

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Berkeley County  
Stephanie P. McDonald, Circuit Court Judge

---

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NOV 21 2014

S.C. Supreme Court

ADRIAN WHITE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000846

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APPENDIX

---

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY ) IN THE GENERAL SESSIONS COURT  
 2009-GS-08-2167 & 2168

State of South Carolina, )  
 )  
 ) TRANSCRIPT OF RECORD  
 )  
 VS. ) July 23, 2012  
 )  
 Adrian White, ) Moncks Corner, South Carolina  
 )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

B E F O R E:

THE HONORABLE KRISTI L. HARRINGTON, Judge

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

ADRIAN DEJEU, Esquire  
Attorney for the State

MITCHELL LANIER, Esquire  
Attorney for the Defendant

SHARON VIZER  
Court Reporter

---

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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No exhibits presented at hearing.

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

JULY 23, 2012

(Whereupon, Court convened with all parties present with counsel when the following matters were had:)

THE COURT: Solicitor, has the victim been notified?

MR. DEJEU: Yes, Your Honor.

THE COURT: Is the victim present?

MR. DEJEU: He's not present.

THE COURT: Are we okay to go forward without the victim here?

MR. DEJEU: Yes, Your Honor. I spoke with the victim last week and he knows what's going on.

THE COURT: All right. Swear the defendant.

(WHEREUPON, the Defendant was duly sworn.)

THE COURT: Mr. Lanier, you represent Mr. White?

MR. LANIER: I do, Your Honor.

THE COURT: Have you advised your client the charges that he is facing, the possible punishment, as well as the consequences of this plea?

MR. LANIER: I have, Your Honor.

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

MR. LANIER: I do, Your Honor.

THE COURT: Mr. White, how old are you?

1 THE DEFENDANT: Twenty-five.

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

3 THE DEFENDANT: Some college.

4 THE COURT: And what type of work do you do?

5 THE DEFENDANT: Auto body and paint repair. I  
6 went to Greenville Tech.

7 THE COURT: Are you married?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Do you have children?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Have you ever been treated for the  
12 abuse of drugs or alcohol?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Ever been treated for mental illness?

15 THE DEFENDANT: No.

16 THE COURT: Have you had any drugs or alcohol in  
17 the last 24 hours that will affect your ability to  
18 understand what we're doing here today?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: You and your attorney have entered  
21 into a negotiated -- negotiation with the State for 20  
22 years, suspended to 10 years active, followed by five years  
23 probation. Is that your understanding, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: Did I accurately state the agreement?

1 MR. DEJEU: Yes, Your Honor.

2 THE COURT: Any terms or conditions that I left  
3 out, Mr. Lanier?

4 MR. LANIER: No, Your Honor. And I think the --  
5 the other indictment's up there for possession of weapon,  
6 that was to run concurrent.

7 THE COURT: All right. Is that your  
8 understanding?

9 MR. DEJEU: Yes, Your Honor.

10 THE COURT: Sir, if after hearing the facts on  
11 your prior record, if any, I cannot accept that negotiation  
12 I will allow you to withdraw that plea. Do you understand  
13 that, sir?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: I can't give you any more time. I  
16 can't give you any less time.

17 THE DEFENDANT: Okay.

18 THE COURT: I will allow you -- if I don't think  
19 that that's an appropriate sentence, I'm going to allow you  
20 to withdraw the plea. Do you understand that, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: Knowing that, do you still wish to go  
23 forward?

24 THE DEFENDANT: Yes.

25 THE COURT: I need you to speak up very loudly so

1 that I can hear you and my court reporter can take down  
2 what you're saying.

3 THE DEFENDANT: Yes.

4 THE COURT: Thank you.

5 You do not have to plead guilty. By pleading guilty  
6 you waive or give up certain rights; your right to a jury  
7 trial, your right to have a jury determine your guilt  
8 beyond a reasonable doubt based upon the evidence the state  
9 presents, as well as any evidence you may introduce, your  
10 right against self-incrimination, your right to say nothing  
11 at all, your right to confront and be confronted by the  
12 witnesses against you, as well as the right to call  
13 witnesses on your behalf. By pleading guilty here today you  
14 give up any defense you have to this charge.

15 Do you understand those rights?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And do you waive those rights at this  
18 time?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. I can sentence you on 2009-GS-  
21 08-2167, which is a true-billed indictment for assault and  
22 battery with intent to kill, up to 20 years in the  
23 Department of Corrections. Do you understand that, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: Knowing that, do you still wish to go

1 forward here today?

2 THE DEFENDANT: Yes.

3 THE COURT: That is classified as a violent and a  
4 most serious offense. Do you understand what those  
5 classifications mean?

6 THE DEFENDANT: Yes.

7 THE COURT: What do they mean?

8 THE DEFENDANT: The most serious offense?

9 THE COURT: Yes.

10 THE DEFENDANT: That's a higher -- it's a higher  
11 profile case.

12 MR. LANIER: What happens if you get another most  
13 serious case?

14 THE DEFENDANT: Then possibly doing life.

15 THE COURT: The state could file an intention to  
16 seek life without the possibility of parole based upon the  
17 fact that you already have what is considered a strike. Do  
18 you understand that, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: Knowing that, do you still wish to  
21 enter into this plea?

22 THE DEFENDANT: Yes.

23 THE COURT: And do you understand what the  
24 classification of violent means to you?

25 MR. LANIER: He understands it's a no-parole

---

1 offense, Your Honor. He's going to have to do 85 percent  
2 of whatever he receives.

3 THE COURT: Do you understand what that means,  
4 sir?

5 THE DEFENDANT: Yes.

6 THE COURT: Knowing what those two  
7 classifications mean, do you wish to go forward and have me  
8 accept your plea here today?

9 THE DEFENDANT: Yes.

10 THE COURT: Understanding that on the 2009-GS-  
11 08-2168, possession of a firearm during a commission of a  
12 violent crime I can sentence you up to five years in the  
13 Department of Corrections. Do you understand that, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: Knowing that, do you still wish to go  
16 forward here today?

17 THE DEFENDANT: Yes.

18 THE COURT: I could sentence you, if I imposed  
19 the maximum on both indictments and run them consecutive, I  
20 could sentence you to 25 years in the Department of  
21 Corrections. Do you understand that, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: Knowing that, do you still wish to go  
24 forward here today?

25 THE DEFENDANT: Yes.

1 THE COURT: Has anybody promised you anything,  
2 threatened you, forced you to plead guilty here today?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: And whose decision was it for you to  
5 plead guilty?

6 THE DEFENDANT: Mine.

7 THE COURT: Have you been satisfied with the  
8 services of your attorney?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you need any additional time to  
11 meet with him?

12 THE DEFENDANT: No.

13 THE COURT: Any complaints about the way he's  
14 handled this case?

15 THE DEFENDANT: No.

16 THE COURT: Do you think that there's anything  
17 that he could have done or perhaps should not have done  
18 that would have assisted you in your defense?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: You have the right to appeal this  
21 plea and any sentence that I do impose, but you or your  
22 attorney must do so within ten days. Do you understand  
23 that?

