANE
LEXINGTON, SC 29072
(803) 951-4634

03-20-2008 0001

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LEXINGTON

AFFIDAVIT

Form Approved by S.C. Attorney Gener July 26, 1990 SCCA 518

Personally appeared before me the affiant Ray Hill being duly sworn deposes and says that defendant RIKAM IKKESH DOZIER did within this county and state on 02/27/2008 violate the criminal la State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LEXINGTON in the following particulars:

DESCRIPTION OF OFFENSE: 16-11-0330(A) / ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON FEBRUARY 27, 2008, THE DEFENDANT, RIKAM IKKESH DOZIER, DID WITHIN THE TOWN OF LEXINGTON COMMIT ROBBERY OF ANOTHER AND THREATEN TO USE FORCE AND VIOLENCE. THE DEFENDANT ENTERED RADIO SHACK INC. LOCATED AT 736 W. MAIN ST. AND ROBBED THE STORE AND CUSTOMERS OF MONEY WHILE ARMED WITH WIT REPRESENTATION OF A DEADLY WEAPON. THE DEFENDANT HAS CONFESSED TO AGENTS OF THE LEXINGTON PO DEPARTMENT AND PROVIDED A SIGNED WRITTEN STATEMENT.

Signature of Affiant Ray Hill

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LEXINGTON

Affiant's Address 111 MAIDEN LANE
LEXINGTON SC 29072
Affiant's Telephone 803-359-6260

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 02/27/2008 defendant RIKAM IKKESH DOZIER did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LEXINGTON) as set forth below:

DESCRIPTION OF OFFENSE: ROBBERY / ARMED ROBBERY, ROBBERY WHILE ARMED OR ALLEGEDL ARMED WITH A DEADLY WEAPON

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

Sworn to and subscribed before me on 02/27/2008

Signature of Issuing Judge (L.S.)

Judge's Address

Judge's Telephone

Judge Code: 4083 T. RACE

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circ

PLAINTIFF'S EXHIBIT A

ORIGINAL

Case: 08003368

A TRUE COPY
ORIGINAL

ARREST WARRANT

I-626642

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LEXINGTON

THE STATE
against

RIKAM IKKESH DOZIER
Address: 2[illegible] LEXINGTON RD.
LEXINGTON SC 29072
Phone: 803-[illegible] SS#:
Sex: M Race: B Height: 5-10 Weight: 145
DL State: DL#:
DOB: 11/07/1984 Agency OR#: 080020400
Prosecuting Agency: TOWN OF LEXINGTON POLICE
Prosecuting Officer:
Offense: ARMED ROBBERY
Offense Code: 0139
Code/Ordinance Sec.: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
_____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant RIKAM IKKESH DOZIER on 02-27-08

[signature]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
JOHN RAKOWSKY, MUNICIPAL JUDGE
111 MAIDEN LANE
LEXINGTON, SC 29072
(803) 359-[illegible]

ORIGINAL

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LEXINGTON

AFFIDAVIT

Personally appeared before me the affiant [signature] who being duly sworn deposes and says that defendant RIKAM IKKESH DOZIER did within this county and state on 02/27/2008 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LEXINGTON) in the following particulars:

DESCRIPTION OF OFFENSE: 16-11-0330(A) / ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON FEBRUARY 27, 2008, THE DEFENDANT, RIKAM IKKESH DOZIER, DID WITHIN THE TOWN OF LEXINGTON COMMIT ROBBERY OF ANOTHER AND THREATEN TO USE FORCE AND VIOLENCE. THE DEFENDANT ENTERED RADIO SHACK CO. INC. LOCATED AT 736 W. MAIN ST. AND ROBBED THE STORE AND CUSTOMERS OF MONEY WHILE ARMED WITH WITH A REPRESENTATION OF A DEADLY WEAPON. THE DEFENDANT HAS CONFESSED TO AGENTS OF THE LEXINGTON POLICE DEPARTMENT AND PROVIDED A SIGNED WRITTEN STATEMENT.

Signature of Affiant [signature]

Affiant's Address 111 MAIDEN LANE
LEXINGTON SC 29072
Affiant's Telephone 803-359-6260

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
LEXINGTON

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 02/27/2008 defendant RIKAM IKKESH DOZIER did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of LEXINGTON) as set forth below:

DESCRIPTION OF OFFENSE: ROBBERY / ARMED ROBBERY, ROBBERY WHILE ARMED OR ALLEGEDLY ARMED WITH A DEADLY WEAPON

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

Sworn to and subscribed before me on 02/27/2008

[signature] (L.S.)
Signature of Issuing Judge

Judge Code: 463

Judge's Address _____

Judge's Telephone _____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

PLAINTIFF'S EXHIBIT B

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

The State of South Carolina,

Defendant.

RIKAM DOZIER
DOB: 11/30/1991, a Minor under the age of eighteen (18).

IN THE COURT OF GENERAL SESSIONS
Indictment No.(s): _____
A/Warrant No.(s): **I626642, 43, & 46**

ORDER FOR CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM EVALUATION (M'NAUGHTEN)

Select one of the following:
(Controls access to evaluation report as outlined below.)

X **Ex parte evaluation requested by defendant prior to assertion of insanity defense.**

Evaluation requested by either party after defendant's assertion of insanity defense.

Evaluation requested by consent of both parties at any time.

This matter is before me for an order requiring Defendant, RIKAM DOZIER, a Minor under the age of eighteen (18), charged with armed robbery, kidnapping, and conspiracy, to submit to an evaluation for criminal responsibility and capacity to conform conduct to the requirements of the law on or about February 27, 2008 pursuant to S.C. Code Ann. § 17-24-10 (1976). One of the following circumstances applies to the issuance of this order: (1) defendant has requested an evaluation to determine whether the insanity defense may apply; or (2) prosecution or defendant has requested this evaluation after defendant has affirmatively asserted the insanity defense and given appropriate notice pursuant to Rule 5(f) of the South Carolina Rules of Criminal Procedure; or (3) both parties by consent request this evaluation regardless of whether defendant has asserted the insanity defense.

KM #1

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and find defendant's mental state at the time of the alleged crime(s) will likely be at issue in this proceeding.

This order is issued for the following reasons:

To determine the competency of the Defendant.

THEREFORE, IT IS ORDERED: Because the Department of Mental Health has statutory responsibility for custody and control of individuals determined not guilty by reason of

STATE OF SOUTH CAROLINA **COUNTY OF LEXINGTON** **The State of South Carolina,** **Plaintiff** **v.** **RIKAM DOZIER** **DOB: 11/30/1991, a minor under the Age of eighteen (18)** **Defendant.**	**IN THE COURT OF GENERAL SESSIONS** Indictment No.(s): A/Warrant No.(s): **I626642,43,46** **ORDER FOR COMPETENCY TO STAND TRIAL EVALUATION PURSUANT TO STATE V. BLAIR** **EVALUATION BY:** **(Select Only One)** ☐ **Department of Mental Health (Mental Illness)** **OR** ☒**Department of Disabilities and Special Needs** **(Mental Retardation or Related Disability)**

This matter is before me for an order requiring defendant RIKAM DOZIER, a Minor under the age of Eighteen (18), charged with armed robbery, kidnapping, conspiracy, to submit to an evaluation for competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976).

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and have reason to believe defendant may lack the competency to understand the criminal proceedings or to assist with the defense as a result of a lack of mental competence.

This order is issued for the following reasons:
to determine the competency of the Defendant.

THEREFORE, IT IS ORDERED: Defendant shall be examined and observed at an appropriate facility by two examiners of the Department of Mental Health if suspected of having a mental illness or by two examiners designated by the Department of Disabilities and Special Needs if suspected of having mental retardation or a related disability, to render an opinion whether defendant is competent to stand trial.

COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION. The examining facility shall schedule the ordered examination no later than thirty (30) days from the examining agency's receipt of this order. If defendant is currently free on bond or personal recognizance, defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the

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examining agency to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order.

TRANSFER TO ALTERNATE AGENCY. If the initial examination is performed by the Department of Mental Health, and examiners find indications of mental retardation or a related disability but not mental illness, the Department of Mental Health shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant is "not mentally ill" and shall provide a copy of such notification and a copy of this order to the Department of Disabilities and Special Needs. Likewise, if the initial examination is performed by the Department of Disabilities and Special Needs, and examiners find indications of mental illness but not mental retardation or a related disability, the Department of Disabilities and Special Needs shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant does "not have mental retardation or a related disability" and shall provide a copy of such notification and this order to the Department of Mental Health.

In either case, the examining agency shall make copies of any records gathered or created in connection with its examination available to examiners designated by the alternate agency, and the alternate agency shall thereafter designate examiners to evaluate defendant as to competency to stand trial within thirty (30) days of receipt of the notification from the initial examining agency.

FINDING OF DUAL DIAGNOSIS. If examiners of either the Department of Mental Health or the Department of Disabilities and Special Needs find an indication of a dual diagnosis of mental illness and mental retardation or a related disability, no opinion on defendant's mental competency shall be rendered, and the dual diagnosis must be reported to the Court, prosecutor, and defense counsel. The examining agency shall also provide notification of the finding and a copy of this order to the other agency. Thereafter, the Department of Mental Health and the Department of Disabilities and Special Needs shall arrange for an examiner from each agency to further evaluate defendant to render a final report on defendant's mental competency. Both agencies are authorized and required to make copies of all relevant records within their possession or control available to examiners for

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purposes of completing the dual evaluation.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from either agency determine defendant requires an inpatient examination, upon written notice to this Court from the director of the examining agency or his designee, defendant shall be committed to an appropriate facility of the requesting agency for no more than fifteen (15) days for examination and observation related to defendant's mental competency to stand trial.

REQUEST FOR EXTENSION. Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen (15) days to complete the examination or the examination and observation.

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of the designated examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the requesting agency in a suitable facility for so long as deemed clinically necessary or until a hearing required and provided by S.C. Code Ann. § 44-23-430 (1976) may be conducted by this Court. An additional Court order **shall** be necessary for ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

ISSUANCE AND ADMISSIBILITY OF WRITTEN REPORT. Within ten (10) days of all examinations or the conclusion of the observation period, a written report shall be made to the Court pursuant to S.C. Code Ann. § 44-23-420 (1976). A copy of the report shall also be forwarded to the prosecutor and defense counsel. This evaluation report shall be admissible as evidence in subsequent hearings pursuant to S.C. Code Ann. § 44-23-420(c) (1976); thus, the report is a statutory exception to the rule against hearsay and shall be admissible without need for foundational testimony. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law.

OWNERSHIP AND DISCOVERABILITY OF EXAMINING AGENCY FILES. The examining agency is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. To promote full disclosure and to assure the cooperation of defendant during the evaluation process, ownership of the examining agency's files shall be vested with the examining agency, including clinician's notes, staff reports, evaluation documents, memoranda, test results, etc. Neither these files nor any of their contents shall be provided to any party except upon presentation of a Court order authorizing such or a release authorization signed by defendant. In the event the examining agency's evaluation opinion is contested, an examiner

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may be appropriately and fully questioned as to the basis for the examiner's opinion at any hearing pursuant to S.C. Code Ann. § 44-23-430 (1976). However, examiners and agency staff may not be compelled to testify regarding statements made during the competency examination for any purpose other than to establish competency. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS. State agency examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the examining agency of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health or the Department of Disabilities and Special Needs, or both.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS. Upon written request from the examining agency, counsel for the prosecution and defense shall furnish to the agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the examining agency may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the examining agency may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the examining agency's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the examining agency of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to

KM #4

discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview, examiners being unable to offer an opinion on competency to stand trial, and the case being called for trial without completion of the evaluation.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the examining agency at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the examining agency to advise of the issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Information

Department of Mental Health	Department of Disabilities and Special Needs
Forensic Evaluation Service Paralegal S. C. Department of Mental Health CBHS Forensic Center 7901 Farrow Road Columbia, S.C. 29203-3220 (803) 935-5540 (Phone) (803) 935-5544 (Fax) Email: FES-PARALEGAL@SCDMH.ORG	Office of Clinical Services Department of Disabilities and Special Needs Post Office Box 4706 Columbia, S.C. 29240 (803) 898-9694 (Phone) (803) 898-9660 (Fax) Email: OBSForensics@ddsn.sc.gov

KM #5

AND IT IS SO ORDERED.

#Knox McMahon
Presiding Circuit Judge

R. KNOX McMAHON
Printed Name of Presiding Circuit Judge

Lexington, South Carolina

June 17, 2008

Dated: _____

S. Richardson Hubbard	Bradley Brydon Hansen
Prosecutor	Defense Counsel
205 East Main Street - Third Floor	602 East Main Street, Suite B
Address	Address
Lexington, SC 29072	Lexington, SC 29072
City, State, Zip	City, State, Zip
803-785-8352	803-996-3600
Telephone	Telephone
	Bradley@TheCLClaw.com
Email	Email

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#6

The following documents must be attached to this order upon submission to the Department of Mental Health or to the Department of Disabilities and Special Needs whichever is applicable:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. Defendant's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Defendant's school psychological records (if available)
9. Autopsy reports (if applicable)

KM
#7

sleep, energy, and appetite were good. He denied symptoms of psychosis like delusions or hallucinations. He denied suicidal or homicidal ideas.

OPINION REGARDING COMPETENCY TO STAND TRIAL: Mr. Dozier named his three charges and estimated a possible fifteen year sentence if given a maximum conviction. He knew that his attorney would be the best source for legal information in his case. He named his attorney, "Mr. Hanson" and stated that he trusts him with his case. He appreciated the respective advocacy and adversarial roles of defense lawyers and solicitors in the courtroom. He appreciated the judge's neutrality and sentencing responsibility if one is convicted. He could describe a jury's function of determining a verdict. He knew the number of jurors but needed education about unanimous voting to reach a verdict. He identified pleas such as "guilty", "not guilty", and "insanity." He knew the basic mechanics of the plea bargaining process, i.e. "less time" for pleading "guilty," but knew the judge ultimately decides one's sentence. He described *probation* and behaviors that could constitute a probation violation. He identified rights that are forfeited if a plea offer is accepted. It is our opinion that he would be capable of accepting or rejecting a plea offer in his case. He gave examples of *evidence* and *witnesses* and identified some of the potential evidence and witnesses in his case. He solved a hypothetical situation involving a lying witness. He appreciated the importance of proper courtroom conduct. He expressed a rational desired outcome for his case. The evidence does not suggest that Mr. Dozier lacks the mental capacity to rationally and factually understand the proceedings against him or to assist in his defense.

Michael Cross, M.D.
Psychiatric Service Director

MC/cj

D: 10/14/08
RT/EM: 10/15/08
F/EM: 10/15/08

PLAINTIFF'S EXHIBIT

PAST PSYCHIATRIC HISTORY: Mr. Dozier does not have a past inpatient or outpatient psychiatric history within the Department of Mental Health. He denied past or current significant mental health issues and being recommended to see a mental health professional. He denied prior or current use of psychoactive prescription medication. He denied a history of depression, other than an emotional adjustment to the Department of Juvenile Justice custody. He denied experiencing hallucinations. He denied past psychotic experiences. He denied past or current suicidal or homicidal thoughts.

PAST SUBSTANCE USE HISTORY: Mr. Dozier endorsed cannabis consumption once every two weeks. He denied repercussions from cannabis consumption except when his mother once discovered his was high. He denied alcohol or other illicit substance use. He reported smoking a few cigarettes daily before his arrest.

SOCIAL HISTORY: Mr. Dozier lived in Lexington with his mother, an older brother, and his grandmother before his arrest. He apparently did not have problems in school until the ninth grade, coinciding with the time when he was age 15, when he reports being "blessed-in" a neighborhood gang, the "Folks". He repeated the ninth grade because he refused due to problems completing homework assignments for a teacher with whom he had a personality conflict and was not a product of an academic inability. He was apparently expelled from high school during the last school year and was attending Lexington Alternative High School prior to his recent arrest. He stated the school administration "accused me of gang graffiti" at the school. He reported staying out too late without permission to be with his "homeboys" and unexcused absences. Mr. Dozier denied a pervasive pattern of conduct disorder traits like setting fires, using weapons, animal cruelty, or vandalism outside of graffiti. It was not clear if his prior illegal acts were solely or partially his own volition or were demands made of street gang. He denied prior legal issues. He stated that he was involved in an age appropriate relationship with a girl prior to his arrest. He does not have children.

PAST MEDICAL HISTORY: Mr. Dozier denied prior medical problems.

MENTAL STATUS EXAM: On October 14, 2008, the defendant was awake and alert. He dressed normally in a Department of Juvenile Justice uniform. His grooming and hygiene were good. He maintained good eye contact throughout the interview. He appeared cooperative with the scope of the evaluation, and overall, he appeared to provide reliable personal information. His speech was articulate, clear, logical and goal directed. There was no evidence of a delusion or other impairment in reality testing. Cognitively, he registered three objects immediately and after five minutes of distraction, he easily recalled all three. He was oriented to all spheres except for the day of the month. He concentrated well evidenced by his spelling *world* forwards and backwards and performance on a serial subtraction test. He abstracted well based on his interpretation of proverbs and similarities. He read well. His fund of knowledge and estimated intellectual functioning appeared to be in a high average range. He solved a hypothetical dilemma. His mood was euthymic (normal). His emotional responses were appropriate to the topics of conversation. He reported that his mood,

EVALUATION SERVICE OF FORENSIC DIVISION

DATE OF EVALUATION: October 14, 2008

PRESIDING EXAMINER: Michael Cross, M.D.

SECOND EXAMINER: Barbara Christensen, LISW-CP

DIAGNOSES:
AXIS I: Child or Adolescent Antisocial Behaviors
AXIS II: No Diagnosis
AXIS III: No Diagnosis

OPINION OF COMPETENCY TO STAND TRIAL: Yes.

IDENTIFYING INFORMATION: Rikam Dozier is a 16-year-old African-American male seen pursuant to court orders from the Lexington County Court of General Sessions. The court orders directed evaluations of the defendant's competency to stand trial, his criminal responsibility pursuant to the McNaughten Test for his actions on or about February 27, 2008, and if criminally responsible, his capacity to conform his conduct to the requirements of the law. The court orders specified charges of Armed Robbery, Kidnapping and Conspiracy.

STATEMENT OF NONCONFIDENTIALITY: Prior to beginning the evaluation, Mr. Dozier read a Rights Information Form. He appreciated the inherent lack of confidentiality associated with this interview. He voluntarily elected to proceed.