24 THE DEFENDANT: Yes.

25 THE COURT: Please listen to the facts.

---

1 Mr. Dejeu?

2 MR. DEJEU: Thank you, Your Honor. May it please  
3 the Court?

4 On June 23<sup>rd</sup>, 2009, around 7 p.m. the defendant shot  
5 the victim, Mr. Gary Lloyd, with a sawed-off shotgun. This  
6 incident occurred on McGuffy Court in Pineville. The  
7 victim, Mr. Gary Lloyd, along with two of his friends, Mr.  
8 Ramey and Mr. Singleton, were outside at one of -- Mr.  
9 Singleton's house when the defendant, along with his  
10 brother, pulled in and the defendant got out of the car  
11 from passenger -- front passenger seat with a shotgun and  
12 came straight to the victim and started arguing with him  
13 over a motorcycle.

14 As the victim tried to reason with him, the defendant  
15 shot him once and then shot him a second time in the back.  
16 Shattered his left arm. He had to -- the victim had to be  
17 airlifted and put in -- and spend few days in ICU. He had  
18 numerous surgeries to his arm, left arm, and to his back.

19 The witnesses, two eyewitness that saw Mr. White with  
20 the shotgun, also the co-defendant Mr. -- his brother, Mr.  
21 Jason White, pled guilty last term for an accessory charge.

22 THE COURT: What did he receive?

23 MR. DEJEU: Being part of this.

24 THE COURT: What did he receive?

25 MR. DEJEU: I can't remember off the top of my

1 head. I apologize for that.

2 But these are the facts, Your Honor. The victim was  
3 notified. He was here -- his parents were here earlier  
4 this morning. They know about this plea.

5 His prior record is a -- some charges out of Florida.  
6 It's really hard to tell the disposition. There's a  
7 failure to stop or failure to appear for which I don't know  
8 the disposition of that. But...

9 THE COURT: Thank you.

10 Mr. White, you heard the facts as presented by the  
11 State. Are those facts true, sir? Is that what you did?

12 THE DEFENDANT: Well, I mean, ---

13 MR. LANIER: Did you shoot Gary Lloyd two times?

14 THE DEFENDANT: Yeah, he -- yes. Yes.

15 THE COURT: And were you in possession of a  
16 firearm during this offense?

17 THE DEFENDANT: Yes.

18 THE COURT: Have you understood all of my  
19 questions here today?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Are you pleading guilty freely and  
22 voluntarily?

23 THE DEFENDANT: Yes.

24 THE COURT: Have you given me your complete and  
25 truthful responses?

1 THE DEFENDANT: Yes.

2 THE COURT: Have you responded to my questions in  
3 any way because your attorney told you to answer my  
4 questions in a certain way?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Are you pleading guilty freely and  
7 voluntarily to each indictment?

8 THE DEFENDANT: Yes.

9 THE COURT: I find a substantial factual basis  
10 for your plea. Your decision to plead guilty has been  
11 freely, voluntarily, knowingly, and intelligently made.  
12 You've indicated to the Court you've had the advice and  
13 counsel of a competent attorney, with whom you've told the  
14 Court you're satisfied. I hereby accept your plea of guilt  
15 on both indictments.

16 Mr. Lanier, I'll be happy to hear from you.

17 MR. LANIER: Thank you, Your Honor. You heard  
18 Adrian is 25 years of age, Your Honor. This happened over  
19 three years ago and he was 22 years of age at the time.  
20 With him in the courtroom, Your Honor, sitted along --  
21 seated along that bench back there, that's his families,  
22 mother, father, brother, sisters, and other members of the  
23 family, Your Honor. And he does have a very close-knit  
24 type family who supports him very much.

25 Your Honor, Gary Lloyd, the gentlemen who got shot,

1 Gary and Adrian have known each other their whole lives.  
2 They are not first cousins, but they're -- they're -- they  
3 are cousins. And I don't think that Adrian White went  
4 there with specific intent to kill Gary Lloyd, Your Honor.

5 It was a 20-gauge shotgun and it was number seven and  
6 half shells, which are the smallest pellets possible, what  
7 you normally use for dove hunting or something like that.  
8 Whereas, you know, police officers, they carry double aught  
9 buckshot. And he had no specific intent, but he did -- on  
10 top of that what makes me believe he had no specific intent  
11 to kill Gary, was that one shot was to his arm. And when  
12 Mr. Dejeu says shot in the back, he was shot in the  
13 buttocks, Your Honor. And then he was shot again in his  
14 hip, Your Honor. And -- but he did cause him serious  
15 injuries. Adrian has no defense to it.

16 I don't know what happened when he got out of that  
17 car. And I know he wishes he could go back and relive that  
18 incident, as I'm sure Mr. Lloyd does also.

19 But, Your Honor, when he comes out he is going to have  
20 strong family support. And under the circumstances I think  
21 the sentence that we've arrived at is a fair sentence to  
22 resolve the case.

23 THE COURT: Anything ---

24 MR. LANIER: And he has been -- it's been a  
25 delight to know him and his family, Your Honor, over the

1 past three years.

2 THE COURT: Anything you wish to tell me, Mr.  
3 White?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: It's the order of the Court on  
6 indictment 2009-GS-08-2167 that you be committed to the  
7 State Department of Corrections for a term of 20 years,  
8 provided upon the service of 10 years, the balance is  
9 suspended. Place you on probation for five years. That is  
10 concurrent to 2009-GS-08-2168. You will be given credit  
11 for any time that you have served.

12 During your probation, I order substance-abuse  
13 counseling if needed and random drug and alcohol testing.

14 It's the order of the Court on indictment 2009-GS-08-  
15 2168 that you be committed to the State Department of  
16 Corrections for a term of five years. Those are to run  
17 concurrent.

18 Good luck to you, sir.

19 \*\*\*END OF REQUESTED TRANSCRIPT OF RECORD\*\*\*

20

21

22

23

24

25

CERTIFICATE OF REPORTER

1  
2 I, the undersigned Missy Brown, Official Court  
3 Reporter for the Ninth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate and complete transcript of record of all the  
6 proceedings had and evidence introduced in the hearing of  
7 the captioned case, relative to appeal, as recorded by  
8 Sharon Vizer and transcribed by me, in the General Sessions  
9 Court for Berkeley County, South Carolina, on the 23<sup>rd</sup> day  
10 of July 2012.

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

13 March 18, 2013

14  
15  
16 Missy Brown

17 Court Reporter  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA )

County of BERKELEY )

Adrian White, #351674 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

**2013-CP-08-0007**

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

2013 JAN -2 PM 1:00

*FILED*

**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 MacDougall Corr. Inst., 1516 Old Gilliard Road,  
Ridgeville, SC 29472
2. Name and location of Court which imposed sentence Berkeley Co. General Sessions,  
Moncks Corner, S.C.
3. Name(s) of co-defendant(s) (if any) Jason White
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2009-GS-08-2167; Assault & Battery with intent to kill.
  - (b) 2009-GS-08-2168; Possession of a firearm during a violent crime

*HW 2-8-13*

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

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

(a) July 23, 2012; 20 yrs, suspended to 10, with 5 yrs. probation.

(b) July 23, 2012; 5 yrs. concurrent

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

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

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

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

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

NO

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

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) The grounds raised herein are PCR matters

(b) \_\_\_\_\_

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: (See attached supplemental issues)
- (a) Ineffective assistance of counsel; 6th and 14 Amendment rights
- (b) Involuntary guilty plea; 6th and 14th Amendment rights.
- (c) Conflict of interest; 6th and 14th Amendment due process rights.
11. State concisely and in the same order the facts which support each of the grounds set out in (10): (See attached supplemental issues)
- (a) Counsel refused to request a lesser sentence.
- (b) Counsel refused to request accrued house arrest time
- (c) Counsel represented the victims family and myself.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF COMMON PLEAS  
COUNTY OF BERKELEY 2013 JAN -2 PM 1:00 C/A No. \_\_\_\_\_

Adrian White, #361674, **CLEAR OF COURT**  
BERKELEY COUNTY, SC  
Applicant,  
vs.  
State of South Carolina,  
Respondent.

**2013-CP-08-0007**  
*AW*

AMENDED APPLICATION FOR  
POST-CONVICTION RELIEF

Under Rule 15(a), South Carolina Rules of Civil Procedure, and South Carolina Code §17-27-50, the Applicant moves to amend the original pleadings filed with this court in order to more fully conform the pleadings with the evidence.

The Applicant would respectfully show this Court that Applicant's conviction, sentence, and custody are in violation of the Constitution and laws of the United States, and were obtained through violations of Applicant's Sixth and Fourteenth Amendment Rights to the effective assistance of counsel. These rights, made applicable to the states through the doctrine of incorporation, are fully outlined in Gideon v. Wainwright, 83 S.Ct. 792 (1963), and its progeny.

The Fourteenth Amendment Due Process Clause and the Sixth Amendment Right to Counsel Clause have been recognized as important elements to a criminal defendant's fundamental rights to a fair and impartial trial. See, e.g., Powell v. Alabama, 287 U.S. 45 (1932). Access to a reasonably competent attorney is necessary in order for an accused, who has no knowledge of the law and the rules of evidence, to have "ample opportunity" to defend himself. Adams v. United States ex rel. McCann, 317 U.S. 269, 275 (1942).

It is through competent counsel that the accused secures all his other constitutional rights. Kimmelman v. Morrison, 477 U.S. 377 (1986). Thus, the right to counsel embodies much more than an attorney's physical presence. "[T]he right to counsel is the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771 n.41 (1970). The right to counsel prevents the states from conducting trials at which persons who face incarceration must defend themselves without adequate legal assistance. Cuyler v. Sullivan, 456 U.S. 335, 344 (1980).

In order for a defendant to obtain relief as a result of the ineffective assistance of counsel, the accused must show that his attorney did not render legal assistance within the range of competence of attorneys in criminal cases according to prevailing professional norms. Strickland v. Washington, 466 U.S. 668, 689-91 (1984). The accused must also 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. It is critical to note (because it is often misunderstood) that the Strickland prejudice test is not an outcome-determinative one. Rather, "reasonable probability is a probability sufficient to undermine confidence in the outcome."

The South Carolina Supreme Court has held that a defendant who enters a guilty plea on the advice of counsel may only attack the voluntary and intelligent nature of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have plead guilty, but would have insisted on going to trial. Jackson v. State, 340 S.C. 112, 531 S.E.2d 294, 296 (2000). (interpreting the Sixth Amendment to the United States Constitution).

The Applicant was denied the effective assistance of

counsel, in violation of the Fourteenth Amendment Due Process Clause, and the Sixth Amendment Right to Counsel Clause, as promulgated in the tenets of Strickland v. Washington, 466 U.S. 671, 104 S.Ct. 2052 (1984), and therefore Applicant's conviction and sentence should be vacated.

- I. THE APPLICANT'S CONVICTION, SENTENCE AND CUSTODY ARE IN VIOLATION OF THE CONSTITUTION AND LAWS OF THE UNITED STATES, AND WERE OBTAINED IN VIOLATION OF APPLICANT'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO THE EFFECTIVE ASSISTANCE OF COUNSEL, IN THAT COUNSEL FAILED TO CONDUCT AN ADEQUATE INVESTIGATION OF THE RELEVANT FACTS AND LAWS GOVERNING THE APPLICANT'S DEFENSE

The Sixth and Fourteenth Amendments impose on counsel a duty to conduct a reasonable investigation into the law and facts underlying a client's charged offense, because reasonably effective assistance must be based on professional decisions, and informed legal choices can be made only after an investigation of the option. "In other words, counsel has a duty to make reasonable investigations, or make a reasonable decision that makes particular investigations unnecessary." Strickland v. Washington, 466 U.S. 671, 104 S.Ct. 2052 (1984). Further, the Supreme Court held that,

If there is only one plausible line of defense, the Court concluded, counsel must conduct a "reasonably substantial investigation" into the line of defense, since there can be no strategic choice that renders such an investigation unnecessary. It must include "an independent examination of the facts, circumstances, pleadings and laws involved."

Strickland at 2061, (Quoting Rummel v. Estelle, 590 F.2d 103, 104 (CA 1979)).

Counsel's failure to conduct a reasonably adequate investigation resulted in substantial prejudice to the Applicant's defense in the following particulars:

1. Counsel rendered ineffective assistance of counsel in that counsel failed to investigate the possibility of a plea of "not guilty", based on either provocation or actual innocence.
2. Counsel rendered ineffective assistance of counsel in that counsel failed to investigate sentencing options short of incarceration; to wit, intensive probation, home arrest, restitution, and or mental health counseling.

I. THE APPLICANT'S CONVICTION, SENTENCE AND CUSTODY ARE IN VIOLATION OF THE CONSTITUTION AND LAWS OF THE UNITED STATES, AND WERE OBTAINED IN VIOLATION OF THE APPLICANT'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO THE EFFECTIVE ASSISTANCE OF COUNSEL, IN THAT COUNSEL'S REPRESENTATION RENDERED THE APPLICANT'S GUILTY PLEA UNKNOWING AND INVOLUNTARY

A defendant who pleads guilty on the advice of counsel may collaterally attack the voluntary nature of his plea only by showing that (1) counsel was ineffective and that (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have proceeded to trial. Counsel's representation rendered the Applicant's guilty plea unknowing and involuntary in the following particular respects:

1. Counsel failed to present the victim's favorable testimony to the trial court, in mitigation of the charged offenses. The victim wished to speak in favor of leniency toward the

Applicant.

2. Counsel rendered ineffective assistance of counsel in that counsel refused to request leniency in sentencing from the trial court.
3. Counsel rendered ineffective assistance of counsel in that counsel refused to request that Applicant's accrued home arrest time be credited toward the completion of the Applicant's sentence.
4. Counsel rendered ineffective assistance of counsel in that counsel represented competing interests during his representation of the Applicant. Counsel's conflict of interests precluded counsel's adequate representation of the Applicant. Counsel's representation was in violation of the tenets of Cuyler v. Sullivan, 466 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980).