DISPOSITION: Mr. Dozier returned to the custody of the South Carolina Department of Juvenile Justice after the evaluation.

SOURCES OF INFORMATION:

1. The Lexington County General Sessions Court Orders.
2. Arrest warrants #I-626642, I-626643, and I-626646.
3. Review of the witness statements.
4. Review of the incident report.
5. A ninety-minute forensic psychiatric interview with Mr. Dozier on October 14, 2008.

Collateral historical information was not available at the time of this report, so the following information relied on the defendant's self-report. *We reserve the right to amend this report should new information warrant.*

DJJ Detention Center
1725 Shivers Road
Columbia, SC 29210-5413
803-896-9440

South Carolina Department of Juvenile Justice

B.W
B.n #

2008 FEB 27 18:

JUVENILE DETAINMENT

ADMISSION DATE: 2/26/08

ADMISSION TIME: 1821

I, name undersigned, have on this date delivered from the county of Lexington to the South Carolina Department of Juvenile Justice Detention Center, Juvenile:

Tobias | H | Davis
First Name | Middle Initial | Juvenile Last Name

6-12-93 from the Lexington
Date of Birth | Name of Arresting Agency

Transporting Agency: LEXINGTON P.D.

Transporting Officer Name (Print): R WALKER / S BALLENTINE

Transporting Officer Title: PFC X2

Transporting Officer Signature: SCBallentine

RECEIVING DETENTION STAFF SECTION: Detainment #: 1 2 3 4 5

J Cowan | Sgt II
Name (Print) | Title

Signature

C: Transporting Officer
_____ DJJ County Office

[illegible] 0055

THE CHRISTIAN LEGAL CENTER, LLC
BRADLEY BRYDON HANSEN
Attorney & Counselor at Law
Admitted to practice in Illinois & South Carolina
602 East Main Street, Suite B
Lexington, South Carolina 29072
Telephone: (803) 996-3600
Facsimile: (803) 996-1267

April 3, 2009

Mr. Rikam Ikkesh Dozier
PERSONAL DELIVERY
LEXINGTON COUNTY JAIL

RE: Municipality of Lexington v. Rikam Ikkesh Dozier
Case No. I-626642

Dear RIkam:

This is delivered to confirm the status of the above referenced matter. You pled guilty to Armed Robbery 16-11-0330 (A) and received a sentence of 15 years. You were facing 10 to 30 years and, as noted by Judge McMahon, you could have been charged with three separate armed robbery charges and, at least, four kidnapping charges; thus totaling potential sentences in well in excess of 90 years. I was able to negotiate with the solicitor to drop all charges, but the single armed robbery and to not object to you serving the minimum 10 year sentence. This was done by the solicitor and myself, yet some comments made by yourself and your brother did not assist in your sentencing. I stated to the court that neither you or your family members were ever "in trouble", this was not challenged by the State, yet you and your brother openly admitted that each of you had been "in trouble" before, there was no need to let the judge know that you had been "in trouble" before – it was not challenged by the State.

Previously, I suggested that you might want to write down what you were going to say so that I could review it and you would know what you wanted to say.

Regardless, while I am disappointed that you did not receive the minimum sentence, I am pleased that I was able to have all the additional charges dropped and that you received close to the minimum for the single count of armed robbery.

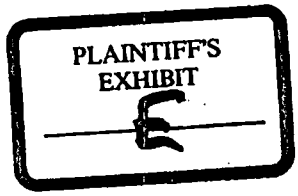
Please take notice that you have a right to file your notice of appeal within ten (10) days of your date of sentencing (your sentencing date was April 2, 2009). **Please inform me as to whether you desire me to file the notice of appeal and who will be representing you on the appeal. I was not retained to handle your appeal only to plea your case. YOU MUST INFORM ME PRIOR TO THE DEADLINE SO THAT I WILL BE ABLE TO DRAFT THE NOTICE OF APPEAL. PLEASE INFORM ME BY APRIL 7, 2009.**

As I have stated to you, I do not suggest that file an appeal, at best, you could have five (5) years reduced off your sentence, at worst, you could have additional charges filed against you. And, as Judge McMahon noted, "you really should have been charged for, at least, three armed robberies and face a sentence between 30 and 90 years."

If you have any questions please contact me at your earliest convenience.

Warmest Regards,
THE CHRISTIAN LEGAL CENTER, LLC

Bradley Brydon Hansen



Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LAFLER *v.* COOPER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 10–209. Argued October 31, 2011—Decided March 21, 2012

Respondent was charged under Michigan law with assault with intent to murder and three other offenses. The prosecution offered to dismiss two of the charges and to recommend a 51-to-85-month sentence on the other two, in exchange for a guilty plea. In a communication with the court, respondent admitted his guilt and expressed a willingness to accept the offer. But he rejected the offer, allegedly after his attorney convinced him that the prosecution would be unable to establish intent to murder because the victim had been shot below the waist. At trial, respondent was convicted on all counts and received a mandatory minimum 185-to-360-month sentence. In a subsequent hearing, the state trial court rejected respondent's claim that his attorney's advice to reject the plea constituted ineffective assistance. The Michigan Court of Appeals affirmed, rejecting the ineffective-assistance claim on the ground that respondent knowingly and intelligently turned down the plea offer and chose to go to trial. Respondent renewed his claim in federal habeas. Finding that the state appellate court had unreasonably applied the constitutional effective-assistance standards laid out in *Strickland* v. *Washington*, 466 U. S. 668, and *Hill* v. *Lockhart*, 474 U. S. 52, the District Court granted a conditional writ and ordered specific performance of the original plea offer. The Sixth Circuit affirmed. Applying *Strickland*, it found that counsel had provided deficient performance by advising respondent of an incorrect legal rule, and that respondent suffered prejudice because he lost the opportunity to take the more favorable sentence offered in the plea.

Held:

1. Where counsel's ineffective advice led to an offer's rejection, and where the prejudice alleged is having to stand trial, a defendant must

Syllabus

show that but for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the actual judgment and sentence imposed. Pp. 3–11.

(a) Because the parties agree that counsel's performance was deficient, the only question is how to apply *Strickland*'s prejudice test where ineffective assistance results in a rejection of the plea offer and the defendant is convicted at the ensuing trial. Pp. 3–4.

(b) In that context, the *Strickland* prejudice test requires a defendant to show a reasonable possibility that the outcome of the plea process would have been different with competent advice. The Sixth Circuit and other federal appellate courts have agreed with the *Strickland* prejudice test for rejected pleas adopted here by this Court. Petitioner and the Solicitor General propose a narrow view—that *Strickland* prejudice cannot arise from plea bargaining if the defendant is later convicted at a fair trial—but their reasoning is unpersuasive. First, they claim that the Sixth Amendment's sole purpose is to protect the right to a fair trial, but the Amendment actually requires effective assistance at critical stages of a criminal proceeding, including pretrial stages. This is consistent with the right to effective assistance on appeal, see, *e.g.*, *Halbert* v. *Michigan*, 545 U. S. 605, and the right to counsel during sentencing, see, *e.g.*, *Glover* v. *United States*, 531 U. S. 198, 203–204. This Court has not followed a rigid rule that an otherwise fair trial remedies errors not occurring at trial, but has instead inquired whether the trial cured the particular error at issue. See, *e.g.*, *Vasquez* v. *Hillery*, 474 U. S. 254, 263. Second, this Court has previously rejected petitioner's argument that *Lockhart* v. *Fretwell*, 506 U. S. 364, modified *Strickland* and does so again here. *Fretwell* and *Nix* v. *Whiteside*, 475 U. S. 157, demonstrate that "it would be unjust to characterize the likelihood of a different outcome as legitimate 'prejudice,'" *Williams* v. *Taylor*, 529 U. S. 362, 391–392, where defendants would receive a windfall as a result of the application of an incorrect legal principle or a defense strategy outside the law. Here, however, respondent seeks relief from counsel's failure to meet a valid legal standard. Third, petitioner seeks to preserve the conviction by arguing that the Sixth Amendment's purpose is to ensure a conviction's reliability, but this argument fails to comprehend the full scope of the Sixth Amendment and is refuted by precedent. Here, the question is the fairness or reliability not of the trial but of the processes that preceded it, which caused respondent to lose benefits he would have received but for counsel's ineffective assistance. Furthermore, a reliable trial may not foreclose relief when counsel has failed to assert rights that may have

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altered the outcome. See *Kimmelman* v. *Morrison*, 477 U. S. 365, 379. Petitioner's position that a fair trial wipes clean ineffective assistance during plea bargaining also ignores the reality that criminal justice today is for the most part a system of pleas, not a system of trials. See *Missouri* v. *Frye*, *ante*, at ___. Pp. 4–11.

2. Where a defendant shows ineffective assistance has caused the rejection of a plea leading to a more severe sentence at trial, the remedy must "neutralize the taint" of a constitutional violation, *United States* v. *Morrison*, 449 U. S. 361, 365, but must not grant a windfall to the defendant or needlessly squander the resources the State properly invested in the criminal prosecution, see *United States* v. *Mechanik*, 475 U. S. 66, 72. If the sole advantage is that the defendant would have received a lesser sentence under the plea, the court should have an evidentiary hearing to determine whether the defendant would have accepted the plea. If so, the court may exercise discretion in determining whether the defendant should receive the term offered in the plea, the sentence received at trial, or something in between. However, resentencing based on the conviction at trial may not suffice, *e.g.*, where the offered guilty plea was for less serious counts than the ones for which a defendant was convicted after trial, or where a mandatory sentence confines a judge's sentencing discretion. In these circumstances, the proper remedy may be to require the prosecution to reoffer the plea. The judge can then exercise discretion in deciding whether to vacate the conviction from trial and accept the plea, or leave the conviction undisturbed. In either situation, a court must weigh various factors. Here, it suffices to give two relevant considerations. First, a court may take account of a defendant's earlier expressed willingness, or unwillingness, to accept responsibility for his or her actions. Second, it is not necessary here to decide as a constitutional rule that a judge is required to disregard any information concerning the crime discovered after the plea offer was made. Petitioner argues that implementing a remedy will open the floodgates to litigation by defendants seeking to unsettle their convictions, but in the 30 years that courts have recognized such claims, there has been no indication that the system is overwhelmed or that defendants are receiving windfalls as a result of strategically timed *Strickland* claims. In addition, the prosecution and trial courts may adopt measures to help ensure against meritless claims. See *Frye*, *ante*, at ___. Pp. 11–14.

3. This case arises under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), but because the Michigan Court of Appeals' analysis of respondent's ineffective-assistance-of-counsel claim was contrary to clearly established federal law, AEDPA presents no bar to relief. Respondent has satisfied *Strickland*'s two-part test.

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The parties concede the fact of deficient performance. And respondent has shown that but for that performance there is a reasonable probability he and the trial court would have accepted the guilty plea. In addition, as a result of not accepting the plea and being convicted at trial, he received a minimum sentence 3½ times greater than he would have received under the plea. As a remedy, the District Court ordered specific performance of the plea agreement, but the correct *remedy is to order the State to reoffer the plea. If respondent accepts* the offer, the state trial court can exercise its discretion in determining whether to vacate respondent's convictions and resentence pursuant to the plea agreement, to vacate only some of the convictions and resentence accordingly, or to leave the conviction and sentence resulting from the trial undisturbed. Pp. 14–16.

376 Fed. Appx. 563, vacated and remanded.

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, and in which ROBERTS, C. J., joined as to all but Part IV. ALITO, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 10–209

BLAINE LAFLER, PETITIONER *v.* ANTHONY COOPER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[March 21, 2012]

JUSTICE KENNEDY delivered the opinion of the Court.

In this case, as in *Missouri* v. *Frye*, *ante*, p. ___, also decided today, a criminal defendant seeks a remedy when inadequate assistance of counsel caused nonacceptance of a plea offer and further proceedings led to a less favorable outcome. In *Frye*, defense counsel did not inform the defendant of the plea offer; and after the offer lapsed the defendant still pleaded guilty, but on more severe terms. Here, the favorable plea offer was reported to the client but, on advice of counsel, was rejected. In *Frye* there was a later guilty plea. Here, after the plea offer had been rejected, there was a full and fair trial before a jury. After a guilty verdict, the defendant received a sentence harsher than that offered in the rejected plea bargain. The instant case comes to the Court with the concession that counsel's advice with respect to the plea offer fell below the standard of adequate assistance of counsel guaranteed by the Sixth Amendment, applicable to the States through the Fourteenth Amendment.

I

On the evening of March 25, 2003, respondent pointed a gun toward Kali Mundy's head and fired. From the rec-

ord, it is unclear why respondent did this, and at trial it was suggested that he might have acted either in self-defense or in defense of another person. In any event the shot missed and Mundy fled. Respondent followed in pursuit, firing repeatedly. Mundy was shot in her buttock, hip, and abdomen but survived the assault.

Respondent was charged under Michigan law with assault with intent to murder, possession of a firearm by a felon, possession of a firearm in the commission of a felony, misdemeanor possession of marijuana, and for being a habitual offender. On two occasions, the prosecution offered to dismiss two of the charges and to recommend a sentence of 51 to 85 months for the other two, in exchange for a guilty plea. In a communication with the court respondent admitted guilt and expressed a willingness to accept the offer. Respondent, however, later rejected the offer on both occasions, allegedly after his attorney convinced him that the prosecution would be unable to establish his intent to murder Mundy because she had been shot below the waist. On the first day of trial the prosecution offered a significantly less favorable plea deal, which respondent again rejected. After trial, respondent was convicted on all counts and received a mandatory minimum sentence of 185 to 360 months' imprisonment.

In a so-called *Ginther* hearing before the state trial court, see *People* v. *Ginther*, 390 Mich. 436, 212 N. W. 2d 922 (1973), respondent argued his attorney's advice to reject the plea constituted ineffective assistance. The trial judge rejected the claim, and the Michigan Court of Appeals affirmed. *People* v. *Cooper*, No. 250583, 2005 WL 599740 (Mar. 15, 2005) *(per curiam)*, App. to Pet. for Cert. 44a. The Michigan Court of Appeals rejected the claim of ineffective assistance of counsel on the ground that respondent knowingly and intelligently rejected two plea offers and chose to go to trial. The Michigan Supreme Court denied respondent's application for leave to file an

appeal. *People* v. *Cooper*, 474 Mich. 905, 705 N. W. 2d 118 (2005) (table).

Respondent then filed a petition for federal habeas relief under 28 U. S. C. §2254, renewing his ineffective-assistance-of-counsel claim. After finding, as required by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), that the Michigan Court of Appeals had unreasonably applied the constitutional standards for effective assistance of counsel laid out in *Strickland* v. *Washington*, 466 U. S. 668 (1984), and *Hill* v. *Lockhart*, 474 U. S. 52 (1985), the District Court granted a conditional writ. *Cooper* v. *Lafler*, No. 06–11068, 2009 WL 817712, *10 (ED Mich., Mar. 26, 2009), App. to Pet. for Cert. 41a–42a. To remedy the violation, the District Court ordered "specific performance of [respondent's] original plea agreement, for a minimum sentence in the range of fifty-one to eighty-five months." *Id.*, at *9, App. to Pet. for Cert. 41a.

The United States Court of Appeals for the Sixth Circuit affirmed, 376 Fed. Appx. 563 (2010), finding "[e]ven full deference under AEDPA cannot salvage the state court's decision," *id.*, at 569. Applying *Strickland*, the Court of Appeals found that respondent's attorney had provided deficient performance by informing respondent of "an incorrect legal rule," 376 Fed. Appx., at 570–571, and that respondent suffered prejudice because he "lost out on an opportunity to plead guilty and receive the lower sentence that was offered to him." *Id.*, at 573. This Court granted certiorari. 562 U. S. ___ (2011).

II

A

Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process. *Frye*, *ante*, at 8; see also *Padilla* v. *Kentucky*, 559 U. S. ___, ___ (2010) (slip op., at 16); *Hill*, *supra*, at 57. During plea negotiations defendants are "entitled to the effective assis-

tance of competent counsel." *McMann* v. *Richardson*, 397 U. S. 759, 771 (1970). In *Hill*, the Court held "the two-part *Strickland* v. *Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel." 474 U. S., at 58. The performance prong of *Strickland* requires a defendant to show "'that counsel's representation fell below an objective standard of reasonableness.'" 474 U. S., at 57 (quoting *Strickland*, 466 U. S., at 688). In this case all parties agree the performance of respondent's counsel was deficient when he advised respondent to reject the plea offer on the grounds he could not be convicted at trial. In light of this concession, it is unnecessary for this Court to explore the issue.

The question for this Court is how to apply *Strickland*'s prejudice test where ineffective assistance results in a rejection of the plea offer and the defendant is convicted at the ensuing trial.

B

To establish *Strickland* prejudice a defendant must "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, at 694. In the context of pleas a defendant must show the outcome of the plea process would have been different with competent advice. See *Frye*, *ante*, at 12 (noting that *Strickland*'s inquiry, as applied to advice with respect to plea bargains, turns on "whether 'the result of the proceeding would have been different'" (quoting *Strickland*, *supra*, at 694)); see also *Hill*, 474 U. S., at 59 ("The . . . 'prejudice,' requirement . . . focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process"). In *Hill*, when evaluating the petitioner's claim that ineffective assistance led to the improvident acceptance of a guilty plea, the Court required the petitioner to show "that there is a reasonable probability that, but for counsel's

errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." *Ibid.*

In contrast to *Hill*, here the ineffective advice led not to an offer's acceptance but to its rejection. Having to stand trial, not choosing to waive it, is the prejudice alleged. In these circumstances a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. Here, the Court of Appeals for the Sixth Circuit agreed with that test for *Strickland* prejudice in the context of a rejected plea bargain. This is consistent with the test adopted and applied by other appellate courts without demonstrated difficulties or systemic disruptions. See 376 Fed. Appx., at 571–573; see also, *e.g.*, *United States* v. *Rodriguez Rodriguez*, 929 F. 2d 747, 753, n. 1 (CA1 1991) *(per curiam)*; *United States* v. *Gordon*, 156 F. 3d 376, 380–381 (CA2 1998) *(per curiam)*; *United States* v. *Day*, 969 F. 2d 39, 43–45 (CA3 1992); *Beckham* v. *Wainwright*, 639 F. 2d 262, 267 (CA5 1981); *Julian* v. *Bartley*, 495 F. 3d 487, 498–500 (CA7 2007); *Wanatee* v. *Ault*, 259 F. 3d 700, 703–704 (CA8 2001); *Nunes* v. *Mueller*, 350 F. 3d 1045, 1052–1053 (CA9 2003); *Williams* v. *Jones*, 571 F. 3d 1086, 1094–1095 (CA10 2009) *(per curiam)*; *United States* v. *Gaviria*, 116 F. 3d 1498, 1512–1514 (CADC 1997) *(per curiam)*.