CONCLUSION

WHEREFORE, the Applicant respectfully moves this Court to vacate the Applicant's conviction and sentence, and remand this case for retrial.

Respectfully submitted,

Dated: 12/28/12  
Ridgeville, South Carolina

1s/ [Signature]  
Adrian White, Applicant

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

- (a) The grounds raised herein are post-conviction matters.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
N/A

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. J. Mitchell Lanier  
P.O. Box 1346; Moncks Corner, SC 29461
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea hearing and sentencing.
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Conviction and Sentence vacated, and granted a new trial.

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

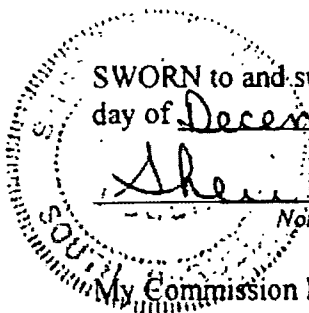
No

STATE OF SOUTH CAROLINA )  
County of BERKELEY )

VERIFICATION

I, Adrian White, #3616784, 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.

Adrian White # 351674  
Adrian White, #3516784



SWORN to and subscribed before me this 28th day of December, 2012.

Sheri C. Hunter (L.S.)  
Notary Public

My Commission Expires: June 18, 2018

FILED  
2013 JAN -2 PM 1:00  
CLERK OF COURT  
BERKELEY COUNTY, SC

2013-CP-08-0007

2013 JAN -2 PM 1:08

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

CLERK OF COURT BERKELEY COUNTY, SC

I, Adrian White, #351674, 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.

Adrian White #351674 Applicant #351674

SWORN or affirmed to and subscribed before me this 28th day of December, 2012

Sheri G. Hunter Notary Public

My Commission Expires: June 18, 2018

Adrian White, #351674<sup>nw</sup>  
MacDougall, C-1  
1516 Old Gilliard Road  
Ridgeville, SC 29472

December 27, 2012

Ms. Mary P. Brown  
Clerk of Court  
300 B California Avenue  
Moncks Corner, SC 29461

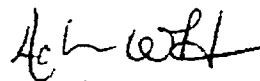
Re: PCR APPLICATION

Dear Ms. Brown:

Please file the enclosed post-conviction application on my behalf with the Common Pleas Court of Berkeley County.

Thank you for your kind attention to the above matter. In highest regards, I remain

Sincerely,



Adrian White



the commission of a violent crime. The sentences are to be served concurrently. The Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. Ineffective Assistance of Counsel
  - a. Counsel refused to request a lesser sentence.
  - b. Counsel refused to request accrued house arrest time.
  - c. Counsel represented the victim's family and the Applicant- conflict of interest.
2. Involuntary Guilty Plea

## III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "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." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Applicant also alleges his guilty plea was not entered freely and voluntarily. The Applicant’s assertion is without merit. In post-conviction relief cases, an applicant asserting a

constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant 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 Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "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." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000)

(citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. 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 Respondent submits 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, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

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

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

Oct. 10, 2013.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
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 ADRIAN WHITE, #351674 )  
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 Applicant, )  
 )  
 vs )  
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 STATE OF SOUTH CAROLINA, )  
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 Respondent. )  
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IN THE COURT OF COMMON PLEAS

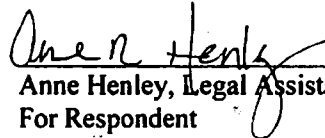
2013-CP-08-0007

AFFIDAVIT OF SERVICE BY MAIL

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

**Lance S. Boozer, Esquire**  
**The Boozer Law Firm, LLC**  
**1331 Park Street**  
**Columbia, SC 29201**

DATED this 10th day of October, 2013

  
 Anne Henley, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA     )  
   )  
 COUNTY OF BERKELEY            )  
 -----)                    IN THE COURT OF  
   )                    COMMON PLEAS  
   )                    2013-CP-08-0007

ADRIAN WHITE,                    )  
                                   APPLICANT            )  
                   vs.                    )                    TRANSCRIPT OF RECORD  
   )  
 STATE OF SOUTH CAROLINA,     )  
                                   RESPONDENT        )  
 -----)

NOVEMBER 20, 2013  
 MONCKS CORNER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE STEPHANIE P. MCDONALD

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

LANCE S. BOOZER, ESQUIRE  
 ATTORNEY FOR APPLICANT

ASHLEIGH WILSON, ASSISTANT ATTORNEY GENERAL  
 ATTORNEY FOR THE STATE

SHARON VIZER,  
 CIRCUIT COURT REPORTER

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
ADRIAN WHITE				
BY MR. BOOZER	3			
BY MS. WILSON		17		
ERNEST WHITE				
BY MR. BOOZER	21			
BY MS. WILSON		23		
ADRIAN DEJEU				
BY MS. WILSON	23		28	
BY MR. BOOZER		27		
CERTIFICATE PAGE	34			

\*\*\* NO EXHIBITS WERE OFFERED \*\*\*

\* \* \* P R O C E E D I N G S \* \* \*

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1  
2  
3 THE COURT: All right. Mr. Boozer, is this Mr.  
4 Adrian White?

5 THE APPLICANT: Yes, it is.

6 MR. BOOZER: Yes.

7 THE COURT: Good morning, sir. And I have this  
8 as -- Mr. White is challenging the negotiated plea that  
9 he made in Berkeley County, correct?

10 MR. BOOZER: That's correct, Your Honor.

11 THE COURT: All right. Then I am happy to hear  
12 anything y'all want to tell me, understanding that I  
13 have read the transcript.

14 MR. BOOZER: Your Honor, may it please the court.

15 THE COURT: Yes, sir.

16 MR. BOOZER: We would first call Mr. White to the  
17 stand.

18 THE COURT: All right, sir. If you'll come on up,  
19 we'll swear you in.

20 ADRIAN WHITE, after having been  
21 duly sworn, testified as follows:

22 THE CLERK: Please have a seat and state your full  
23 name, spelling your last name for the record.

24 THE WITNESS: Adrian White, W-h-i-t-e.

25 DIRECT EXAMINATION BY MR. BOOZER:

1 Q. All right, Mr. White. Do you know why you are  
2 here today?

3 A. Yes, to challenge Mr. Lanier's decision, you  
4 know representation.

5 Q. Okay. You're here because you filed a  
6 post-conviction relief application?

7 A. Yes, a PCR.

8 Q. Okay. And you're asking for a new trial?

9 A. Correct.

10 Q. Now, you're currently serving a 20 year  
11 sentence for assault and battery with intent to kill,  
12 that provided upon the service of 10 years, it will be  
13 suspended to five years, correct?

14 A. Yes.

15 Q. Along with possession of a weapon during a  
16 violent crime?

17 A. Yes.

18 Q. Okay. Now, you filed an application for PCR.  
19 Let's go ahead -- go ahead and get our allegations  
20 straight that we have got before the court. You've got  
21 ineffective assistance of counsel?