Petitioner and the Solicitor General propose a different, far more narrow, view of the Sixth Amendment. They contend there can be no finding of *Strickland* prejudice arising from plea bargaining if the defendant is later convicted at a fair trial. The three reasons petitioner and

the Solicitor General offer for their approach are unpersuasive.

First, petitioner and the Solicitor General claim that the sole purpose of the Sixth Amendment is to protect the right to a fair trial. Errors before trial, they argue, are not cognizable under the Sixth Amendment unless they affect the fairness of the trial itself. See Brief for Petitioner 12–21; Brief for United States as *Amicus Curiae* 10–12. The Sixth Amendment, however, is not so narrow in its reach. Cf. *Frye*, *ante*, at 11 (holding that a defendant can show prejudice under *Strickland* even absent a showing that the deficient performance precluded him from going to trial). The Sixth Amendment requires effective assistance of counsel at critical stages of a criminal proceeding. Its protections are not designed simply to protect the trial, even though "counsel's absence [in these stages] may derogate from the accused's right to a fair trial." *United States* v. *Wade*, 388 U. S. 218, 226 (1967). The constitutional guarantee applies to pretrial critical stages that are part of the whole course of a criminal proceeding, a proceeding in which defendants cannot be presumed to make critical decisions without counsel's advice. This is consistent, too, with the rule that defendants have a right to effective assistance of counsel on appeal, even though that cannot in any way be characterized as part of the trial. See, *e.g.*, *Halbert* v. *Michigan*, 545 U. S. 605 (2005); *Evitts* v. *Lucey*, 469 U. S. 387 (1985). The precedents also establish that there exists a right to counsel during sentencing in both noncapital, see *Glover* v. *United States*, 531 U. S. 198, 203–204 (2001); *Mempa* v. *Rhay*, 389 U. S. 128 (1967), and capital cases, see *Wiggins* v. *Smith*, 539 U. S. 510, 538 (2003). Even though sentencing does not concern the defendant's guilt or innocence, ineffective assistance of counsel during a sentencing hearing can result in *Strickland* prejudice because "any amount of [additional] jail time has Sixth Amendment significance." *Glover*, *supra*,

at 203.

The Court, moreover, has not followed a rigid rule that an otherwise fair trial remedies errors not occurring at the trial itself. It has inquired instead whether the trial cured the particular error at issue. Thus, in *Vasquez* v. *Hillery*, 474 U. S. 254 (1986), the deliberate exclusion of all African-Americans from a grand jury was prejudicial because a defendant may have been tried on charges that would not have been brought at all by a properly constituted grand jury. *Id.*, at 263; see *Ballard* v. *United States*, 329 U. S. 187, 195 (1946) (dismissing an indictment returned by a grand jury from which women were excluded); see also *Stirone* v. *United States*, 361 U. S. 212, 218–219 (1960) (reversing a defendant's conviction because the jury may have based its verdict on acts not charged in the indictment). By contrast, in *United States* v. *Mechanik*, 475 U. S. 66 (1986), the complained-of error was a violation of a grand jury rule meant to ensure probable cause existed to believe a defendant was guilty. A subsequent trial, resulting in a verdict of guilt, cured this error. See *id.*, at 72–73.

In the instant case respondent went to trial rather than accept a plea deal, and it is conceded this was the result of ineffective assistance during the plea negotiation process. Respondent received a more severe sentence at trial, one 3½ times more severe than he likely would have received by pleading guilty. Far from curing the error, the trial caused the injury from the error. Even if the trial itself is free from constitutional flaw, the defendant who goes to trial instead of taking a more favorable plea may be prejudiced from either a conviction on more serious counts or the imposition of a more severe sentence.

Second, petitioner claims this Court refined *Strickland*'s prejudice analysis in *Fretwell* to add an additional requirement that the defendant show that ineffective assistance of counsel led to his being denied a substantive or

procedural right. Brief for Petitioner 12–13. The Court has rejected the argument that *Fretwell* modified *Strickland* before and does so again now. See *Williams* v. *Taylor*, 529 U. S. 362, 391 (2000) ("The Virginia Supreme Court erred in holding that our decision in *Lockhart* v. *Fretwell*, 506 U. S. 364 (1993), modified or in some way supplanted the rule set down in *Strickland*"); see also *Glover*, *supra*, at 203 ("The Court explained last Term [in *Williams*] that our holding in *Lockhart* does not supplant the *Strickland* analysis").

Fretwell could not show *Strickland* prejudice resulting from his attorney's failure to object to the use of a sentencing factor the Eighth Circuit had erroneously (and temporarily) found to be impermissible. *Fretwell*, 506 U. S., at 373. Because the objection upon which his ineffective-assistance-of-counsel claim was premised was meritless, Fretwell could not demonstrate an error entitling him to relief. The case presented the "unusual circumstance where the defendant attempts to demonstrate prejudice based on considerations that, as a matter of law, ought not inform the inquiry." *Ibid.* (O'Connor, J., concurring). See also *ibid.* (recognizing "[t]he determinative question—whether there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different—remains unchanged" (internal quotation marks and citation omitted)). It is for this same reason a defendant cannot show prejudice based on counsel's refusal to present perjured testimony, even if such testimony might have affected the outcome of the case. See *Nix* v. *Whiteside*, 475 U. S. 157, 175 (1986) (holding first that counsel's refusal to present perjured testimony breached no professional duty and second that it cannot establish prejudice under *Strickland*).

Both *Fretwell* and *Nix* are instructive in that they demonstrate "there are also situations in which it would be unjust to characterize the likelihood of a different

outcome as legitimate 'prejudice,'" *Williams*, *supra*, at 391–392, because defendants would receive a windfall as a result of the application of an incorrect legal principle or a defense strategy outside the law. Here, however, the injured client seeks relief from counsel's failure to meet a valid legal standard, not from counsel's refusal to violate it. He maintains that, absent ineffective counsel, he would have accepted a plea offer for a sentence the prosecution evidently deemed consistent with the sound administration of criminal justice. The favorable sentence that eluded the defendant in the criminal proceeding appears to be the sentence he or others in his position would have received in the ordinary course, absent the failings of counsel. See Bibas, Regulating the Plea-Bargaining Market: From Caveat Emptor to Consumer Protection, 99 Cal. L. Rev. 1117, 1138 (2011) ("The expected post-trial sentence is imposed in only a few percent of cases. It is like the sticker price for cars: only an ignorant, ill-advised consumer would view full price as the norm and anything less a bargain"); see also *Frye*, *ante*, at 7–8. If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. If that right is denied, prejudice can be shown if loss of the plea opportunity led to a trial resulting in a conviction on more serious charges or the imposition of a more severe sentence.

It is, of course, true that defendants have "no right to be offered a plea . . . nor a federal right that the judge accept it." *Frye*, *ante*, at 12. In the circumstances here, that is beside the point. If no plea offer is made, or a plea deal is accepted by the defendant but rejected by the judge, the issue raised here simply does not arise. Much the same reasoning guides cases that find criminal defendants have a right to effective assistance of counsel in direct appeals even though the Constitution does not require States to provide a system of appellate review at all. See *Evitts*, 469

U. S. 387; see also *Douglas* v. *California*, 372 U. S. 353 (1963). As in those cases, "[w]hen a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution." *Evitts*, *supra*, at 401.

Third, petitioner seeks to preserve the conviction obtained by the State by arguing that the purpose of the Sixth Amendment is to ensure "the reliability of [a] conviction following trial." Brief for Petitioner 13. This argument, too, fails to comprehend the full scope of the Sixth Amendment's protections; and it is refuted by precedent. *Strickland* recognized "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." 466 U. S., at 686. The goal of a just result is not divorced from the reliability of a conviction, see *United States* v. *Cronic*, 466 U. S. 648, 658 (1984); but here the question is not the fairness or reliability of the trial but the fairness and regularity of the processes that preceded it, which caused the defendant to lose benefits he would have received in the ordinary course but for counsel's ineffective assistance.

There are instances, furthermore, where a reliable trial does not foreclose relief when counsel has failed to assert rights that may have altered the outcome. In *Kimmelman* v. *Morrison*, 477 U. S. 365 (1986), the Court held that an attorney's failure to timely move to suppress evidence during trial could be grounds for federal habeas relief. The Court rejected the suggestion that the "failure to make a timely request for the exclusion of illegally seized evidence" could not be the basis for a Sixth Amendment violation because the evidence "is 'typically reliable and often the most probative information bearing on the guilt or innocence of the defendant.'" *Id.*, at 379 (quoting *Stone* v. *Powell*, 428 U. S. 465, 490 (1976)). "The constitutional

rights of criminal defendants," the Court observed, "are granted to the innocent and the guilty alike. Consequently, we decline to hold either that the guarantee of effective assistance of counsel belongs solely to the innocent or that it attaches only to matters affecting the determination of actual guilt." 477 U. S., at 380. The same logic applies here. The fact that respondent is guilty does not mean he was not entitled by the Sixth Amendment to effective assistance or that he suffered no prejudice from his attorney's deficient performance during plea bargaining.

In the end, petitioner's three arguments amount to one general contention: A fair trial wipes clean any deficient performance by defense counsel during plea bargaining. That position ignores the reality that criminal justice today is for the most part a system of pleas, not a system of trials. Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas. See *Frye*, *ante*, at 7. As explained in *Frye*, the right to adequate assistance of counsel cannot be defined or enforced without taking account of the central role plea bargaining plays in securing convictions and determining sentences. *Ibid.* ("[I]t is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process").

C

Even if a defendant shows ineffective assistance of counsel has caused the rejection of a plea leading to a trial and a more severe sentence, there is the question of what constitutes an appropriate remedy. That question must now be addressed.

Sixth Amendment remedies should be "tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests." *United States* v. *Morrison*, 449 U. S. 361, 364 (1981). Thus, a remedy must "neutralize the taint" of a constitu-

tional violation, *id.*, at 365, while at the same time not grant a windfall to the defendant or needlessly squander the considerable resources the State properly invested in the criminal prosecution. See *Mechanik*, 475 U. S., at 72 ("The reversal of a conviction entails substantial social costs: it forces jurors, witnesses, courts, the prosecution, and the defendants to expend further time, energy, and other resources to repeat a trial that has already once taken place; victims may be asked to relive their disturbing experiences").

The specific injury suffered by defendants who decline a plea offer as a result of ineffective assistance of counsel and then receive a greater sentence as a result of trial can come in at least one of two forms. In some cases, the sole advantage a defendant would have received under the plea is a lesser sentence. This is typically the case when the charges that would have been admitted as part of the plea bargain are the same as the charges the defendant was convicted of after trial. In this situation the court may conduct an evidentiary hearing to determine whether the defendant has shown a reasonable probability that but for counsel's errors he would have accepted the plea. If the showing is made, the court may exercise discretion in determining whether the defendant should receive the term of imprisonment the government offered in the plea, the sentence he received at trial, or something in between.

In some situations it may be that resentencing alone will not be full redress for the constitutional injury. If, for example, an offer was for a guilty plea to a count or counts less serious than the ones for which a defendant was convicted after trial, or if a mandatory sentence confines a judge's sentencing discretion after trial, a resentencing based on the conviction at trial may not suffice. See, *e.g.*, *Williams*, 571 F. 3d, at 1088; *Riggs* v. *Fairman*, 399 F. 3d 1179, 1181 (CA9 2005). In these circumstances, the proper exercise of discretion to remedy the constitutional

injury may be to require the prosecution to reoffer the plea proposal. Once this has occurred, the judge can then exercise discretion in deciding whether to vacate the conviction from trial and accept the plea or leave the conviction undisturbed.

In implementing a remedy in both of these situations, the trial court must weigh various factors; and the boundaries of proper discretion need not be defined here. Principles elaborated over time in decisions of state and federal courts, and in statutes and rules, will serve to give more complete guidance as to the factors that should bear upon the exercise of the judge's discretion. At this point, however, it suffices to note two considerations that are of relevance.

First, a court may take account of a defendant's earlier expressed willingness, or unwillingness, to accept responsibility for his or her actions. Second, it is not necessary here to decide as a constitutional rule that a judge is required to prescind (that is to say disregard) any information concerning the crime that was discovered after the plea offer was made. The time continuum makes it difficult to restore the defendant and the prosecution to the precise positions they occupied prior to the rejection of the plea offer, but that baseline can be consulted in finding a remedy that does not require the prosecution to incur the expense of conducting a new trial.

Petitioner argues that implementing a remedy here will open the floodgates to litigation by defendants seeking to unsettle their convictions. See Brief for Petitioner 20. Petitioner's concern is misplaced. Courts have recognized claims of this sort for over 30 years, see *supra*, at 5, and yet there is no indication that the system is overwhelmed by these types of suits or that defendants are receiving windfalls as a result of strategically timed *Strickland* claims. See also *Padilla*, 559 U. S., at ___ (slip op., at 14) ("We confronted a similar 'floodgates' concern in *Hill*," but

a "flood did not follow in that decision's wake"). In addition, the "prosecution and the trial courts may adopt some measures to help ensure against late, frivolous, or fabricated claims after a later, less advantageous plea offer has been accepted or after a trial leading to conviction." *Frye, ante,* at 10. See also *ibid.* (listing procedures currently used by various States). This, too, will help ensure against meritless claims.

III

The standards for ineffective assistance of counsel when a defendant rejects a plea offer and goes to trial must now be applied to this case. Respondent brings a federal collateral challenge to a state-court conviction. Under AEDPA, a federal court may not grant a petition for a writ of habeas corpus unless the state court's adjudication on the merits was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. §2254(d)(1). A decision is contrary to clearly established law if the state court "applies a rule that contradicts the governing law set forth in [Supreme Court] cases." *Williams* v. *Taylor*, 529 U. S. 362, 405 (2000) (opinion for the Court by O'Connor, J.). The Court of Appeals for the Sixth Circuit could not determine whether the Michigan Court of Appeals addressed respondent's ineffective-assistance-of-counsel claim or, if it did, "what the court decided, or even whether the correct legal rule was identified." 376 Fed. Appx., at 568–569.

The state court's decision may not be quite so opaque as the Court of Appeals for the Sixth Circuit thought, yet the federal court was correct to note that AEDPA does not present a bar to granting respondent relief. That is because the Michigan Court of Appeals identified respondent's ineffective-assistance-of-counsel claim but failed to apply *Strickland* to assess it. Rather than applying

Strickland, the state court simply found that respondent's rejection of the plea was knowing and voluntary. *Cooper*, 2005 WL 599740, *1, App. to Pet. for Cert. 45a. An inquiry into whether the rejection of a plea is knowing and voluntary, however, is not the correct means by which to address a claim of ineffective assistance of counsel. See *Hill*, 474 U. S., at 370 (applying *Strickland* to assess a claim of ineffective assistance of counsel arising out of the plea negotiation process). After stating the incorrect standard, moreover, the state court then made an irrelevant observation about counsel's performance at trial and mischaracterized respondent's claim as a complaint that his attorney did not obtain a more favorable plea bargain. By failing to apply *Strickland* to assess the ineffective-assistance-of-counsel claim respondent raised, the state court's adjudication was contrary to clearly established federal law. And in that circumstance the federal courts in this habeas action can determine the principles necessary to grant relief. See *Panetti* v. *Quarterman*, 551 U. S. 930, 948 (2007).

Respondent has satisfied *Strickland*'s two-part test. Regarding performance, perhaps it could be accepted that it is unclear whether respondent's counsel believed respondent could not be convicted for assault with intent to murder as a matter of law because the shots hit Mundy below the waist, or whether he simply thought this would be a persuasive argument to make to the jury to show lack of specific intent. And, as the Court of Appeals for the Sixth Circuit suggested, an erroneous strategic prediction about the outcome of a trial is not necessarily deficient performance. Here, however, the fact of deficient performance has been conceded by all parties. The case comes to us on that assumption, so there is no need to address this question.

As to prejudice, respondent has shown that but for counsel's deficient performance there is a reasonable

probability he and the trial court would have accepted the guilty plea. See 376 Fed. Appx., at 571–572. In addition, as a result of not accepting the plea and being convicted at trial, respondent received a minimum sentence 3½ times greater than he would have received under the plea. The standard for ineffective assistance under *Strickland* has thus been satisfied.

As a remedy, the District Court ordered specific performance of the original plea agreement. The correct remedy in these circumstances, however, is to order the State to reoffer the plea agreement. Presuming respondent accepts the offer, the state trial court can then exercise its discretion in determining whether to vacate the convictions and resentence respondent pursuant to the plea agreement, to vacate only some of the convictions and resentence respondent accordingly, or to leave the convictions and sentence from trial undisturbed. See Mich. Ct. Rule 6.302(C)(3) (2011) ("If there is a plea agreement and its terms provide for the defendant's plea to be made in exchange for a specific sentence disposition or a prosecutorial sentence recommendation, the court may . . . reject the agreement"). Today's decision leaves open to the trial court how best to exercise that discretion in all the circumstances of the case.

The judgment of the Court of Appeals for the Sixth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 10–209

BLAINE LAFLER, PETITIONER *v.* ANTHONY COOPER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[March 21, 2012]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, and with whom THE CHIEF JUSTICE joins as to all but Part IV, dissenting.

> *"If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. If that right is denied, prejudice can be shown if loss of the plea opportunity led to a trial resulting in a conviction on more serious charges or the imposition of a more severe sentence."* *Ante*, at 9.
>
> *"The inquiry then becomes how to define the duty and responsibilities of defense counsel in the plea bargain process. This is a difficult question. . . . Bargaining is, by its nature, defined to a substantial degree by personal style. . . . This case presents neither the necessity nor the occasion to define the duties of defense counsel in those respects . . . ."* *Missouri* v. *Frye*, *ante*, at 8.

With those words from this and the companion case, the Court today opens a whole new field of constitutionalized criminal procedure: plea-bargaining law. The ordinary criminal process has become too long, too expensive, and unpredictable, in no small part as a consequence of an intricate federal Code of Criminal Procedure imposed on the States by this Court in pursuit of perfect justice. See

Friendly, The Bill of Rights as a Code of Criminal Procedure, 53 Cal. L. Rev. 929 (1965). The Court now moves to bring perfection to the alternative in which prosecutors and defendants have sought relief. Today's opinions deal with only two aspects of counsel's plea-bargaining inadequacy, and leave other aspects (who knows what they might be?) to be worked out in further constitutional litigation that will burden the criminal process. And it would be foolish to think that "constitutional" rules governing *counsel's* behavior will not be followed by rules governing the *prosecution's* behavior in the plea-bargaining process that the Court today announces "'*is* the criminal justice system,'" *Frye*, *ante*, at 7 (quoting approvingly from Scott & Stuntz, Plea Bargaining as Contract, 101 Yale L. J. 1909, 1912 (1992) (hereinafter Scott)). Is it constitutional, for example, for the prosecution to withdraw a plea offer that has already been accepted? Or to withdraw an offer before the defense has had adequate time to consider and accept it? Or to make no plea offer at all, even though its case is weak—thereby excluding the defendant from "the criminal justice system"?

Anthony Cooper received a full and fair trial, was found guilty of all charges by a unanimous jury, and was given the sentence that the law prescribed. The Court nonetheless concludes that Cooper is entitled to some sort of habeas corpus relief (perhaps) because his attorney's allegedly incompetent advice regarding a plea offer *caused* him to receive a full and fair trial. That conclusion is foreclosed by our precedents. Even if it were not foreclosed, the constitutional right to effective plea-bargainers that it establishes is at least a new rule of law, which does not undermine the Michigan Court of Appeals' decision and therefore cannot serve as the basis for habeas relief. And the remedy the Court announces—namely, whatever the state trial court in its discretion prescribes, down to and including no remedy at all—is unheard-of and quite ab-

surd for violation of a constitutional right. I respectfully dissent.

I

This case and its companion, *Missouri* v. *Frye*, *ante*, p. ___, raise relatively straightforward questions about the scope of the right to effective assistance of counsel. Our case law originally derived that right from the Due Process Clause, and its guarantee of a fair trial, see *United States* v. *Gonzalez-Lopez*, 548 U. S. 140, 147 (2006), but the seminal case of *Strickland* v. *Washington*, 466 U. S. 668 (1984), located the right within the Sixth Amendment. As the Court notes, *ante*, at 6, the right to counsel does not begin at trial. It extends to "any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial." *United States* v. *Wade*, 388 U. S. 218, 226 (1967). Applying that principle, we held that the "entry of a guilty plea, whether to a misdemeanor or a felony charge, ranks as a 'critical stage' at which the right to counsel adheres." *Iowa* v. *Tovar*, 541 U. S. 77, 81 (2004); see also *Hill* v. *Lockhart*, 474 U. S. 52, 58 (1985). And it follows from this that *acceptance* of a plea offer is a critical stage. That, and nothing more, is the point of the Court's observation in *Padilla* v. *Kentucky*, 559 U. S. ___, ___ (2010) (slip op., at 16), that "the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." The defendant in *Padilla* had accepted the plea bargain and pleaded guilty, abandoning his right to a fair trial; he was entitled to advice of competent counsel before he did so. The Court has never held that the rule articulated in *Padilla*, *Tovar*, and *Hill* extends to all aspects of plea negotiations, requiring not just advice of competent counsel before the defendant accepts a plea bargain and pleads guilty, but also the advice of competent counsel before the defendant rejects a

plea bargain and stands on his constitutional right to a fair trial. The latter is a vast departure from our past cases, protecting not just the constitutionally prescribed right to a fair adjudication of guilt and punishment, but a judicially invented right to effective plea bargaining.

It is also apparent from *Strickland* that bad plea bargaining has nothing to do with ineffective assistance of counsel in the constitutional sense. *Strickland* explained that "[i]n giving meaning to the requirement [of effective assistance], . . . we must take its purpose—to ensure a fair trial—as the guide." 466 U. S., at 686. Since "the right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial," *United States* v. *Cronic*, 466 U. S. 648, 658 (1984), the "benchmark" inquiry in evaluating any claim of ineffective assistance is whether counsel's performance "so undermined the proper functioning of the adversarial process" that it failed to produce a reliably "just result." *Strickland*, 466 U. S., at 686. That is what *Strickland*'s requirement of "prejudice" consists of: Because the right to effective assistance has as its purpose the assurance of a fair trial, the right is not infringed unless counsel's mistakes call into question the basic justice of a defendant's conviction or sentence. That has been, until today, entirely clear. A defendant must show "that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.*, at 687. See also *Gonzalez-Lopez*, *supra*, at 147. Impairment of fair trial is how we distinguish between unfortunate attorney error and error of constitutional significance.[1]

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[1] Rather than addressing the constitutional origins of the *right to effective counsel*, the Court responds to the broader claim (raised by no one) that "the sole purpose of the *Sixth Amendment* is to protect the right to a fair trial." *Ante*, at 6 (emphasis added). Cf. Brief for United States as *Amicus Curiae* 10–12 (arguing that the "purpose of the Sixth

To be sure, *Strickland* stated a rule of thumb for measuring prejudice which, applied blindly and out of context, could support the Court's holding today: "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U. S., at 694. *Strickland* itself cautioned, however, that its test was not to be applied in a mechanical fashion, and that courts were not to divert their "ultimate focus" from "the fundamental fairness of the proceeding whose result is being challenged." *Id.*, at 696. And until today we have followed that course.

In *Lockhart* v. *Fretwell*, 506 U. S. 364 (1993), the deficient performance at issue was the failure of counsel for a defendant who had been sentenced to death to make an objection that would have produced a sentence of life

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Amendment *right to counsel* is to secure a fair trial" (emphasis added)); Brief for Petitioner 12–21 (same). To destroy that straw man, the Court cites cases in which violations of rights *other* than the right to effective counsel—and, perplexingly, even rights found outside the Sixth Amendment and the Constitution entirely—were not cured by a subsequent trial. *Vasquez* v. *Hillery*, 474 U. S. 254 (1986) (violation of equal protection in grand jury selection); *Ballard* v. *United States*, 329 U. S. 187 (1946) (violation of statutory scheme providing that women serve on juries); *Stirone* v. *United States*, 361 U. S. 212 (1960) (violation of Fifth Amendment right to indictment by grand jury). Unlike the right to effective counsel, no showing of prejudice is required to make violations of the rights at issue in *Vasquez*, *Ballard*, and *Stirone* complete. See *Vasquez*, *supra*, at 263–264 ("[D]iscrimination in the grand jury undermines the structural integrity of the criminal tribunal itself, and is not amenable to harmless-error review"); *Ballard*, *supra*, at 195 ("[R]eversible error does not depend on a showing of prejudice in an individual case"); *Stirone*, *supra*, at 217 ("Deprivation of such a basic right is far too serious to be treated as nothing more than a variance and then dismissed as harmless error"). Those cases are thus irrelevant to the question presented here, which is whether a defendant can establish *prejudice* under *Strickland* v. *Washington*, 466 U. S. 668 (1984), while conceding the fairness of his conviction, sentence, and appeal.

imprisonment instead. The objection was fully supported by then-extant Circuit law, so that the sentencing court would have been compelled to sustain it, producing a life sentence that principles of double jeopardy would likely make final. See *id.*, at 383–385 (Stevens, J., dissenting); *Bullington* v. *Missouri*, 451 U. S. 430 (1981). By the time Fretwell's claim came before us, however, the Circuit law had been overruled in light of one of our cases. We determined that a prejudice analysis "focusing solely on mere outcome determination, without attention to whether the result of the proceeding was fundamentally unfair or unreliable," would be defective. *Fretwell*, 506 U. S., at 369. Because counsel's error did not "deprive the defendant of any substantive or procedural right to which the law entitles him," the defendant's sentencing proceeding was fair and its result was reliable, even though counsel's error may have affected its outcome. *Id.*, at 372. In *Williams* v. *Taylor*, 529 U. S. 362, 391–393 (2000), we explained that even though *Fretwell* did not mechanically apply an outcome-based test for prejudice, its reasoning was perfectly consistent with *Strickland*. "Fretwell's counsel had not deprived him of any substantive or procedural right to which the law entitled him." 529 U. S. at 392.[2]

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[2] *Kimmelman* v. *Morrison*, 477 U. S. 365 (1986), cited by the Court, *ante*, at 10–11, does not contradict this principle. That case, which predated *Fretwell* and *Williams*, considered whether our holding that Fourth Amendment claims fully litigated in state court cannot be raised in federal habeas "should be extended to Sixth Amendment claims of ineffective assistance of counsel where the principal allegation and manifestation of inadequate representation is counsel's failure to file a timely motion to suppress evidence allegedly obtained in violation of the Fourth Amendment." 477 U. S., at 368. Our negative answer to that question had nothing to do with the issue here. The parties in *Kimmelman* had not raised the question "whether the admission of illegally seized but reliable evidence can ever constitute 'prejudice' under *Strickland*"—a question similar to the one presented here—and

Those precedents leave no doubt about the answer to the question presented here. As the Court itself observes, a criminal defendant has no right to a plea bargain. *Ante*, at 9. "[T]here is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial." *Weatherford* v. *Bursey*, 429 U. S. 545, 561 (1977). Counsel's mistakes in this case thus did not "deprive the defendant of a substantive or procedural right to which the law entitles him," *Williams*, *supra*, at 393. Far from being "beside the point," *ante*, at 9, that is critical to correct application of our precedents. Like *Fretwell*, this case "concerns the unusual circumstance where the defendant attempts to demonstrate prejudice based on considerations that, as a matter of law, ought not inform the inquiry," 506 U. S., at 373 (O'Connor, J., concurring); he claims "that he might have been denied 'a right the law simply does not recognize,'" *id.*, at 375 (same). *Strickland*, *Fretwell*, and *Williams* all instruct that the pure outcome-based test on which the Court relies is an erroneous measure of cognizable prejudice. In ignoring *Strickland*'s "ultimate focus . . . on the fundamental fairness of the proceeding whose result is being challenged," 466 U. S., at 696, the Court has lost the forest for the trees, leading it to accept what we have previously rejected, the "novel argument that constitutional rights are infringed by trying the defendant rather than accepting his plea of guilty." *Weatherford*, *supra*, at 561.

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the Court therefore did not address it. *Id.*, at 391 (Powell, J., concurring in judgment); see also *id.*, at 380. *Kimmelman* made clear, however, how the answer to that question is to be determined: "The essence of an ineffective-assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution *that the trial was rendered unfair and the verdict rendered suspect*," *id.*, at 374 (emphasis added). "Only those habeas petitioners who can prove under *Strickland that they have been denied a fair trial* . . . will be granted the writ," *id.*, at 382 (emphasis added). In short, *Kimmelman*'s only relevance is to prove the Court's opinion wrong.

II

Novelty alone is the second, independent reason why the Court's decision is wrong. This case arises on federal habeas, and hence is governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Since, as the Court acknowledges, the Michigan Court of Appeals adjudicated Cooper's ineffective-assistance claim on the merits, AEDPA bars federal courts from granting habeas relief unless that court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. §2254(d)(1). Yet the Court concludes that §2254(d)(1) does not bar relief here, because "[b]y failing to apply *Strickland* to assess the ineffective-assistance-of-counsel claim respondent raised, the state court's adjudication was contrary to clearly established federal law." *Ante,* at 15. That is not so.

The relevant portion of the Michigan Court of Appeals decision reads as follows:

> "To establish ineffective assistance, the defendant must demonstrate that his counsel's performance fell below an objective standard of reasonableness and that counsel's representation so prejudiced the defendant that he was deprived of a fair trial. With respect to the prejudice aspect of the test, the defendant must demonstrate a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different, and that the attendant proceedings were fundamentally unfair and unreliable.
>
> "Defendant challenges the trial court's finding after a *Ginther* hearing that defense counsel provided effective assistance to defendant during the plea bargaining process. He contends that defense counsel failed to convey the benefits of the plea offer to him and ignored his desire to plead guilty, and that these fail-

> ures led him to reject a plea offer that he now wishes to accept. However, the record shows that defendant knowingly and intelligently rejected two plea offers and chose to go to trial. The record fails to support defendant's contentions that defense counsel's representation was ineffective because he rejected a defense based on [a] claim of self-defense and because he did not obtain a more favorable plea bargain for defendant." *People* v. *Cooper*, No. 250583 (Mar. 15, 2005), App. to Pet. for Cert. 45a, 2005 WL 599740, *1 *(per curiam)* (footnote and citations omitted).

The first paragraph above, far from ignoring *Strickland*, recites its standard with a good deal more accuracy than the Court's opinion. The second paragraph, which is presumably an application of the standard recited in the first, says that "defendant knowingly and intelligently rejected two plea offers and chose to go to trial." This can be regarded as a denial that there was anything "fundamentally unfair" about Cooper's conviction and sentence, so that no *Strickland* prejudice had been shown. On the other hand, the entire second paragraph can be regarded as a contention that Cooper's claims of inadequate representation were unsupported by the record. The state court's analysis was admittedly not a model of clarity, but federal habeas corpus is a "guard against extreme malfunctions in the state criminal justice systems," not a license to penalize a state court for its opinion-writing technique. *Harrington* v. *Richter*, 562 U. S. ___, ___ (2011) (slip op., at 13) (internal quotation marks omitted). The Court's readiness to find error in the Michigan court's opinion is "inconsistent with the presumption that state courts know and follow the law," *Woodford* v. *Visciotti*, 537 U. S. 19, 24 (2002) *(per curiam)*, a presumption borne out here by the state court's recitation of the correct legal standard.

Since it is ambiguous whether the state court's holding

was based on a lack of prejudice or rather the court's factual determination that there had been no deficient performance, to provide relief under AEDPA this Court must conclude that *both* holdings would have been unreasonable applications of clearly established law. See *Premo* v. *Moore*, 562 U. S. ___, ___ (2011) (slip op., at 7). The first is impossible of doing, since this Court has never held that a defendant in Cooper's position can establish *Strickland* prejudice. The Sixth Circuit thus violated AEDPA in granting habeas relief, and the Court now does the same.

III

It is impossible to conclude discussion of today's extraordinary opinion without commenting upon the remedy it provides for the unconstitutional conviction. It is a remedy unheard-of in American jurisprudence—and, I would be willing to bet, in the jurisprudence of any other country.

The Court requires Michigan to "reoffer the plea agreement" that was rejected because of bad advice from counsel. *Ante*, at 16. That would indeed be a powerful remedy—but for the fact that Cooper's acceptance of that reoffered agreement is not conclusive. Astoundingly, "the state trial court can then *exercise its discretion* in determining whether to vacate the convictions and resentence respondent pursuant to the plea agreement, to vacate only some of the convictions and resentence respondent accordingly, *or to leave the convictions and sentence from trial undisturbed.*" *Ibid.* (emphasis added).

Why, one might ask, require a "reoffer" of the plea agreement, and its acceptance by the defendant? If the district court finds (as a necessary element, supposedly, of *Strickland* prejudice) that Cooper *would have accepted* the original offer, and would thereby have avoided trial and conviction, why not skip the reoffer-and-reacceptance minuet and simply leave it to the discretion of the state

trial court what the remedy shall be? The answer, of course, is camouflage. Trial courts, after all, *regularly* accept or reject plea agreements, so there seems to be nothing extraordinary about their accepting or rejecting the new one mandated by today's decision. But the acceptance or rejection of a plea agreement that has no status whatever under the United States Constitution is worlds apart from what this is: "discretionary" specification of a remedy for an unconstitutional criminal conviction.

To be sure, the Court asserts that there are "factors" which bear upon (and presumably limit) exercise of this discretion—factors that it is not prepared to specify in full, much less assign some determinative weight. "Principles elaborated over time in decisions of state and federal courts, and in statutes and rules" will (in the Court's rosy view) sort all that out. *Ante*, at 13. I find it extraordinary that "statutes and rules" can specify the remedy for a criminal defendant's unconstitutional conviction. Or that the remedy for an unconstitutional conviction should *ever* be subject *at all* to a trial judge's discretion. Or, finally, that the remedy could *ever* include no remedy at all.

I suspect that the Court's squeamishness in fashioning a remedy, and the incoherence of what it comes up with, is attributable to its realization, deep down, that there is no real constitutional violation here anyway. The defendant has been fairly tried, lawfully convicted, and properly sentenced, and *any* "remedy" provided for this will do nothing but undo the just results of a fair adversarial process.

IV

In many—perhaps most—countries of the world, American-style plea bargaining is forbidden in cases as serious as this one, even for the purpose of obtaining testimony that enables conviction of a greater malefactor, much less

for the purpose of sparing the expense of trial. See, *e.g.*, World Plea Bargaining 344, 363–366 (S. Thaman ed. 2010). In Europe, many countries adhere to what they aptly call the "legality principle" by requiring prosecutors to charge all prosecutable offenses, which is typically incompatible with the practice of charge-bargaining. See, *e.g.*, *id.*, at xxii; Langbein, Land Without Plea Bargaining: How the Germans Do It, 78 Mich. L. Rev. 204, 210–211 (1979) (describing the "Legalitätsprinzip," or rule of compulsory prosecution, in Germany). Such a system reflects an admirable belief that the law is the law, and those who break it should pay the penalty provided.

In the United States, we have plea bargaining a-plenty, but until today it has been regarded as a necessary evil. It presents grave risks of prosecutorial overcharging that effectively compels an innocent defendant to avoid massive risk by pleading guilty to a lesser offense; and for guilty defendants it often—perhaps usually—results in a sentence well below what the law prescribes for the actual crime. But even so, we accept plea bargaining because many believe that without it our long and expensive process of criminal trial could not sustain the burden imposed on it, and our system of criminal justice would grind to a halt. See, *e.g.*, Alschuler, Plea Bargaining and its History, 79 Colum. L. Rev. 1, 38 (1979).

Today, however, the Supreme Court of the United States elevates plea bargaining from a necessary evil to a constitutional entitlement. It is no longer a somewhat embarrassing adjunct to our criminal justice system; rather, as the Court announces in the companion case to this one, "'it *is* the criminal justice system.'" *Frye*, *ante*, at 7 (quoting approvingly from Scott 1912). Thus, even though there is no doubt that the respondent here is guilty of the offense with which he was charged; even though he has received the exorbitant gold standard of American justice—a full-dress criminal trial with its innumerable

constitutional and statutory limitations upon the evidence that the prosecution can bring forward, and (in Michigan as in most States[3]) the requirement of a unanimous guilty verdict by impartial jurors; the Court says that his conviction is invalid because he was deprived of his *constitutional entitlement* to plea-bargain.