22 A. Correct.

23 Q. And that's counsel refused to request a lesser  
24 sentence, counsel refused to request accrued house  
25 time?

1 A. Yes.

2 Q. You've also got counsel represented the  
3 victim's family and the -- I guess a victim -- alleged  
4 victim. That's a conflict of interest; that's what  
5 you've got?

6 A. Yes.

7 Q. And have involuntary guilty plea, is that  
8 correct?

9 A. Correct.

10 Q. All right. When did Mr. Lanier start  
11 representing you?

12 A. Mr. Lanier start representing me maybe a day  
13 after -- after the charge in June 2009.

14 Q. Okay. And when did you -- when did you go to  
15 court for the plea?

16 A. I went to court July 23, 2012.

17 Q. All right. And how times did you meet with  
18 Mr. Lanier over those three years or thereabout?

19 A. Three, maybe four times.

20 Q. Were you meeting with him in person or by  
21 phone or how were you meeting with him?

22 A. Yes, it would be in person.

23 Q. Okay. So you weren't in jail. Did you bond  
24 out?

25 A. Yes. Judge Dennis, he gave me a bond. And he

1 placed me on house arrest. And I was on house arrest  
2 for three years.

3 Q. All right. So you were on house arrest for  
4 three years, all the way going up to your plea?

5 A. Yes.

6 Q. Now, let's move forward talking about that  
7 house arrest. Were you hoping or did you ask Mr.  
8 Lanier to maybe ask the solicitor or ask the court to  
9 consider you -- maybe giving you credit for that house  
10 arrest for the three years?

11 A. Yes, oh yeah.

12 Q. Did he do that?

13 A. No, he did not. And when I asked him about  
14 it, he refused.

15 Q. All right. So you wanted him to do it, but he  
16 refused to do it?

17 A. Yes, he refused.

18 Q. And we don't know if that would have been  
19 successful or not, but you wanted to do it?

20 A. Yes.

21 Q. Now, you also have an allegation that Mr.  
22 Lanier represented some of the alleged victim's family.  
23 Who did he represent?

24 A. He represented the victim's brother, as well  
25 as his father. I have documentation of that, that I

1 pulled from the Clerk of Court Berkeley County.

2 Q. Okay. Who -- did you know that he represented  
3 both of those folks?

4 A. No. One -- in one of our meetings, he  
5 mentioned that he knew his father. And -- but when I  
6 did my research, that's when I found out that he  
7 represented them both.

8 Q. Okay. And did he disclose to you that he  
9 represented both of them or one of them, or tell you  
10 about it?

11 A. No, he didn't -- he just knew -- he told me  
12 about a case that he knew of that his father had, and  
13 said that he knew them. But, no, he did not say that  
14 he represented both of them. Because if I knew that, I  
15 wouldn't have even used him.

16 Q. You wouldn't have gone forward had you known  
17 he represented --

18 A. Yeah --

19 Q. -- those family members?

20 A. That makes me believe that you have some type  
21 of relationship with that family.

22 Q. All right. Now, in these meetings with Mr.  
23 Lanier, did he review the charges with you?

24 A. He reviewed the charges, but actually he -- it  
25 was three days before I actually went to Court on July

ADRIAN WHITE -- DIRECT BY MR. BOOZER

1 23rd. So on July 20th, I was at work. That's when I  
2 received a phone call that we was even going to court.  
3 And when we got to court, which was that Monday, the  
4 23rd, that's when I found out about a whole new charge  
5 that he never even told me about.

6 Q. Let me stop you there. What's the new charge  
7 that he told you about?

8 A. That was the possession of a firearm during  
9 the commission of a crime.

10 Q. So over those three years that he was  
11 representing you, until three days prior to when you  
12 guys were set to go to trial, you never knew about the  
13 firearm charge?

14 A. I never even heard about it.

15 Q. Okay. Did he show you any indictments or  
16 anything like that?

17 A. Indictments, no.

18 Q. Did he discuss some possible defenses to this  
19 case with you?

20 A. Once, but it wasn't -- he didn't feel like it  
21 was -- it was grounds. So from there on, I never heard  
22 any more. That's why a meeting, it wasn't too many  
23 meetings, you know.

24 Q. Did you want him to pursue and look into the  
25 possible defenses for you?

1 A. Yes, of course, yes.

2 Q. And do you think he failed to do that?

3 A. Yes.

4 Q. Now, you just indicated just a minute ago that  
5 you received a plea offer for this case a few days  
6 before the trial and that was -- you pled on July 23rd?

7 A. Yes.

8 Q. And that was a Monday?

9 A. Yes.

10 Q. And then you received the plea offer on  
11 Friday?

12 A. Friday, the 20th.

13 Q. And you were at work. So how did you get the  
14 plea offer, by the phone?

15 A. By phone, via phone from Mr. Lanier.

16 Q. All right. Did he tell you what the terms of  
17 the plea were?

18 A. He just said it was for 10 years and that was  
19 it, I mean.

20 - Q. All right. Did you want to take that plea?

21 A. I actually -- no, I didn't want to take that  
22 plea. But the day -- the day of the court, on the  
23 23rd, that was when he told me, you know, it was either  
24 this plea or they are going to crank up the trial. He  
25 didn't give me any type of confidence to -- going

ADRIAN WHITE -- DIRECT BY MR. BOOZER

1 toward trial. So I actually felt like I was between a  
2 rock and a hard place. So, I mean, you know --

3 Q. Okay. Now, your parents are here today?

4 A. Yes, my parents are.

5 Q. All right. Do you recall a meeting prior to  
6 the plea at the courthouse with Mr. Lanier and your  
7 parents?

8 A. With Mr. Lanier on -- one meeting?

9 Q. Is that when Mr. Lanier -- what you had  
10 indicated, where he told you that if you didn't take  
11 the plea, you would get 25 years?

12 A. Yes.

13 Q. Okay. Did you -- and Mr. Lanier, during the  
14 plea or any time, never asked for -- to get three years  
15 on house arrest, to get credit for that?

16 A. No.

17 Q. All right. Now, you've reviewed the  
18 transcript in the case, right?

19 A. Yes, I did.

20 Q. Now, of course, you've got in there that you  
21 are happy with your lawyer and you didn't stop the  
22 plea. Why didn't you stop the plea?

23 A. I didn't stop the plea for one, this is my  
24 first conviction. This is the first time I ever been  
25 in this type of situation, so I was in a trance. I

1 mean, I felt -- I never even felt that feeling before,  
2 you know, because this is my first time going through  
3 the motions. I never dealt with this. And I mean, it  
4 just was different.

5 Q. All right. Did Mr. Lanier indicate to you how  
6 you should answer the questions at the plea?

7 A. Yeah, just give short answers and go along  
8 with his, you know, his way of doing things.

9 MR. BOOZER: And, Your Honor, I am going to turn  
10 to page 12 of the transcript.

11 THE COURT: Okay. I have it in front of me. Thank  
12 you.

13 BY MR. BOOZER:

14 Q. Adrian, we've talked a little bit about  
15 looking at the transcript. You've read the transcript,  
16 correct?

17 A. Yes.

18 Q. Now, at one point when the solicitor goes over  
19 the facts of the case, I'm looking at page 12, the  
20 court indicates after the solicitor goes over the  
21 facts: "*Mr. White, you heard the facts as presented by*  
22 *the State, are those facts true, sir? Is that what you*  
23 *did?*"

24 "ADRIAN: *Well, I mean --*"

25 "MR. LANIER: *Did you shoot Gary Lloyd two*

ADRIAN WHITE -- DIRECT BY MR. BOOZER

1 times?"