I am less saddened by the outcome of this case than I am by what it says about this Court's attitude toward criminal justice. The Court today embraces the sporting-chance theory of criminal law, in which the State functions like a conscientious casino-operator, giving each player a fair chance to beat the house, that is, to serve less time than the law says he deserves. And when a player is excluded from the tables, his *constitutional rights* have been violated. I do not subscribe to that theory. No one should, least of all the Justices of the Supreme Court.

* * *

Today's decision upends decades of our cases, violates a federal statute, and opens a whole new boutique of constitutional jurisprudence ("plea-bargaining law") without even specifying the remedies the boutique offers. The result in the present case is the undoing of an adjudicatory process that worked *exactly* as it is supposed to. Released felon Anthony Cooper, who shot repeatedly and gravely injured a woman named Kali Mundy, was tried and convicted for his crimes by a jury of his peers, and given a punishment that Michigan's elected representatives have deemed appropriate. Nothing about that result is unfair or unconstitutional. To the contrary, it is wonderfully just, and infinitely superior to the trial-by-bargain that today's opinion affords constitutional status. I respectfully dissent.

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[3]See *People* v. *Cooks*, 446 Mich. 503, 510, 521 N. W. 2d 275, 278 (1994); 6 W. LaFave, J. Israel, N. King, & O. Kerr, Criminal Procedure §22.1(e) (3d ed. 2007 and Supp. 2011–2012).

SUPREME COURT OF THE UNITED STATES

No. 10–209

BLAINE LAFLER, PETITIONER *v.* ANTHONY COOPER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[March 21, 2012]

JUSTICE ALITO, dissenting.

For the reasons set out in Parts I and II of JUSTICE SCALIA's dissent, the Court's holding in this case misapplies our ineffective-assistance-of-counsel case law and violates the requirements of the Antiterrorism and Effective Death Penalty Act of 1996. Respondent received a trial that was free of any identified constitutional error, and, as a result, there is no basis for concluding that respondent suffered prejudice and certainly not for granting habeas relief.

The weakness in the Court's analysis is highlighted by its opaque discussion of the remedy that is appropriate when a plea offer is rejected due to defective legal representation. If a defendant's Sixth Amendment rights are violated when deficient legal advice about a favorable plea offer causes the opportunity for that bargain to be lost, the only logical remedy is to give the defendant the benefit of the favorable deal. But such a remedy would cause serious injustice in many instances, as I believe the Court tacitly recognizes. The Court therefore eschews the only logical remedy and relies on the lower courts to exercise sound discretion in determining what is to be done.

Time will tell how this works out. The Court, for its part, finds it unnecessary to define "the boundaries of proper discretion" in today's opinion. *Ante*, at 13. In my view, requiring the prosecution to renew an old plea offer

would represent an abuse of discretion in at least two circumstances: first, when important new information about a defendant's culpability comes to light after the offer is rejected, and, second, when the rejection of the plea offer results in a substantial expenditure of scarce prosecutorial or judicial resources.

The lower court judges who must implement today's holding may—and I hope, will—do so in a way that mitigates its potential to produce unjust results. But I would not depend on these judges to come to the rescue. The Court's interpretation of the Sixth Amendment right to counsel is unsound, and I therefore respectfully dissent.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MISSOURI *v.* FRYE

CERTIORARI TO THE COURT OF APPEALS OF MISSOURI, WESTERN DISTRICT

No. 10–444. Argued October 31, 2011—Decided March 21, 2012

Respondent Frye was charged with driving with a revoked license. Because he had been convicted of the same offense three times before, he was charged, under Missouri law, with a felony carrying a maximum 4-year prison term. The prosecutor sent Frye's counsel a letter, offering two possible plea bargains, including an offer to reduce the charge to a misdemeanor and to recommend, with a guilty plea, a 90-day sentence. Counsel did not convey the offers to Frye, and they expired. Less than a week before Frye's preliminary hearing, he was again arrested for driving with a revoked license. He subsequently pleaded guilty with no underlying plea agreement and was sentenced to three years in prison. Seeking postconviction relief in state court, he alleged his counsel's failure to inform him of the earlier plea offers denied him the effective assistance of counsel, and he testified that he would have pleaded guilty to the misdemeanor had he known of the offer. The court denied his motion, but the Missouri appellate court reversed, holding that Frye met both of the requirements for showing a Sixth Amendment violation under *Strickland* v. *Washington*, 466 U. S. 668. Specifically, the court found that defense counsel had been ineffective in not communicating the plea offers to Frye and concluded that Frye had shown that counsel's deficient performance caused him prejudice because he pleaded guilty to a felony instead of a misdemeanor.

Held:

1. The Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected. That right applies to "all 'critical' stages of the criminal proceedings." *Montejo* v. *Louisiana*, 556 U. S. 778, 786. *Hill* v. *Lockhart*, 474 U. S. 52, established that *Strickland*'s two-part test governs ineffective-

Syllabus

assistance claims in the plea bargain context. There, the defendant had alleged that his counsel had given him inadequate advice about his plea, but he failed to show that he would have proceeded to trial had he received the proper advice. 474 U. S., at 60. In *Padilla* v. *Kentucky*, 559 U. S. ___, where a plea offer was set aside because counsel had misinformed the defendant of its immigration consequences, this Court made clear that "the negotiation of a plea bargain *is a critical" stage for ineffective-assistance purposes, id.*, at ___, and rejected the argument made by the State in this case that a knowing and voluntary plea supersedes defense counsel's errors. The State attempts to distinguish *Hill* and *Padilla* from the instant case. It notes that *Hill* and *Padilla* concerned whether there was ineffective assistance leading to acceptance of a plea offer, a process involving a formal court appearance with the defendant and all counsel present, while no formal court proceedings are involved when a plea offer has lapsed or been rejected; and it insists that there is no right to receive a plea offer in any event. Thus, the State contends, it is unfair to subject it to the consequences of defense counsel's inadequacies when the opportunities for a full and fair trial, or for a later guilty plea albeit on less favorable terms, are preserved. While these contentions are neither illogical nor without some persuasive force, they do not suffice to overcome the simple reality that 97 percent of federal convictions and 94 percent of state convictions are the result of guilty pleas. Plea bargains have become so central to today's criminal justice system that defense counsel must meet responsibilities in the plea bargain process to render the adequate assistance of counsel that the Sixth Amendment requires at critical stages of the criminal process. Pp. 3–8.

2. As a general rule, defense counsel has the duty to communicate formal prosecution offers to accept a plea on terms and conditions that may be favorable to the accused. Any exceptions to this rule need not be addressed here, for the offer was a formal one with a fixed expiration date. Standards for prompt communication and consultation recommended by the American Bar Association and adopted by numerous state and federal courts, though not determinative, serve as important guides. The prosecution and trial courts may adopt measures to help ensure against late, frivolous, or fabricated claims. First, a formal offer's terms and processing can be documented. Second, States may require that all offers be in writing. Third, formal offers can be made part of the record at any subsequent plea proceeding or before trial to ensure that a defendant has been fully advised before the later proceedings commence. Here, as the result of counsel's deficient performance, the offers lapsed. Under *Strickland*, the question then becomes what, if any, prejudice resulted from the

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breach of duty. Pp. 8–11.

3. To show prejudice where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability both that they would have accepted the more favorable plea offer had they been afforded effective assistance of counsel and that the plea would have been entered without the prosecution's canceling it or the trial court's refusing to accept it, *if they had the authority to exercise that discretion under state law.* This application of *Strickland* to uncommunicated, lapsed pleas does not alter *Hill*'s standard, which requires a defendant complaining that ineffective assistance led him to accept a plea offer instead of going to trial to show "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." 474 U. S., at 59. *Hill* correctly applies in the context in which it arose, but it does not provide the sole means for demonstrating prejudice arising from counsel's deficient performance during plea negotiations. Because Frye argues that with effective assistance he would have accepted an earlier plea offer as opposed to entering an open plea, *Strickland*'s inquiry into whether "the result of the proceeding would have been different," 466 U. S., at 694, requires looking not at whether the defendant would have proceeded to trial but at whether he would have accepted the earlier plea offer. He must also show that, if the prosecution had the discretion to cancel the plea agreement or the trial court had the discretion to refuse to accept it, there is a reasonable probability neither the prosecution nor the trial court would have prevented the offer from being accepted or implemented. This further showing is particularly important because a defendant has no right to be offered a plea, see *Weatherford* v. *Bursey*, 429 U. S. 545, 561, nor a federal right that the judge accept it, *Santobello* v. *New York*, 404 U. S. 257, 262. Missouri, among other States, appears to give the prosecution some discretion to cancel a plea agreement; and the Federal Rules of Criminal Procedure, some state rules, including Missouri's, and this Court's precedents give trial courts some leeway to accept or reject plea agreements. Pp. 11–13.

4. Applying these standards here, the Missouri court correctly concluded that counsel's failure to inform Frye of the written plea offer before it expired fell below an objective reasonableness standard, but it failed to require Frye to show that the plea offer would have been adhered to by the prosecution and accepted by the trial court. These matters should be addressed by the Missouri appellate court in the first instance. Given that Frye's new offense for driving without a license occurred a week before his preliminary hearing, there is reason to doubt that the prosecution would have adhered to the agreement or that the trial court would have accepted it unless they were re-

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quired by state law to do so. Pp. 13–15.

311 S. W. 3d 350, vacated and remanded.

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS and ALITO, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 10–444

MISSOURI, PETITIONER *v.* GALIN E. FRYE

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MISSOURI, WESTERN DISTRICT

[March 21, 2012]

JUSTICE KENNEDY delivered the opinion of the Court.

The Sixth Amendment, applicable to the States by the terms of the Fourteenth Amendment, provides that the accused shall have the assistance of counsel in all criminal prosecutions. The right to counsel is the right to effective assistance of counsel. See *Strickland* v. *Washington*, 466 U. S. 668, 686 (1984). This case arises in the context of claimed ineffective assistance that led to the lapse of a prosecution offer of a plea bargain, a proposal that offered terms more lenient than the terms of the guilty plea entered later. The initial question is whether the constitutional right to counsel extends to the negotiation and consideration of plea offers that lapse or are rejected. If there is a right to effective assistance with respect to those offers, a further question is what a defendant must demonstrate in order to show that prejudice resulted from counsel's deficient performance. Other questions relating to ineffective assistance with respect to plea offers, including the question of proper remedies, are considered in a second case decided today. See *Lafler* v. *Cooper*, *post*, at 3–16.

I

In August 2007, respondent Galin Frye was charged with driving with a revoked license. Frye had been convicted for that offense on three other occasions, so the State of Missouri charged him with a class D felony, which carries a maximum term of imprisonment of four years. See Mo. Rev. Stat. §§302.321.2, 558.011.1(4) (2011).

On November 15, the prosecutor sent a letter to Frye's counsel offering a choice of two plea bargains. App. 50. The prosecutor first offered to recommend a 3-year sentence if there was a guilty plea to the felony charge, without a recommendation regarding probation but with a recommendation that Frye serve 10 days in jail as so-called "shock" time. The second offer was to reduce the charge to a misdemeanor and, if Frye pleaded guilty to it, to recommend a 90-day sentence. The misdemeanor charge of driving with a revoked license carries a maximum term of imprisonment of one year. 311 S. W. 3d 350, 360 (Mo. App. 2010). The letter stated both offers would expire on December 28. Frye's attorney did not advise Frye that the offers had been made. The offers expired. *Id.*, at 356.

Frye's preliminary hearing was scheduled for January 4, 2008. On December 30, 2007, less than a week before the hearing, Frye was again arrested for driving with a revoked license. App. 47–48, 311 S. W. 3d, at 352–353. At the January 4 hearing, Frye waived his right to a preliminary hearing on the charge arising from the August 2007 arrest. He pleaded not guilty at a subsequent arraignment but then changed his plea to guilty. There was no underlying plea agreement. App. 5, 13, 16. The state trial court accepted Frye's guilty plea. *Id.*, at 21. The prosecutor recommended a 3-year sentence, made no recommendation regarding probation, and requested 10 days shock time in jail. *Id.*, at 22. The trial judge sentenced Frye to three years in prison. *Id.*, at 21, 23.

Frye filed for postconviction relief in state court. *Id.*, at 8, 25–29. He alleged his counsel's failure to inform him of the prosecution's plea offer denied him the effective assistance of counsel. At an evidentiary hearing, Frye testified he would have entered a guilty plea to the misdemeanor had he known about the offer. *Id.*, at 34.

A state court denied the postconviction motion, *id.*, at 52–57, but the Missouri Court of Appeals reversed, 311 S. W. 3d 350. It determined that Frye met both of the requirements for showing a Sixth Amendment violation under *Strickland*. First, the court determined Frye's counsel's performance was deficient because the "record is void of any evidence of any effort by trial counsel to communicate the Offer to Frye during the Offer window." 311 S. W. 3d, at 355, 356 (emphasis deleted). The court next concluded Frye had shown his counsel's deficient performance caused him prejudice because "Frye pled guilty to a felony instead of a misdemeanor and was subject to a maximum sentence of four years instead of one year." *Id.*, at 360.

To implement a remedy for the violation, the court deemed Frye's guilty plea withdrawn and remanded to allow Frye either to insist on a trial or to plead guilty to any offense the prosecutor deemed it appropriate to charge. This Court granted certiorari. 562 U. S. ___ (2011).

II

A

It is well settled that the right to the effective assistance of counsel applies to certain steps before trial. The "Sixth Amendment guarantees a defendant the right to have counsel present at all 'critical' stages of the criminal proceedings." *Montejo* v. *Louisiana*, 556 U. S. 778, 786 (2009) (quoting *United States* v. *Wade*, 388 U. S. 218, 227–228 (1967)). Critical stages include arraignments, postindict-

ment interrogations, postindictment lineups, and the entry of a guilty plea. See *Hamilton* v. *Alabama*, 368 U. S. 52 (1961) (arraignment); *Massiah* v. *United States*, 377 U. S. 201 (1964) (postindictment interrogation); *Wade*, *supra* (postindictment lineup); *Argersinger* v. *Hamlin*, 407 U. S. 25 (1972) (guilty plea).

With respect to the right to effective counsel in plea negotiations, a proper beginning point is to discuss two cases from this Court considering the role of counsel in advising a client about a plea offer and an ensuing guilty plea: *Hill* v. *Lockhart*, 474 U. S. 52 (1985); and *Padilla* v. *Kentucky*, 559 U. S. ___(2010).

Hill established that claims of ineffective assistance of counsel in the plea bargain context are governed by the two-part test set forth in *Strickland*. See *Hill*, *supra*, at 57. As noted above, in Frye's case, the Missouri Court of Appeals, applying the two part test of *Strickland*, determined first that defense counsel had been ineffective and second that there was resulting prejudice.

In *Hill*, the decision turned on the second part of the *Strickland* test. There, a defendant who had entered a guilty plea claimed his counsel had misinformed him of the amount of time he would have to serve before he became eligible for parole. But the defendant had not alleged that, even if adequate advice and assistance had been given, he would have elected to plead not guilty and proceed to trial. Thus, the Court found that no prejudice from the inadequate advice had been shown or alleged. *Hill*, *supra*, at 60.

In *Padilla*, the Court again discussed the duties of counsel in advising a client with respect to a plea offer that leads to a guilty plea. *Padilla* held that a guilty plea, based on a plea offer, should be set aside because counsel misinformed the defendant of the immigration consequences of the conviction. The Court made clear that "the negotiation of a plea bargain is a critical phase of litiga-

tion for purposes of the Sixth Amendment right to effective assistance of counsel." 559 U. S., at ___ (slip op., at 16). It also rejected the argument made by petitioner in this case that a knowing and voluntary plea supersedes errors by defense counsel. Cf. Brief for Respondent in *Padilla* v. *Kentucky*, O. T. 2009, No. 08–651, p. 27 (arguing Sixth Amendment's assurance of effective assistance "does not extend to collateral aspects of the prosecution" because "knowledge of the consequences that are collateral to the guilty plea is not a prerequisite to the entry of a knowing and intelligent plea").

In the case now before the Court the State, as petitioner, points out that the legal question presented is different from that in *Hill* and *Padilla*. In those cases the claim was that the prisoner's plea of guilty was invalid because counsel had provided incorrect advice pertinent to the plea. In the instant case, by contrast, the guilty plea that was accepted, and the plea proceedings concerning it in court, were all based on accurate advice and information from counsel. The challenge is not to the advice pertaining to the plea that was accepted but rather to the course of legal representation that preceded it with respect to other potential pleas and plea offers.

To give further support to its contention that the instant case is in a category different from what the Court considered in *Hill* and *Padilla*, the State urges that there is no right to a plea offer or a plea bargain in any event. See *Weatherford* v. *Bursey*, 429 U. S. 545, 561 (1977). It claims Frye therefore was not deprived of any legal benefit to which he was entitled. Under this view, any wrongful or mistaken action of counsel with respect to earlier plea offers is beside the point.

The State is correct to point out that *Hill* and *Padilla* concerned whether there was ineffective assistance leading to acceptance of a plea offer, a process involving a formal court appearance with the defendant and all coun-

sel present. Before a guilty plea is entered the defendant's understanding of the plea and its consequences can be established on the record. This affords the State substantial protection against later claims that the plea was the result of inadequate advice. At the plea entry proceedings the trial court and all counsel have the opportunity to establish on the record that the defendant understands the process that led to any offer, the advantages and disadvantages of accepting it, and the sentencing consequences or possibilities that will ensue once a conviction is entered based upon the plea. See, *e.g.*, Fed. Rule Crim. Proc. 11; Mo. Sup. Ct. Rule 24.02 (2004). *Hill* and *Padilla* both illustrate that, nevertheless, there may be instances when claims of ineffective assistance can arise after the conviction is entered. Still, the State, and the trial court itself, have had a substantial opportunity to guard against this contingency by establishing at the plea entry proceeding that the defendant has been given proper advice or, if the advice received appears to have been inadequate, to remedy that deficiency before the plea is accepted and the conviction entered.