2 "ADRIAN: Yeah, he -- yes, yes." And then they  
3 accepted the plea after that. Were you about to  
4 dispute the facts of --

5 THE COURT: Well, I think there is some more to  
6 it. You might want to read the rest of it.

7 MR. BOOZER: Absolutely, Your Honor. And the  
8 transcript is already in the record, I imagine --

9 THE COURT: Well, I have it in front of me. But  
10 after he says, "yeah, he -- yes, yes."

11 The court asks: "And were you in possession of  
12 a firearm during this offense?"

13 "THE DEFENDANT: Yes."

14 "THE COURT: Have you understood all of my  
15 questions here today?"

16 "THE DEFENDANT: Yes, ma'am."

17 "Are you pleading guilty freely and  
18 voluntarily?"

19 "THE DEFENDANT: Yes."

20 And then "THE COURT: Have you given me your  
21 complete and truthful responses?"

22 THE DEFENDANT: "Yes."

23 All right. You can ask him anything you want,  
24 but make sure you present a full and complete  
25 questioning, understanding that I'm looking at the

1 transcript and I've read it before we came in here  
2 today.

3 MR. BOOZER: Absolutely, Your Honor. I certainly  
4 understand.

5 BY MR. BOOZER:

6 Q. Now, going back to that, were you attempting  
7 at that point, when you said, well, I mean, were you  
8 about to dispute the facts?

9 A. Yes, I was about to dispute the facts.

10 Q. Okay. And do you feel that you -- that you  
11 got that opportunity or no?

12 A. No. Because he cut me off in the middle of  
13 it.

14 THE COURT: Now -- and by "he", you mean "she"?

15 A. Ma'am?

16 THE COURT: "He", you mean the judge?

17 A. Yes, sorry, sorry.

18 MR. BOOZER: And, Your Honor, may I just follow up  
19 just briefly?

20 THE COURT: Yes.

21 BY MR. BOOZER:

22 Q. When you say "he cut you off", did you mean  
23 Mr. Lanier when he said --

24 A. Yeah, yeah, I'm sorry, Your Honor. He did cut  
25 me off when I was saying, well, well -- that's when Mr.

ADRIAN WHITE -- DIRECT BY MR. BOOZER

1 Lanier interjected and cut me off. It was "he", sorry  
2 about that.

3 Q. Okay. Mr. White, is there anything else that  
4 you wish Mr. Lanier would have done?

5 A. I just -- I wish Mr. Lanier would have really  
6 just did this the right way. I don't feel like Mr.  
7 Lanier represented me well at all, you know. And he  
8 didn't put forth any effort, just being there really.  
9 We didn't meet maybe three times over the course of  
10 three years. And I just didn't feel comfortable at  
11 all. I felt like I was pressured into it, being that I  
12 only had three days just to hear this. And it was new  
13 to me. This is the first time I have been in this in  
14 situation, Your Honor, and I just felt pressured.

15 Q. And are -- you understand that you are asking  
16 the court for a new trial, that's not going to cut  
17 time. The court can't do any of that, but you want a  
18 new trial in this case?

19 A. Yes.

20 THE COURT: Now, what's he looking at if he gets a  
21 new trial? How much time?

22 MR. BOOZER: Well, if everything comes back, it's  
23 of course, the 20 and the five.

24 THE COURT: The 20 plus the five for the firearm,  
25 correct?

1 MR. BOOZER: Yes, ma'am.

2 THE COURT: And he's currently serving what?

3 MR. BOOZER: You're on a 10 year -- a suspended  
4 sentence on 10 years.

5 BY MR. BOOZER:

6 Q. Do you understand that you do -- you could  
7 face more time going in than what you have right now?  
8 That your sentence right now, you have 20 years that's  
9 been suspended to you serving 10 years. Then you have  
10 a five year probationary period; do you understand  
11 that?

12 A. Yes, I do understand that.

13 Q. Okay. And you understand that if you were  
14 successful here today, that these two charges,  
15 everything kind of starts over?

16 A. Yes.

17 Q. And that if you go forward, the solicitor  
18 moves forward with the case, and you have a trial --  
19 and let's say the worst case scenario, you do get  
20 convicted on the two charges, that you could ultimately  
21 face 25 years?

22 A. Yes, I understand that.

23 MR. BOOZER: Okay. Your Honor, is that...?

24 THE COURT: Thank you. No, I appreciate that. I  
25 just like to make sure.

ADRIAN WHITE -- DIRECT BY MR. BOOZER

1 BY MR. BOOZER:

2 Q. And is there anything else that you want to  
3 put on the record? I don't want you to go on and on  
4 about some other things, but anything as far as what I  
5 have left out of your post-conviction relief  
6 application that you want to address to the court?

7 A. No. I just -- I just wish Mr. Lanier just, he  
8 help me better. My victim, he was willing, you know,  
9 to help -- he didn't want me to even do this type of  
10 time, Your Honor. And Mr. Lanier didn't even go bring  
11 that up. He didn't bring up that my victim wanted to  
12 be there.

13 And when I asked him, you know -- when I told  
14 him about the situation, that my victim wanted to be  
15 here. He said, no, he don't even need to be here. But  
16 what -- what I fail to understand is why? Why would  
17 you even do that, if he wants to give the judge his,  
18 you know, version of the story.

19 Q. And, Mr. White, are you related to the victim?

20 A. Yes.

21 Q. Okay. And was the victim present at the plea?

22 A. No, he wasn't.

23 Q. Okay.

24 MR. BOOZER: Your Honor, I believe that's all the  
25 questions I have of Mr. White.

1 THE COURT: Okay. Thank you. Cross-examination.

2 MS. WILSON: Thank you, Your Honor.

3 CROSS EXAMINATION BY MS. WILSON:

4 Q. Good afternoon, Mr. White.

5 A. Good afternoon.

6 Q. How many times did you say you met with Mr.  
7 Lanier before you pled guilty?

8 A. Three, maybe four.

9 Q. And do you recall going over your discovery  
10 with Mr. Lanier, the evidence that the State had  
11 against you?

12 A. Going over my discovery -- yes.

13 Q. And did he talk to you about possible defenses  
14 and what -- if there were any defenses to present for  
15 you?

16 A. Once, and I remember the once. Yes.

17 Q. Okay. And did he say he had a defense?

18 A. The one time we discussed it, he didn't give  
19 me any type of, you know, like -- he didn't, no. No,  
20 it was real slack.

21 Q. Do you recall during your -- during your  
22 guilty plea, where the court asked you, was it your  
23 decision to plead guilty; do you recall that?

24 A. Yes, I do recall that.

25 Q. Okay. And prior to you pleading guilty, Mr.

1 Lanier told you what the State's offer was of 10 years,  
2 is that correct?

3 A. Yes. But may I add that Mr. Lanier, he told  
4 me that. But Mr. Lanier never told me the difference,  
5 what was a negotiated plea and a recommended plea. I  
6 just found that out, you know. So there's a lot of  
7 things that he didn't explain well.

8 Q. Okay. And did you give -- well, scratch that.  
9 Did you tell the court you were guilty?

10 A. Did I tell the court I was guilty?

11 Q. When they were questioning you about the  
12 incident?

13 A. Please explain further.

14 Q. Did you -- did you tell the Court that you had  
15 the gun, and that you shot the victim?

16 A. No.

17 Q. Do you recall waiving your constitutional  
18 rights at the guilty plea, and telling the court you  
19 waived your right to a jury trial?

20 A. Yes, I recall.

21 Q. Did you tell the court that you were satisfied  
22 with Mr. Lanier?

23 A. Yes, I did.

24 Q. And did you also tell the court that you  
25 didn't have any complaints against Mr. Lanier?

1 A. Yes.

2 Q. And did you also tell the court that there was  
3 nothing else Mr. Lanier could do for you?

4 A. Yes. I felt that there was nothing else he  
5 could do. That's the way he made me feel.

6 Q. Today, you gave some testimony about how you  
7 found out about the possession of a weapon during the  
8 commission of a violent crime charge, maybe you said  
9 three days before trial -- were you ever served with  
10 the warrant for possession of a weapon during the  
11 commission of a crime, an arrest warrant?

12 A. Was I served with -- I'm not sure, sorry.

13 Q. You said that it was -- you didn't stop the  
14 plea because it was your first conviction and you -- I  
15 guess, kind of -- I guess you were afraid or fearful,  
16 but is it true that you had some arrests in Florida?

17 A. Yes, I did. And the arrest that was in  
18 Florida, may I add, Mr. Dejeu -- if I'm pronouncing his  
19 name right -- he stated that it was a failure to stop  
20 or something like that in court. But my lawyer, he  
21 failed to even, you know, try to protest against that.  
22 Because that wasn't the charge. It was just a little  
23 misdemeanor, you know.

24 Q. Okay. And did you tell the court that you  
25 weren't coerced or threatened to plead guilty?

1 A. Ma'am?

2 Q. Did you tell the court that you weren't  
3 coerced or threatened to plead guilty?

4 A. Yes.

5 Q. And do you recall being told by the court that  
6 he could run your sentences consecutive, so that you  
7 could get a total of 25 years?

8 A. Yes.

9 Q. Do you also recall the court advising you that  
10 if you pled guilty, you would give up any defenses that  
11 you had?

12 A. Yes.

13 Q. Did you also tell the court that you were  
14 giving truthful responses and that Mr. Lanier didn't  
15 tell you how to answer the questions a certain way?

16 A. Yes.

17 MS. WILSON: Thank you.

18 THE COURT: Yes, sir. Redirect?

19 MR. BOOZER: No redirect, Your Honor.

20 THE COURT: Okay. Sir, you may step back to the  
21 table. Okay. Next witness.

22 MR. BOOZER: Your Honor, thank you. I would call  
23 Pastor White to the stand.

24 THE COURT: And what's the relevance of this?

25 MR. BOOZER: Your Honor, if I may, it's just going

1 to be a very brief colloquy. He was present for the  
2 meeting between Adrian and Mr. Lanier. And  
3 unfortunately we don't have Mr. Lanier here, but I  
4 would just like for him to confirm what his  
5 understanding was that day of what Adrian was doing.

6 THE COURT: Okay.

7 MR. BOOZER: Thank you, Your Honor.

8 THE COURT: He was present when the lawyer met  
9 with his client?

10 MR. BOOZER: Evidentially they had a family type  
11 meeting with the attorney and Mr. White is my  
12 understanding.

13 ERNEST L. WHITE, after  
14 having been duly sworn, testified as follows:

15 THE CLERK: If you could please have a seat and  
16 state your full name, spelling your last name for the  
17 record.

18 THE WITNESS: My name is Ernest L. White,  
19 W-h-i-t-e.

20 THE COURT: Yes, sir.

21 MR. BOOZER: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MR. BOOZER:

23 Q. Should we call you Pastor White? I see that  
24 you have a certain outfit on today.

25 A. No, I am a pastor for about 20 something

ERNEST WHITE -- DIRECT BY MR. BOOZER

1 years, but you can call me Mr. White, Pastor White, or  
2 whatever.

3 Q. Okay. I'll stick with Pastor White. Pastor  
4 White, are you related to Adrian White?

5 A. That's my son.

6 Q. Okay. That's your son. Were you at Adrian's  
7 plea?

8 A. Yes, I was.

9 Q. All right. Prior to the plea, did anything  
10 occur, a meeting occur with Mr. Lanier?

11 A. Not that I know of. He had a meeting, but I  
12 don't know. I wasn't there.

13 Q. Did you talk to Mr. Lanier and with Adrian?

14 A. Yes, I did, at the court.

15 Q. Okay. What, if anything, did Mr. Lanier tell  
16 you guys?

17 A. Well, he told Adrian, and I was present, and  
18 we had two other family members there, that if he  
19 didn't accept this plea, the judge would say --  
20 automatically going to give him 20 years -- 25 years.

21 Q. If he didn't take the plea?

22 A. If he didn't take the plea, so that left him  
23 with no choice.

24 MR. BOOZER: Your Honor, those are the only  
25 questions I have for Mr. White.

1 THE COURT: Okay. Cross-examination, if any.

2 MS. WILSON: Thank you.

3 CROSS EXAMINATION BY MS. WILSON:

4 Q. How are you doing, Mr. White?

5 A. Doing great.

6 Q. Good. Were you present at every meeting  
7 between Mr. Lanier and --

8 A. No.

9 MS. WILSON: Okay. Thank you.

10 THE COURT: All right. Thank you, sir.

11 MR. BOOZER: And, Your Honor, that would be the  
12 State's -- or the Plaintiff's case -- excuse me.

13 THE COURT: Sir, you may step down. All right,  
14 Ms. Wilson.

15 MS. WILSON: Thank you, Your Honor. The State  
16 would call Mr. Adrian DeJeu.

17 THE COURT: All right. Counsel, come on up and  
18 we'll swear you in.

19 ADRIAN DEJEU, after having been  
20 duly sworn, testified as follows:

21 THE CLERK: If you could, please have a seat.  
22 State your name and spell your last name for the  
23 record.

24 THE WITNESS: Adrian Dejeu. D-e-j-e-u.

25 DIRECT EXAMINATION BY MS. WILSON:

1 Q. Mr. Dejeu, can you tell the court how long  
2 you've been practicing law and your experience in  
3 criminal law?

4 A. In the United States, I started practicing  
5 from 2008 at the 8th Circuit Solicitor's Office,  
6 Assistant Solicitor there. Then I took five months  
7 off, and did some private practice. Then I came here,  
8 the 9th Circuit from 2011, January.