When a plea offer has lapsed or been rejected, however, no formal court proceedings are involved. This underscores that the plea-bargaining process is often in flux, with no clear standards or timelines and with no judicial supervision of the discussions between prosecution and defense. Indeed, discussions between client and defense counsel are privileged. So the prosecution has little or no notice if something may be amiss and perhaps no capacity to intervene in any event. And, as noted, the State insists there is no right to receive a plea offer. For all these reasons, the State contends, it is unfair to subject it to the consequences of defense counsel's inadequacies, especially when the opportunities for a full and fair trial, or, as here, for a later guilty plea albeit on less favorable terms, are preserved.

The State's contentions are neither illogical nor without some persuasive force, yet they do not suffice to overcome a simple reality. Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas. See Dept. of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics Online, Table 5.22.2009, http://www.albany.edu/sourcebook/pdf/t5222009.pdf (all Internet materials as visited Mar. 1, 2012, and available in Clerk of Court's case file); Dept. of Justice, Bureau of Justice Statistics, S. Rosenmerkel, M. Durose, & D. Farole, Felony Sentences in State Courts, 2006-Statistical Tables, p. 1 (NCJ226846, rev. Nov. 2010), http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf; *Padilla*, *supra*, at ___ (slip op., at 15) (recognizing pleas account for nearly 95% of all criminal convictions). The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. Because ours "is for the most part a system of pleas, not a system of trials," *Lafler*, *post*, at 11, it is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process. "To a large extent . . . horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long. That is what plea bargaining is. It is not some adjunct to the criminal justice system; it *is* the criminal justice system." Scott & Stuntz, Plea Bargaining as Contract, 101 Yale L. J. 1909, 1912 (1992). See also Barkow, Separation of Powers and the Criminal Law, 58 Stan. L. Rev. 989, 1034 (2006) ("[Defendants] who do take their case to trial and lose receive longer sentences than even Congress or the prosecutor might think appropriate, because the longer sentences exist on the books largely for

bargaining purposes. This often results in individuals who accept a plea bargain receiving shorter sentences than other individuals who are less morally culpable but take a chance and go to trial" (footnote omitted)). In today's criminal justice system, therefore, the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant.

To note the prevalence of plea bargaining is not to criticize it. The potential to conserve valuable prosecutorial resources and for defendants to admit their crimes and receive more favorable terms at sentencing means that a plea agreement can benefit both parties. In order that these benefits can be realized, however, criminal defendants require effective counsel during plea negotiations. "Anything less . . . might deny a defendant 'effective representation by counsel at the only stage when legal aid and advice would help him.'" *Massiah*, 377 U. S., at 204 (quoting *Spano* v. *New York*, 360 U. S. 315, 326 (1959) (Douglas, J., concurring)).

B

The inquiry then becomes how to define the duty and responsibilities of defense counsel in the plea bargain process. This is a difficult question. "The art of negotiation is at least as nuanced as the art of trial advocacy and it presents questions farther removed from immediate judicial supervision." *Premo* v. *Moore*, 562 U. S. ___, ___ (2011) (slip op., at 8–9). Bargaining is, by its nature, defined to a substantial degree by personal style. The alternative courses and tactics in negotiation are so individual that it may be neither prudent nor practicable to try to elaborate or define detailed standards for the proper discharge of defense counsel's participation in the process. *Cf. ibid.*

This case presents neither the necessity nor the occasion to define the duties of defense counsel in those respects,

however. Here the question is whether defense counsel has the duty to communicate the terms of a formal offer to accept a plea on terms and conditions that may result in a lesser sentence, a conviction on lesser charges, or both.

This Court now holds that, as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused. Any exceptions to that rule need not be explored here, for the offer was a formal one with a fixed expiration date. When defense counsel allowed the offer to expire without advising the defendant or allowing him to consider it, defense counsel did not render the effective assistance the Constitution requires.

Though the standard for counsel's performance is not determined solely by reference to codified standards of professional practice, these standards can be important guides. The American Bar Association recommends defense counsel "promptly communicate and explain to the defendant all plea offers made by the prosecuting attorney," ABA Standards for Criminal Justice, Pleas of Guilty 14–3.2(a) (3d ed. 1999), and this standard has been adopted by numerous state and federal courts over the last 30 years. See, *e.g.*, *Davie* v. *State*, 381 S. C. 601, 608–609, 675 S. E. 2d 416, 420 (2009); *Cottle* v. *State*, 733 So. 2d 963, 965–966 (Fla. 1999); *Becton* v. *Hun*, 205 W. Va. 139, 144, 516 S. E. 2d 762, 767 (1999); *Harris* v. *State*, 875 S. W. 2d 662, 665 (Tenn. 1994); *Lloyd* v. *State*, 258 Ga. 645, 648, 373 S. E. 2d 1, 3 (1988); *United States* v. *Rodriguez Rodriguez*, 929 F. 2d 747, 752 (CA1 1991) *(per curiam)*; *Pham* v. *United States*, 317 F. 3d 178, 182 (CA2 2003); *United States ex rel. Caruso* v. *Zelinsky*, 689 F. 2d 435, 438 (CA3 1982); *Griffin* v. *United States*, 330 F. 3d 733, 737 (CA6 2003); *Johnson* v. *Duckworth*, 793 F. 2d 898, 902 (CA7 1986); *United States* v. *Blaylock*, 20 F. 3d 1458, 1466 (CA9 1994); cf. *Diaz* v. *United States*, 930 F. 2d

832, 834 (CA11 1991). The standard for prompt communication and consultation is also set out in state bar professional standards for attorneys. See, *e.g.*, Fla. Rule Regulating Bar 4–1.4 (2008); Ill. Rule Prof. Conduct 1.4 (2011); Kan. Rule Prof. Conduct 1.4 (2010); Ky. Sup. Ct. Rule 3.130, Rule Prof. Conduct 1.4 (2011); Mass. Rule Prof. Conduct 1.4 (2011–2012); Mich. Rule Prof. Conduct 1.4 (2011).

The prosecution and the trial courts may adopt some measures to help ensure against late, frivolous, or fabricated claims after a later, less advantageous plea offer has been accepted or after a trial leading to conviction with resulting harsh consequences. First, the fact of a formal offer means that its terms and its processing can be documented so that what took place in the negotiation process becomes more clear if some later inquiry turns on the conduct of earlier pretrial negotiations. Second, States may elect to follow rules that all offers must be in writing, again to ensure against later misunderstandings or fabricated charges. See N. J. Ct. Rule 3:9–1(b) (2012) ("Any plea offer to be made by the prosecutor shall be in writing and forwarded to the defendant's attorney"). Third, formal offers can be made part of the record at any subsequent plea proceeding or before a trial on the merits, all to ensure that a defendant has been fully advised before those further proceedings commence. At least one State often follows a similar procedure before trial. See Brief for National Association of Criminal Defense Lawyers et al. as *Amici Curiae* 20 (discussing hearings in Arizona conducted pursuant to *State* v. *Donald*, 198 Ariz. 406, 10 P. 3d 1193 (App. 2000)); see also N. J. Ct. Rules 3:9–1(b), (c) (requiring the prosecutor and defense counsel to discuss the case prior to the arraignment/status conference including any plea offers and to report on these discussions in open court with the defendant present); *In re Alvernaz*, 2 Cal. 4th 924, 938, n. 7, 830 P. 2d 747, 756, n. 7 (1992)

(encouraging parties to "memorialize in some fashion prior to trial (1) the fact that a plea bargain offer was made, and (2) that the defendant was advised of the offer [and] its precise terms, . . . and (3) the defendant's response to the plea bargain offer"); Brief for Center on the Administration of Criminal Law, New York University School of Law as *Amicus Curiae* 25–27.

Here defense counsel did not communicate the formal offers to the defendant. As a result of that deficient performance, the offers lapsed. Under *Strickland*, the question then becomes what, if any, prejudice resulted from the breach of duty.

C

To show prejudice from ineffective assistance of counsel where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law. To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time. Cf. *Glover* v. *United States*, 531 U. S. 198, 203 (2001) ("[A]ny amount of [additional] jail time has Sixth Amendment significance").

This application of *Strickland* to the instances of an uncommunicated, lapsed plea does nothing to alter the standard laid out in *Hill*. In cases where a defendant complains that ineffective assistance led him to accept a plea offer as opposed to proceeding to trial, the defendant will have to show "a reasonable probability that, but for

counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U. S., at 59. *Hill* was correctly decided and applies in the context in which it arose. *Hill* does not, however, provide the sole means for demonstrating prejudice arising from the deficient performance of counsel during plea negotiations. Unlike the defendant in *Hill*, Frye argues that with effective assistance he would have accepted an earlier plea offer (limiting his sentence to one year in prison) as opposed to entering an open plea (exposing him to a maximum sentence of four years' imprisonment). In a case, such as this, where a defendant pleads guilty to less favorable terms and claims that ineffective assistance of counsel caused him to miss out on a more favorable earlier plea offer, *Strickland*'s inquiry into whether "the result of the proceeding would have been different," 466 U. S., at 694, requires looking not at whether the defendant would have proceeded to trial absent ineffective assistance but whether he would have accepted the offer to plead pursuant to the terms earlier proposed.

In order to complete a showing of *Strickland* prejudice, defendants who have shown a reasonable probability they would have accepted the earlier plea offer must also show that, if the prosecution had the discretion to cancel it or if the trial court had the discretion to refuse to accept it, there is a reasonable probability neither the prosecution nor the trial court would have prevented the offer from being accepted or implemented. This further showing is of particular importance because a defendant has no right to be offered a plea, see *Weatherford*, 429 U. S., at 561, nor a federal right that the judge accept it, *Santobello* v. *New York*, 404 U. S. 257, 262 (1971). In at least some States, including Missouri, it appears the prosecution has some discretion to cancel a plea agreement to which the defendant has agreed, see, *e.g.*, 311 S. W. 3d, at 359 (case below); Ariz. Rule Crim. Proc. 17.4(b) (Supp. 2011). The Federal

Rules, some state rules including in Missouri, and this Court's precedents give trial courts some leeway to accept or reject plea agreements, see Fed. Rule Crim. Proc. 11(c)(3); see Mo. Sup. Ct. Rule 24.02(d)(4); *Boykin* v. *Alabama*, 395 U. S. 238, 243–244 (1969). It can be assumed that in most jurisdictions prosecutors and judges are familiar with the boundaries of acceptable plea bargains and sentences. So in most instances it should not be difficult to make an objective assessment as to whether or not a particular fact or intervening circumstance would suffice, in the normal course, to cause prosecutorial withdrawal or judicial nonapproval of a plea bargain. The determination that there is or is not a reasonable probability that the outcome of the proceeding would have been different absent counsel's errors can be conducted within that framework.

III

These standards must be applied to the instant case. As regards the deficient performance prong of *Strickland*, the Court of Appeals found the "record is void of *any* evidence of *any* effort by trial counsel to communicate the [formal] Offer to Frye during the Offer window, let alone any evidence that Frye's conduct interfered with trial counsel's ability to do so." 311 S. W. 3d, at 356. On this record, it is evident that Frye's attorney did not make a meaningful attempt to inform the defendant of a written plea offer before the offer expired. See *supra*, at 2. The Missouri Court of Appeals was correct that "counsel's representation fell below an objective standard of reasonableness." *Strickland*, *supra*, at 688.

The Court of Appeals erred, however, in articulating the precise standard for prejudice in this context. As noted, a defendant in Frye's position must show not only a reasonable probability that he would have accepted the lapsed plea but also a reasonable probability that the prosecution

would have adhered to the agreement and that it would have been accepted by the trial court. Frye can show he would have accepted the offer, but there is strong reason to doubt the prosecution and the trial court would have permitted the plea bargain to become final.

There appears to be a reasonable probability Frye would have accepted the prosecutor's original offer of a plea bargain if the offer had been communicated to him, because he pleaded guilty to a more serious charge, with no promise of a sentencing recommendation from the prosecutor. It may be that in some cases defendants must show more than just a guilty plea to a charge or sentence harsher than the original offer. For example, revelations between plea offers about the strength of the prosecution's case may make a late decision to plead guilty insufficient to demonstrate, without further evidence, that the defendant would have pleaded guilty to an earlier, more generous plea offer if his counsel had reported it to him. Here, however, that is not the case. The Court of Appeals did not err in finding Frye's acceptance of the less favorable plea offer indicated that he would have accepted the earlier (and more favorable) offer had he been apprised of it; and there is no need to address here the showings that might be required in other cases.

The Court of Appeals failed, however, to require Frye to show that the first plea offer, if accepted by Frye, would have been adhered to by the prosecution and accepted by the trial court. Whether the prosecution and trial court are required to do so is a matter of state law, and it is not the place of this Court to settle those matters. The Court has established the minimum requirements of the Sixth Amendment as interpreted in *Strickland*, and States have the discretion to add procedural protections under state law if they choose. A State may choose to preclude the prosecution from withdrawing a plea offer once it has been accepted or perhaps to preclude a trial court from rejecting

a plea bargain. In Missouri, it appears "a plea offer once accepted by the defendant can be withdrawn without recourse" by the prosecution. 311 S. W. 3d, at 359. The extent of the trial court's discretion in Missouri to reject a plea agreement appears to be in some doubt. Compare *id.*, at 360, with Mo. Sup. Ct. Rule 24.02(d)(4).

We remand for the Missouri Court of Appeals to consider these state-law questions, because they bear on the federal question of *Strickland* prejudice. If, as the Missouri court stated here, the prosecutor could have canceled the plea agreement, and if Frye fails to show a reasonable probability the prosecutor would have adhered to the agreement, there is no *Strickland* prejudice. Likewise, if the trial court could have refused to accept the plea agreement, and if Frye fails to show a reasonable probability the trial court would have accepted the plea, there is no *Strickland* prejudice. In this case, given Frye's new offense for driving without a license on December 30, 2007, there is reason to doubt that the prosecution would have adhered to the agreement or that the trial court would have accepted it at the January 4, 2008, hearing, unless they were required by state law to do so.

It is appropriate to allow the Missouri Court of Appeals to address this question in the first instance. The judgment of the Missouri Court of Appeals is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 10–444

MISSOURI, PETITIONER *v.* GALIN E. FRYE

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MISSOURI, WESTERN DISTRICT

[March 21, 2012]

JUSTICE SCALIA, with whom THE CHIEF JUSTICE, JUSTICE THOMAS, and JUSTICE ALITO join, dissenting.

This is a companion case to *Lafler* v. *Cooper*, *post*, p. ___. The principal difference between the cases is that the fairness of the defendant's conviction in *Lafler* was established by a full trial and jury verdict, whereas Frye's conviction here was established by his own admission of guilt, received by the court after the usual colloquy that assured it was voluntary and truthful. In *Lafler* all that could be said (and as I discuss there it was quite enough) is that the *fairness* of the conviction was clear, though a unanimous jury finding beyond a reasonable doubt can sometimes be wrong. Here it can be said not only that the process was fair, but that the defendant acknowledged the correctness of his conviction. Thus, as far as the reasons for my dissent are concerned, this is an *a fortiori* case. I will not repeat here the constitutional points that I discuss at length in *Lafler*, but I will briefly apply those points to the facts here and comment upon a few statements in the Court's analysis.

* * *

Galin Frye's attorney failed to inform him about a plea offer, and Frye ultimately pleaded guilty without the benefit of a deal. Counsel's mistake did not deprive Frye of any substantive or procedural right; only of the oppor-

tunity to accept a plea bargain to which he had no entitlement in the first place. So little entitlement that, had he known of and accepted the bargain, the prosecution would have been able to withdraw it right up to the point that his guilty plea pursuant to the bargain was accepted. See 311 S. W. 3d 350, 359, and n. 4 (Mo. App. 2010).

The Court acknowledges, moreover, that Frye's conviction was untainted by attorney error: "[T]he guilty plea that was accepted, and the plea proceedings concerning it in court, were all based on accurate advice and information from counsel." *Ante,* at 5. Given the "ultimate focus" of our ineffective-assistance cases on "the fundamental fairness of the proceeding whose result is being challenged," *Strickland* v. *Washington,* 466 U. S. 668, 696 (1984), that should be the end of the matter. Instead, here, as in *Lafler,* the Court mechanically applies an outcome-based test for prejudice, and mistakes the possibility of a different result for constitutional injustice. As I explain in *Lafler, post,* p. ___ (dissenting opinion), that approach is contrary to our precedents on the right to effective counsel, and for good reason.

The Court announces its holding that "as a general rule, defense counsel has the duty to communicate formal offers from the prosecution" as though that resolves a disputed point; in reality, however, neither the State nor the Solicitor General argued that counsel's performance here was adequate. *Ante,* at 9. The only issue was whether the inadequacy deprived Frye of his constitutional right to a fair trial. In other cases, however, it will not be so clear that counsel's plea-bargaining skills, which must now meet a constitutional minimum, are adequate. "[H]ow to define the duty and responsibilities of defense counsel in the plea bargain process," the Court acknowledges, "is a difficult question," since "[b]argaining is, by its nature, defined to a substantial degree by personal style." *Ante,* at 8. Indeed. What if an attorney's "personal style" is to

establish a reputation as a hard bargainer by, for example, advising clients to proceed to trial rather than accept anything but the most favorable plea offers? It seems inconceivable that a lawyer could compromise his client's *constitutional rights* so that he can secure better deals for other clients in the future; does a hard-bargaining "personal style" now violate the Sixth Amendment? The Court ignores such difficulties, however, since "[t]his case presents neither the necessity nor the occasion to define the duties of defense counsel in those respects." *Ante,* at 8. Perhaps not. But it does present the necessity of confronting the serious difficulties that will be created by constitutionalization of the plea-bargaining process. It will not do simply to announce that they will be solved in the sweet by-and-by.

While the inadequacy of counsel's performance in this case is clear enough, whether it was prejudicial (in the sense that the Court's new version of *Strickland* requires) is not. The Court's description of how that question is to be answered on remand is alone enough to show how unwise it is to constitutionalize the plea-bargaining process. Prejudice is to be determined, the Court tells us, by a process of retrospective crystal-ball gazing posing as legal analysis. First of all, of course, we must estimate whether the defendant *would have accepted* the earlier plea bargain. Here that seems an easy question, but as the Court acknowledges, *ante,* at 14, it will not always be. Next, since Missouri, like other States, permits accepted plea offers to be withdrawn by the prosecution (a reality which alone should suffice, one would think, to demonstrate that Frye had no entitlement to the plea bargain), we must estimate whether the prosecution *would have withdrawn* the plea offer. And finally, we must estimate whether the trial court *would have approved* the plea agreement. These last two estimations may seem easy in the present case, since Frye committed a new infraction

before the hearing at which the agreement would have been presented; but they assuredly will not be easy in the mine run of cases.

The Court says "[i]t can be assumed that in most jurisdictions prosecutors and judges are familiar with the boundaries of acceptable plea bargains and sentences." *Ante,* at 13. Assuredly it can, just as it can be assumed that the sun rises in the west; but I know of no basis for the assumption. Virtually no cases deal with the standards for a prosecutor's withdrawal from a plea agreement beyond stating the general rule that a prosecutor may withdraw any time prior to, but not after, the entry of a guilty plea or other action constituting detrimental reliance on the defendant's part. See, *e.g., United States* v. *Kuchinski*, 469 F. 3d 853, 857–858 (CA9 2006). And cases addressing trial courts' authority to accept or reject plea agreements almost universally observe that a trial court enjoys broad discretion in this regard. See, *e.g., Missouri* v. *Banks*, 135 S. W. 3d 497, 500 (Mo. App. 2004) (trial court abuses its discretion in rejecting a plea only if the decision "is so arbitrary and unreasonable that it shocks the sense of justice and indicates a lack of careful consideration" (internal quotation marks omitted)). Of course after today's opinions there will be cases galore, so the Court's *assumption* would better be cast as an optimistic *prediction* of the certainty that will emerge, many years hence, from our newly created constitutional field of plea-bargaining law. Whatever the "boundaries" ultimately devised (if that were possible), a vast amount of discretion will still remain, and it is extraordinary to make a defendant's constitutional rights depend upon a series of retrospective mind-readings as to how that discretion, in prosecutors and trial judges, *would have been* exercised.

The plea-bargaining process is a subject worthy of regulation, since it is the means by which most criminal convictions are obtained. It happens not to be, however, a

subject covered by the Sixth Amendment, which is concerned not with the fairness of bargaining but with the fairness of conviction. "The Constitution . . . is not an all-purpose tool for judicial construction of a perfect world; and when we ignore its text in order to make it that, we often find ourselves swinging a sledge where a tack hammer is needed." *Padilla* v. *Kentucky*, 559 U. S. ___, ___ (2010) (SCALIA, J., dissenting) (slip op., at 1). In this case and its companion, the Court's sledge may require the reversal of perfectly valid, eminently just, convictions. A legislature could solve the problems presented by these cases in a much more precise and efficient manner. It might begin, for example, by penalizing the attorneys who made such grievous errors. That type of sub-constitutional remedy is not available to the Court, which is limited to penalizing (almost) everyone else by reversing valid convictions or sentences. Because that result is inconsistent with the Sixth Amendment and decades of our precedent, I respectfully dissent.

State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

COUNTIES
EDGEFIELD / LEXINGTON
McCORMICK / SALUDA
FAXES: (803) 785-8431 or (803) 785-8255

LEXINGTON COUNTY JUDICIAL CENTER
205 E. MAIN ST. • THIRD FLOOR
LEXINGTON, SOUTH CAROLINA 29072
TELEPHONE: (803) 785-8352

DONALD V. MYERS
Solicitor

December 8, 2008

Bradley Hansen, Esquire
602 East Main Street, Suite B
Lexington, SC 29072

Re: Rikam Dozier

Mr. Hansen:

Having reviewed your client's evaluation, and having spoken to the victims at length, I can only extend an offer for your client to plead to Armed Robbery, with no objection to the minimum sentence. In exchange for his plea, I will dismiss his Conspiracy charge.

I would like to handle this matter next week (week of December 15th). Please let me know if your client accepts this offer as soon as possible so I can make the necessary arrangements to handle his plea. If your client rejects this offer, I will plan on calling his case for trial the week of February 23rd of 2009.

Sincerely,

Rick Hubbard
Deputy Solicitor

THE CHRISTIAN LEGAL CENTER, LLC

BRADLEY BRYDON HANSEN

Attorney & Counselor at Law

602 East Main Street, Suite B

Lexington, South Carolina 29072

Telephone: (803) 996-3600

Facsimile: (803) 996-1267

Date: January 16, 2009 # of Pages, Including Cover Page: 1

Please deliver this Facsimile to: Mr. S. Richardson Hubbard, III, Esq.
Deputy. Solicitor, County of Lexington

Fax Number: 803-785-8610 Phone Number: 803-785-8352

Re: State vs. Azrikam Dozier

Mr. Hubbard:

Please be advised that we accept your offer of Armed Robbery with no objection to the minimum sentence and a dismissal of the conspiracy charge in the above referenced matter. Please contact my office with details in regards to the next plea and sentencing date.

If you have any questions or concerns please contact me at your earliest convenience.

Warmest Regards,
THE CHRISTIAN LEGAL CENTER, LLC

Bradley Brydon Hansen
BBH/ehh

cc: Azrikam Dozier

PLAINTIFF'S EXHIBIT H

State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

COUNTIES
EDGEFIELD / LEXINGTON
McCORMICK / SALUDA
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205 E. MAIN ST. • THIRD FLOOR
LEXINGTON, SOUTH CAROLINA 29072
TELEPHONE: (803) 785-8352

DONALD V. MYERS
Solicitor

March 25, 2009

VIA FACSIMILE
Bradley B. Hansen, Esquire
602 East Main Street, Suite B
Lexington, SC 29072

Re: Rikam Dozier ✓

Dear Mr. Hansen:

I am in receipt of your letter wherein you say you need three weeks to a month's notice to proceed with a plea. Although I appreciate your desire to notify your client's family members of a possible plea, I can not continue to postpone this matter for such extended periods of time. I have multiple victims that must be notified as well. I believe there is sufficient time for your client's family to obtain notice from you via mail of a plea for next week.

I do not wish to be difficult, but if your client does not wish to plead next week, I will be prepared to call him for trial the week of April 13, 2009. In such case, my offer to have no objection to a minimum sentence and to dismiss the conspiracy charge will be revoked.

I look forward to hearing from you.

Sincerely,

Rick Hubbard
Deputy Solicitor

PLAINTIFF'S EXHIBIT
1

Gmail by Google

Rakim Dozier v. State, 2010-CP-38-1122, PCR

Dickson, Edgar W. Law Clerk (Andrew C. Evans) <edicksonlc@sccourts.org> Mon, Jul 1, 2013 at 4:32 PM
To: "Karen Ratigan (KRatigan@scag.gov)" <KRatigan@scag.gov>, Aimee Zmroczek <ajzlawfirm@gmail.com>
Cc: "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>

Good afternoon:

This letter is in reference to a hearing before Judge Dickson on November 15, 2012 in Lexington County.

After due deliberation, review of the memoranda, case law, exhibits and arguments of counsel, Judge Dickson is denying the Applicant's PCR Action.

The Court was concerned about several aspects of Mr. Hansen's representation that may have fallen below a reasonable professional standard. The Applicant was 16 years old at the time of his arrest; Mr. Hansen had concerns about the Applicant's mental capacity coupled with his age and had him evaluated but chose not to pursue any further action along these lines; there was evidence that Applicant may not have fully understood his potential sentencing range at the time of his guilty plea; Mr. Hansen sent a post-plea letter to Applicant informing him of his right to appeal but advising him not to do so because "at best, you could have five (5) years reduced off your sentence...."; Mr. Hansen testified that his approach to criminal investigation involves his clients admitting guilt and deciding on a "fair and just punishment" and that he is retained specifically to negotiate a plea; there was also testimony that Applicant's mother retained Mr. Hansen and that the Applicant may not have been fully aware of Mr. Hansen's unique approach to criminal representation. The Court is concerned that these actions of trial counsel may not meet a reasonable professional standard and may amount to errors in representation—particularly that trial counsel's manner of criminal representation may conflict with his Constitutional obligation to provide *full* and fair representation, including preparing for the possibility of a trial

The Court is concerned that the cumulative effects of these errors of counsel may have prejudiced the Applicant. However, our Courts have not recognized cumulative errors of counsel as cognizable grounds for relief under the PCR Act, although our Courts have noted that the issue is unsettled. See Lorenzen v. State, 376 S.C. 521, 535 n. 3, 657 S.E.2d 771, 779 n. 3 (2008) ("[W]hether the cumulation of several errors, 'which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina'" (quoting Green v. State, 351 S.C. 184, 197, 569 S.E.2d 318, 325 (2002)); See also, Walker v. State, 397 S.C. 226, 243 723 S.E.2d 610, 619 (Ct. App. 2012) ("Even if South Carolina did allow PCR based on the cumulative prejudicial effect of two or more instances of deficient performance, [Applicant] would still have to demonstrate [prejudice under Strickland]"). The Court is bound to apply the law as it has been defined, or not defined, in South Carolina. As such, the Court does not find that the cumulative effect of counsel's errors have prejudiced the Applicant so as to justify post-conviction relief.

The Court also finds that none of these errors of counsel, taken individually, has sufficiently prejudiced the Applicant so as to justify post-conviction relief. The Court is not convinced that, but for any one of these errors, the outcome of Applicant's proceedings would have been any different. Therefore, the Court is denying the Applicant's PCR Action.

Ms. Ratigan, Judge Dickson asks that you prepare the Order reflecting the Court's findings herein. When it has been prepared, please send a copy to opposing counsel and mail or hand deliver the Order to this office with a self-addressed, stamped envelope for its prompt return.

If you have any questions or concerns, please contact this office by email or by phone at (803) 535-2187.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans

Law Clerk, Hon. Edgar Warren Dickson

First Judicial Circuit

P. O. Box 1949

Orangeburg, S. C. 29116

803-535-2187 (phone)

803-535-2188 (fax)

ALAN WILSON
ATTORNEY GENERAL

February 4, 2014

The Honorable Beth Carrigg
Lexington County Clerk of Court
305 E. Main St, Suite 146
Lexington, SC 29072

Re: **Rikam Ikkesh Dozier v. State of South Carolina**
2010-CP-32-1122

Dear Mrs. Carrigg:

Enclosed please find the original **Order of Dismissal** signed by Judge Edgar W. Dickson, for filing in your office. Please return a clocked copy to our office.

Sincerely,

Karen C. Ratigan
Senior Assistant Deputy Attorney General

JWW/tb
Enclosure

cc: Aimee Zmroczek, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	
	)	2010-CP-32-1122
Rikam Ikkesh Dozier, S.C.D.C. No. 334052,	)	
	)	
Applicant,	)	
	)	**ORDER OF DISMISSAL**
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 10, 2010. The Respondent made its return on May 14, 2010. An evidentiary hearing into the matter was convened on November 15, 2012 at the Lexington County Courthouse. The Applicant was present at the hearing and represented by Aimee Zmroczek, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Bradley B. Hansen, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Lexington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, the return, and the Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. The Applicant was indicted at the September 2008 term of the Lexington County Grand Jury for armed robbery (2008-GS-32-

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2826) and criminal conspiracy (2008-GS-32-2827). He was represented by Bradley B. Hansen, Esquire.

On April 2, 2009, the Applicant pled guilty to armed robbery.[1] He was sentenced by the Honorable R. Knox McMahon to fifteen years imprisonment. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Violations of the 5th, 6th, and 14th Amendments.
3. Subject matter jurisdiction.
4. Due process violations.

Counsel for the Applicant also prepared a Trial Brief (with Exhibits A-I). This document, dated November 14, 2012, was submitted to the Court on the day of the hearing[2] and listed the following issues:

1. Ineffective assistance of counsel:
   a. Failure to ask the solicitor to have the case remanded to the family court.
   b. Failure to argue the Applicant's case fell within the jurisdiction of the family court.
   c. Misrepresented the Applicant's potential charges when he advised him not to file an appeal.
   d. Advised the Applicant he would receive the minimum sentence.
2. Involuntary guilty plea:
   a. This case should have been transferred to the family court.
   b. The Applicant was misadvised about the potential sentence he faced.
   c. The Applicant could not consider the impact his statements may have had at trial because counsel had not investigated the admissibility of these statements.

[1] The State nol prossed the criminal conspiracy charge.
[2] This document was admitted as Applicant's Exhibit 1.

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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 their 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).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, 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, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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). When

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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. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he hired plea counsel to negotiate a plea on his three warrants (armed robbery, criminal conspiracy, and kidnapping). The Applicant stated he had two meetings with plea counsel and they reviewed the evidence and his version of events. The Applicant stated plea counsel said he was facing a ninety year sentence. The Applicant stated, however, that plea counsel said he was working out a deal for a ten year offer. The Applicant stated he believed he was pleading guilty in exchange for ten years. The Applicant stated he answered the plea judge's questions as counsel had instructed him. The Applicant stated he discussed an appeal with plea counsel but plea counsel said it was not in his best interest because he only received five years over the minimum sentence and he could potentially receive new charges if he was successful on appeal. The Applicant stated he wanted an appeal because his sentence was too harsh.

Plea counsel confirmed the Applicant retained him in order to negotiate a plea in this case. Plea counsel testified he filed discovery motions, received those materials and reviewed them with the Applicant. Plea counsel testified they discussed the sentence ranges on the charges. Plea counsel testified the Applicant was sixteen years old when he committed the offense and had been waived up to General Sessions. Plea counsel testified he asked the State to waive the matter back to family court but never filed a formal motion. Plea counsel testified the Applicant admitted his guilt from the beginning and that he engaged in lengthy plea negotiations. Plea counsel testified the first assistant solicitor took a hard stance with this case but the second

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assistant solicitor dropped the Applicant's kidnapping charge. Plea counsel testified the State could have brought additional charges of armed robbery for the other individuals but the State agreed not to bring those indictments. Plea counsel testified the eventual offer was for the Applicant to plead to a range of 10-30 years and that the State would not object to the minimum sentence on armed robbery. Plea counsel testified he explained the offer to the Applicant, who had 4-6 weeks to consider it. Plea counsel testified he never promised the Applicant would receive a certain sentence and noted the Applicant did not waver at the plea hearing itself. Plea counsel testified he spoke with the Applicant after the plea hearing and he was unsatisfied because he hoped to get the minimum sentence. Plea counsel testified he delivered a letter to the Applicant the next day, however, in which he advised not to file an appeal.

Initially, this Court notes concern with some aspects of plea counsel's representation that may have fallen below a reasonable standard of care.

First, plea counsel was apprehensive about the Applicant's age and mental capacity. While the Applicant was evaluated, plea counsel chose not to pursue any further action along these lines – though there was evidence the Applicant may not have fully understood the potential sentencing range at the time of his guilty plea.

The Court is also concerned that Applicant was not fully advised of his right to appeal. However, this Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about an appeal. Applicant received a letter from counsel advising him of his right to appeal, but advising him not to do so because he could, at best, have five years removed from his sentence. There is no evidence in the record that the Applicant asked plea counsel to file an appeal and counsel did not do so. Rather, this Court finds the Applicant, after having been advised of his appellate rights both orally and in writing, chose not to pursue them. See

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Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) ("To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal."). As such, this Court finds the Applicant is not entitled to a belated appeal from his guilty plea hearing.

The Court is also concerned that Mr. Hansen unique approach to criminal representation- which included having his client admit their guilt and deciding on a "fair and just punishment"- may have caused his representation of applicant to fall below reasonable professional standards and may amount to errors in representation.

The Court is concerned these aspects of Applicant's representation, when taken cumulatively, may have prejudiced Applicant. However, this Court is aware that South Carolina courts have not recognized the potentially cumulative effects of counsel's actions can be a cognizable ground for post-conviction relief. Our courts have noted the issue is unsettled. See Lorenzen v. State, 376 S.C. 521, 535 n.3, 657 S.E.2d 771, 779 n.3 (2008) ("[W]hether the cumulation of several errors, 'which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina.'") (quoting Green v. State, 351 S.C. 184, 197, 569 S.E.2d 318, 325 (2002)); see also Walker v. State, 397 S.C. 226, 243, 723 S.E.2d 610, 619 (Ct. App. 2012) ("Even if South Carolina did allow PCR based on the cumulative prejudicial effect of two or more instances of deficient performance, [Applicant] would still have to demonstrate [prejudice under Strickland]."). As this Court is bound to apply the law as defined, or not defined, the Court cannot find the cumulative effect of plea counsel's representation has prejudiced the Applicant.

Ultimately, this Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance under current South Carolina law. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not

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knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174. The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.9). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.8-9; pp.10-11; pp.11-12).

The Court finds that Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive if he pled guilty. The Applicant testified plea counsel said he would receive a ten-year sentence if he pled guilty. Plea counsel testified they were hopeful the Applicant would receive the minimum sentence for armed robbery but that he never made any promises regarding sentencing. Plea counsel also testified the State had agreed not to oppose the minimum sentence in this case. This Court finds plea counsel's testimony is credible. This Court notes plea counsel's testimony is supported by the record. The assistant solicitor informed the plea judge that he was "not taking a position on the actual sentencing" and did not oppose the minimum sentence. (Plea transcript, p.9). Both plea counsel and the Applicant affirmed this was also their understanding about plea negotiations. (Plea transcript, pp.9-10). At no point does the Applicant inform the plea judge he was pleading guilty in exchange for a ten-year sentence. This Court finds plea counsel properly relayed and explained the plea negotiations to the Applicant. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). This Court notes that, while the Applicant and plea counsel may have hoped for the minimum sentence, both were fully aware of the sentencing ranges for the offenses. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("Wishful thinking regarding sentencing

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does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.").

The Court is concerned that Applicant may not have understood his potential sentencing range at the time of the plea, but ultimately finds that Applicant failed to meet his burden of proving plea counsel misadvised him about his potential sentence. Plea counsel testified he reviewed the discovery materials and discussed it with the Applicant. Plea counsel testified that, based upon the facts, the Applicant could have been charged with additional counts of armed robbery but that the State agreed not to seek additional indictments. Plea counsel testified he advised the Applicant of the sentences he was facing. This Court finds plea counsel's testimony is credible. This Court further finds plea counsel fulfilled his obligations as the Applicant's attorney when he explained the sentence ranges of both the charges he was pleading guilty to and the charges that could potentially be brought against him. This Court also notes the plea judge explained the sentence ranges for the armed robbery and criminal conspiracy charges and the Applicant did not indicate he was surprised by these figures. (Plea transcript, pp.7-8). This Court finds plea counsel properly advised the Applicant regarding sentencing. See Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived").

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

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present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not proved that Counsel was not deficient, or that any one of his errors caused the Applicant to be prejudiced by counsel's representation. Furthermore, the Applicant has not proven that his guilty plea was not entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application 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 this Order if he wants 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 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.

AND IT IS SO ORDERED this 31st day of January, 2014.

Edgar W. Dickson
Presiding Judge

Orangeburg, South Carolina.

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COPY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
	2010-CP-32-1122
Rikam I. Dozier #334052)	
Applicant,)	
)	
v.)	MOTION TO RECONSIDER
)	
State of South Carolina,)	
Respondent.)	
)	

NOW COMES, Applicant, Rikam Dozier, by and through his undersigned counsel, and moves pursuant to Rule 59(e), SCRCP for an order altering or amending the court's prior order filed on February 5, 2014, denying Applicant's claim and dismissing with prejudice. While the court has ruled in the State's favor, the Applicant submits this motion to ensure that he has "enable[d] the lower court to rule properly after it has considered all relevant facts, law, and arguments." Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000).

Specifically all allegations submitted in the memoranda by Applicant regarding:

1. Ineffective assistance of counsel-pretrial with regards to remanding case to family court.
2. Ineffective assistance of counsel-guilty plea and voluntariness and application under the standard set under the Sixth Amendment, Missouri v. Frye, 132 S. Ct 1399, 1407 (2012); Lafler v. Cooper, 132 S. Ct. 1376 (2012); Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009); and Padilla v. Kentucky, 130 S. Ct. 1479, 1486 (2010).

3. The competent and ethical representation by trial counsel including his policy to only negotiate pleas, requirement that the client "confess" and trial counsel's approach to "fair and just punishment."

4. Trial counsel's failure to be aware of the nature and crucial elements of the offense, as well as the maximum and any mandatory minimum penalty. Including recommendations regarding to appeal. Anderson v. State, 342 S.C. 54, 535 S.E.2d 646 (2000).

5. Trial counsel's cumulative errors. The issue of whether individual errors, which may not be independently prejudicial, may be prejudicial when taken as a whole, is the threshold to deciding the question in a case where there is a finding of multiple errors. Green v. State, 351 S.C. 184, 569 S.E.2d 318 (2002); see also Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771 (2008) (stating it is an unsettled question in South Carolina whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief).

6. Trial counsel's failure to preserve file and produce a copy of the signed contract/fee agreement entered into with client.

7. Trial counsel's failure to mitigate including seeking a sentence similar to more culpable co-defendants.

8. Trial counsel's admission to "Judge Shopping."

THEREFORE, counsel requests the Order be reconsidered for the above listed specific

reasons and issues not specifically listed above but raised during the trial of this matter.

Respectfully Submitted,

Aimee J. Zmroczek, Esq. #77936
A.J.Z. Law Firm, LLC
2003 Lincoln Street
P.O. Box 11961
Columbia, S C 29211
(803) 400-1918 telephone
(803) 405-8005 fax
ajzlawfirm@gmail.com
Counsel for Applicant

Lexington, South Carolina.
Dated: February 12, 2014.

COPY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
	2010-CP-32-1122
Rikam I. Dozier #334052)	
Applicant,)	
)	
v.)	**CERTIFICATE OF SERVICE**
)	
State of South Carolina,)	
Respondent.)	
)	

The undersigned hereby certifies that on February 12, 2014, a copy of the foregoing Applicant's Motion to Reconsider, was duly served on opposing counsel by depositing them in the U.S. Mail in an envelope with sufficient postage affixed, addressed as follows:

Karen C. Ratigan
Senior Assistant Deputy Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Respectfully Submitted,

Aimee J. Zmroczek, Esq. #77936
A.J.Z. Law Firm, LLC
2003 Lincoln Street
P.O. Box 11961
Columbia, S C 29211
(803) 400-1918 telephone
(803) 405-8005 fax
ajzlawfirm@gmail.com
Counsel for Applicant

Lexington, South Carolina.
Dated: February 12, 2014.

KR
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ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	
	)	2010-CP-32-1122
Rikam Ikkesh Dozier, S.C.D.C. No. 334052,	)	
	)	
Applicant,	)	**ORDER**
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
2014 MAR 13 A 10:49
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

The above-captioned case is a post-conviction relief matter arising from an application filed March 10, 2010. An evidentiary hearing was convened at the Lexington County Courthouse on November 15, 2012 and the final order of dismissal was signed by this Court on January 31, 2014 and filed February 5, 2014.

This matter is back before the Court by way of the Applicant's motion to reconsider pursuant to Rule 59(e), SCRCP, dated February 12, 2014. The Applicant argues this Court should reconsider several issues.

Based upon careful reconsideration of the evidence in this case and upon full consideration of the Applicant's motion, this Court is not persuaded to grant the motion. This Court notes the Applicant is not requesting either an alteration or amendment to the final order. Rather, the Applicant is asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court). This Court finds the

1/28

previous order of dismissal fully comports with the requirements of Rule 52(a) SCRCP.

IT IS THEREFORE ORDERED:

1. That the Applicant's motion is denied and dismissed.

AND IT IS SO ORDERED this 13th day of March, 2014.

Edgar W. Dickson
Presiding Judge

FILED
2014 MAR 13 A 10:49
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2/2

A. J. Z. Law Firm, LLC

Mailing Address
P.O. Box 11961
Columbia, SC 29211

Physical Address
2003 Lincoln Street
Columbia, South Carolina 29201

Phone: (803) 400-1918
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Aimee J. Zmroczek, Attorney
ajzlawfirm@gmail.com

M. Wade Dowtin, Attorney
wade.ajzlawfirm@gmail.com

Christina Metze, paralegal
christina.ajzlawfirm@gmail.com

March 27, 2014

Supreme Court of South Carolina
ATTN: Daniel Shearouse, Clerk of Court
P.O. Box 11330
Columbia, SC 29211

RE: Rikam Ikkesh Dozier v. State of South Carolina

Dear Mr. Shearouse:

Enclosed please find a Notice of Appeal along with a Certificate of Service and copies of the Orders being appealed. Also enclosed is a copy which I request you stamp as "filed" and return to me in the enclosed stamped envelope.

Thank you for your assistance in this matter.

Yours truly,

Christina Metze

Christina Metze
Paralegal

cc: Karen C. Ratigan, Assistant Attorney General
Beth Carrigg, Lexington County Clerk of Court
Rikam Dozier

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Edgar W. Dickson, Presiding Judge

RECEIVED
APR - 2 2014
S.C. Supreme Court

10-CP-32-1122

RIKAM IKKESH DOZIER, #334052,

Petitioner,

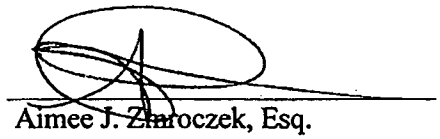
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Rikam Ikkesh Dozier, #334052,, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed February 5, 2014, and received by counsel on February 5, 2014, and the Order Denying Rule 59(E) Motion filed March 13, 2014, and received by counsel on March 17, 2014, issued by the Honorable Edgar W. Dickson, presiding Judge.



Aimee J. Zivoczek, Esq.
A.J.Z. Law Firm, LLC
2003 Lincoln Street
P.O. Box 11961
Columbia, South Carolina 29211
(803) 400-1918 telephone
(803) 405-8005 fax
ajzlawfirm@gmail.com
ATTORNEY FOR PETITIONER

This 27th day of March 2014.

Other Counsel of Record:
Karen C. Ratigan, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Edgar W. Dickson, Presiding Judge

10-CP-32-1122

RIKAM IKKESH DOZIER, #334052,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Karen C. Ratigan, Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211, by mailing in an envelope properly addressed with postage prepaid on this 27th day of March, 2014.

Aimee J. Zmroczek
Attorney and Counselor at Law

SWORN TO BEFORE me this 27th day
of March 2014.

Christina Metze (L.S.)
Notary Public for South Carolina
My Commission Expires: 9/25/16

ORIGINAL 2

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	2010-CP-32-1122
Rikam Ikkesh Dozier, S.C.D.C. No. 334052, Applicant, v. State of South Carolina, Respondent.	**ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 10, 2010. The Respondent made its return on May 14, 2010. An evidentiary hearing into the matter was convened on November 15, 2012 at the Lexington County Courthouse. The Applicant was present at the hearing and represented by Aimee Zmroczek, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Bradley B. Hansen, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Lexington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, the return, and the Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. The Applicant was indicted at the September 2008 term of the Lexington County Grand Jury for armed robbery (2008-GS-32-

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2826) and criminal conspiracy (2008-GS-32-2827). He was represented by Bradley B. Hansen, Esquire.

On April 2, 2009, the Applicant pled guilty to armed robbery.[1] He was sentenced by the Honorable R. Knox McMahon to fifteen years imprisonment. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Violations of the 5th, 6th, and 14th Amendments.
3. Subject matter jurisdiction.
4. Due process violations.

Counsel for the Applicant also prepared a Trial Brief (with Exhibits A-I). This document, dated November 14, 2012, was submitted to the Court on the day of the hearing[2] and listed the following issues:

1. Ineffective assistance of counsel:
   a. Failure to ask the solicitor to have the case remanded to the family court.
   b. Failure to argue the Applicant's case fell within the jurisdiction of the family court.
   c. Misrepresented the Applicant's potential charges when he advised him not to file an appeal.
   d. Advised the Applicant he would receive the minimum sentence.
2. Involuntary guilty plea:
   a. This case should have been transferred to the family court.
   b. The Applicant was misadvised about the potential sentence he faced.
   c. The Applicant could not consider the impact his statements may have had at trial because counsel had not investigated the admissibility of these statements.

---

[1] The State nol prossed the criminal conspiracy charge.
[2] This document was admitted as Applicant's Exhibit 1.

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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 their 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).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, 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, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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). When

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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. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he hired plea counsel to negotiate a plea on his three warrants (armed robbery, criminal conspiracy, and kidnapping). The Applicant stated he had two meetings with plea counsel and they reviewed the evidence and his version of events. The Applicant stated plea counsel said he was facing a ninety year sentence. The Applicant stated, however, that plea counsel said he was working out a deal for a ten year offer. The Applicant stated he believed he was pleading guilty in exchange for ten years. The Applicant stated he answered the plea judge's questions as counsel had instructed him. The Applicant stated he discussed an appeal with plea counsel but plea counsel said it was not in his best interest because he only received five years over the minimum sentence and he could potentially receive new charges if he was successful on appeal. The Applicant stated he wanted an appeal because his sentence was too harsh.

Plea counsel confirmed the Applicant retained him in order to negotiate a plea in this case. Plea counsel testified he filed discovery motions, received those materials and reviewed them with the Applicant. Plea counsel testified they discussed the sentence ranges on the charges. Plea counsel testified the Applicant was sixteen years old when he committed the offense and had been waived up to General Sessions. Plea counsel testified he asked the State to waive the matter back to family court but never filed a formal motion. Plea counsel testified the Applicant admitted his guilt from the beginning and that he engaged in lengthy plea negotiations. Plea counsel testified the first assistant solicitor took a hard stance with this case but the second

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assistant solicitor dropped the Applicant's kidnapping charge. Plea counsel testified the State could have brought additional charges of armed robbery for the other individuals but the State agreed not to bring those indictments. Plea counsel testified the eventual offer was for the Applicant to plead to a range of 10-30 years and that the State would not object to the minimum sentence on armed robbery. Plea counsel testified he explained the offer to the Applicant, who had 4-6 weeks to consider it. Plea counsel testified he never promised the Applicant would receive a certain sentence and noted the Applicant did not waver at the plea hearing itself. Plea counsel testified he spoke with the Applicant after the plea hearing and he was unsatisfied because he hoped to get the minimum sentence. Plea counsel testified he delivered a letter to the Applicant the next day, however, in which he advised not to file an appeal.

Initially, this Court notes concern with some aspects of plea counsel's representation that may have fallen below a reasonable standard of care.

First, plea counsel was apprehensive about the Applicant's age and mental capacity. While the Applicant was evaluated, plea counsel chose not to pursue any further action along these lines – though there was evidence the Applicant may not have fully understood the potential sentencing range at the time of his guilty plea.

The Court is also concerned that Applicant was not fully advised of his right to appeal. However, this Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about an appeal. Applicant received a letter from counsel advising him of his right to appeal, but advising him not to do so because he could, at best, have five years removed from his sentence. There is no evidence in the record that the Applicant asked plea counsel to file an appeal and counsel did not do so. Rather, this Court finds the Applicant, after having been advised of his appellate rights both orally and in writing, chose not to pursue them. See

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Sheppard v. State, 357 S.C. 646, 651, 594 S.E.2d 462, 465 (2004) ("To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal."). As such, this Court finds the Applicant is not entitled to a belated appeal from his guilty plea hearing.

The Court is also concerned that Mr. Hansen unique approach to criminal representation- which included having his client admit their guilt and deciding on a "fair and just punishment"- may have caused his representation of applicant to fall below reasonable professional standards and may amount to errors in representation.

The Court is concerned these aspects of Applicant's representation, when taken cumulatively, may have prejudiced Applicant. However, this Court is aware that South Carolina courts have not recognized the potentially cumulative effects of counsel's actions can be a cognizable ground for post-conviction relief. Our courts have noted the issue is unsettled. See Lorenzen v. State, 376 S.C. 521, 535 n.3, 657 S.E.2d 771, 779 n.3 (2008) ("[W]hether the cumulation of several errors, 'which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina.'") (quoting Green v. State, 351 S.C. 184, 197, 569 S.E.2d 318, 325 (2002)); see also Walker v. State, 397 S.C. 226, 243, 723 S.E.2d 610, 619 (Ct. App. 2012) ("Even if South Carolina did allow PCR based on the cumulative prejudicial effect of two or more instances of deficient performance, [Applicant] would still have to demonstrate [prejudice under Strickland]."). As this Court is bound to apply the law as defined, or not defined, the Court cannot find the cumulative effect of plea counsel's representation has prejudiced the Applicant.

Ultimately, this Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance under current South Carolina law. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not

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knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174. The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.9). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.8-9; pp.10-11; pp.11-12).

The Court finds that Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive if he pled guilty. The Applicant testified plea counsel said he would receive a ten-year sentence if he pled guilty. Plea counsel testified they were hopeful the Applicant would receive the minimum sentence for armed robbery but that he never made any promises regarding sentencing. Plea counsel also testified the State had agreed not to oppose the minimum sentence in this case. This Court finds plea counsel's testimony is credible. This Court notes plea counsel's testimony is supported by the record. The assistant solicitor informed the plea judge that he was "not taking a position on the actual sentencing" and did not oppose the minimum sentence. (Plea transcript, p.9). Both plea counsel and the Applicant affirmed this was also their understanding about plea negotiations. (Plea transcript, pp.9-10). At no point does the Applicant inform the plea judge he was pleading guilty in exchange for a ten-year sentence. This Court finds plea counsel properly relayed and explained the plea negotiations to the Applicant. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). This Court notes that, while the Applicant and plea counsel may have hoped for the minimum sentence, both were fully aware of the sentencing ranges for the offenses. See Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("Wishful thinking regarding sentencing

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does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made.").

The Court is concerned that Applicant may not have understood his potential sentencing range at the time of the plea, but ultimately finds that Applicant failed to meet his burden of proving plea counsel misadvised him about his potential sentence. Plea counsel testified he reviewed the discovery materials and discussed it with the Applicant. Plea counsel testified that, based upon the facts, the Applicant could have been charged with additional counts of armed robbery but that the State agreed not to seek additional indictments. Plea counsel testified he advised the Applicant of the sentences he was facing. This Court finds plea counsel's testimony is credible. This Court further finds plea counsel fulfilled his obligations as the Applicant's attorney when he explained the sentence ranges of both the charges he was pleading guilty to and the charges that could potentially be brought against him. This Court also notes the plea judge explained the sentence ranges for the armed robbery and criminal conspiracy charges and the Applicant did not indicate he was surprised by these figures. (Plea transcript, pp.7-8). This Court finds plea counsel properly advised the Applicant regarding sentencing. See Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived").

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

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present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not proved that Counsel was not deficient, or that any one of his errors caused the Applicant to be prejudiced by counsel's representation. Furthermore, the Applicant has not proven that his guilty plea was not entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application 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 this Order if he wants 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 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.

AND IT IS SO ORDERED this 31st day of January, 2014.

Edgar W. Dickson
Presiding Judge

Orangeburg, South Carolina.

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 10 CP- 1122

Rikam Dozier

PLAINTIFF(S)

State of SC

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on the day of 4th 20 Feb and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Zmroczek

ATTORNEY(S) FOR THE PLAINTIFF(S)

Walt Whitmire

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth Carraghan

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

KR
11

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	2010-CP-32-1122
Rikam Ikkesh Dozier, S.C.D.C. No. 334052,	)	
Applicant,	)	ORDER
v.	)	
State of South Carolina,	)	
Respondent.	)	

FILED
2014 MAR 13 A 10:49
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

The above-captioned case is a post-conviction relief matter arising from an application filed March 10, 2010. An evidentiary hearing was convened at the Lexington County Courthouse on November 15, 2012 and the final order of dismissal was signed by this Court on January 31, 2014 and filed February 5, 2014.

This matter is back before the Court by way of the Applicant's motion to reconsider pursuant to Rule 59(e), SCRCP, dated February 12, 2014. The Applicant argues this Court should reconsider several issues.

Based upon careful reconsideration of the evidence in this case and upon full consideration of the Applicant's motion, this Court is not persuaded to grant the motion. This Court notes the Applicant is not requesting either an alteration or amendment to the final order. Rather, the Applicant is asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court). This Court finds the

1/2-28

previous order of dismissal fully comports with the requirements of Rule 52(a) SCRCP.

IT IS THEREFORE ORDERED:

1. That the Applicant's motion is denied and dismissed.

AND IT IS SO ORDERED this 7th day of March, 2014.

Edgar W. Dickson
Presiding Judge

FILED
2014 MAR 13 A 10:49
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2/2

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP3201122

Rikam Ikkesh Dozier #334052	State of South Carolina South Carolina State of
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

3/18/2014

Circuit Court Judge **Judge Code** **Date**

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SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on **18th of March 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **18th of March 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Aimee Jendrzejewski Zmroczek PO Box 11961 Columbia, SC 29211	**J Walt Whitmire** PO Box 11549 Columbia, SC 29211
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

Beth A. Carrigg/mh

Court Reporter — **Beth A. Carrigg - Clerk of Court**

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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SCCA SCRCP Form 4C (Revised 3/2013)