9 Q. And could you briefly describe the State's  
10 evidence against Mr. White?

11 A. This case was a shooting. The defendant, as  
12 the record indicates, the defendant was accused of  
13 shooting -- a Gary Lloyd was the victim. It was over  
14 an argument. The defendant, Mr. White, arrived at the  
15 place where the victim was, along with two other  
16 friends. He got out of the car -- the defendant got  
17 out of the car with a shotgun. The victim turned  
18 around, trying to avoid any altercation, and he was  
19 shot twice in the back. He was airlifted and spent a  
20 few days in MUSC ICU.

21 Q. And do you know how Mr. Dejeu (sic) was  
22 developed as a suspect?

23 A. Mr. White was developed as a suspect through  
24 the investigation, Berkeley County Sheriff's Office.  
25 There was obviously the victim. After he regained

1 consciousness, he was able to tell the officers who did  
2 it. As he was prior -- previously indicated, there was  
3 some kind of family relationship between the defendant  
4 and the victim in the case. Also two other victims --  
5 two other witnesses that were present were able to  
6 positively identify the defendant, Mr. White, as being  
7 the shooter.

8 Also, his brother, defendant Jason White, I  
9 believe is his name, was present. He was the driver of  
10 the vehicle. And this case was ready. And I worked to  
11 take it to trial.

12 And this was a few weeks before we were about to  
13 call the case for trial, that Mr. Lanier and I came to  
14 an agreement.

15 Q. Okay. And had you had any plea negotiations  
16 with Mr. Lanier for Mr. White prior to this time  
17 shortly before trial?

18 A. I don't have any dates, but I'm sure Mr.  
19 Lanier was in -- it was his habit to always try to do  
20 what's best for his clients --

21 MR. BOOZER: Objection, Your Honor. Continued  
22 testimony regarding Mr. Lanier's habits, what he does  
23 with his clients.

24 THE COURT: Sustained.

25 BY MS. WILSON:

1 Q. Mr. Dejeu, did you turn over all discovery  
2 materials?

3 A. I did.

4 Q. Thank you. And was the victim on board with  
5 this plea, Mr. White's guilty plea, and the negotiated  
6 sentence you and Mr. Lanier worked out?

7 A. Yes. He -- the victim came to our office  
8 several times. As I said, we were preparing this case  
9 for trial. Also I met with his family in Pineville, I  
10 believe, in the Berkeley county area. And I also met  
11 with the witnesses involved in the case. And like I  
12 said, everybody was ready to go to trial.

13 Q. Do you know anything about the victim's family  
14 being represented by Mr. Lanier?

15 A. No.

16 Q. Did you have any discussions with Mr. Lanier  
17 about having house arrest time be taken away from  
18 whatever sentence he received that -- if he pled  
19 guilty?

20 A. No. But we did have negotiations -- it was --  
21 during the negotiation process, we came up with the 10  
22 year sentence. So I can't remember whether he asked or  
23 not.

24 Q. Was there anything unusual that took place in  
25 your interactions with Mr. Lanier or Mr. White's --

1 during Mr. White's guilty plea?

2 A. No.

3 MS. WILSON: Thank you.

4 THE COURT: Okay. Cross-examination.

5 MR. BOOZER: Thank you, Your Honor. Just briefly.

6 THE COURT: Sure.

7 CROSS EXAMINATION BY MR. BOOZER:

8 Q. Solicitor Dejeu, you were not at any of these  
9 meetings between Mr. Lanier and Mr. White, correct?

10 A. No.

11 Q. That would be odd, right?

12 A. Yes. I wish Mr. Lanier could be here.

13 Q. Okay. Now, you said that you conveyed a plea  
14 offer to Mr. Lanier a few weeks prior to trial?

15 A. No. I said -- I said this case pled a few  
16 weeks before we were about to call the case for trial.

17 Q. Okay.

18 A. Mr. Lanier knew that this case was being  
19 prepped and it was going to trial.

20 Q. And it's true that the victim was not at this  
21 plea?

22 A. He was not, yeah. He was not in the  
23 courtroom, but he was available.

24 Q. And you don't have any recollection of Mr.  
25 Lanier asking you to consider in the sentence or before

1 the plea, giving him some credit for the three years  
2 that he was on house arrest?

3 A. No, I can't remember.

4 Q. And is it your recollection that Mr. White's  
5 brother actually received just a five year probationary  
6 sentence for this case?

7 A. It seems like he pled to an accessory or  
8 something like that.

9 MR. BOOZER: Thank you, Your Honor. No further  
10 questions.

11 THE COURT: Did Mr. White's brother shoot the  
12 victim in the back twice?

13 A. No. It was this defendant that shot the  
14 victim in the back. Mr. -- his brother, I think Jason  
15 White, was the driver of the vehicle that this  
16 defendant was in.

17 THE COURT: Okay. Any follow up based on my  
18 questions?

19 MR. BOOZER: Just one, Your Honor.

20 THE COURT: Sure.

21 RECROSS EXAMINATION BY MR. BOOZER:

22 Q. Mr. Dejeu, is it your understanding that he  
23 wasn't -- and I understand the relevancy on this, but  
24 just to clean it up -- just for my client's sake, is it  
25 your understanding that the victim was shot in the

1 rear-end, not exactly in the middle of the back or  
2 anything like that?

3 A. Yes, his butt and right arm.

4 MR. BOOZER: Thank you, Your Honor.

5 THE COURT: Okay. The backside of the victim,  
6 correct?

7 A. Yes.

8 MR. BOOZER: And I had him explain that just now  
9 --

10 THE COURT: Okay. I just want to make sure I'm  
11 clear. I'm looking at this transcript. And the facts  
12 as presented to the Court, "*as the victim tried to*  
13 *reason with him*" -- this is at page 11 -- and "*him*"  
14 would be the defendant, the applicant, "*The defendant*  
15 *shot him once and then shot him a second time in the*  
16 *back, shattered the victim's left arm. The victim was*  
17 *airlifted. He had numerous surgeries to his arm, left*  
18 *arm and to his back.*" And that may have been his  
19 backside; is that what you were clarifying?

20 MR. BOOZER: Yes, ma'am. And Mr. Lanier clarified  
21 it further in the record, on 14.

22 THE COURT: All right.

23 MR. BOOZER: Half way down. And Mr. Lanier says,  
24 and this is the beginning at line 11 on 14, "*and when*  
25 *Mr. Dejeu says shot in the back, he was shot in the*

1     *buttocks, Your Honor. . I just wanted to put that on for-*  
2     *my client." My client --*

3             THE COURT:   Okay.   So Mr. Lanier did clarify that  
4     for the court, correct?

5             MR. BOOZER:   Yes, Your Honor.

6             THE COURT:   Okay.   And then I believe at page 14,  
7     Mr. Lanier talked about his strong family support.  
8     *"It's been a delight to know him and his family, Your*  
9     *Honor, over the past three years."*

10            And the court said at page 15, *"anything you*  
11     *wish to tell me, Mr. White"*? And the defendant's  
12     response was *"no, ma'am"*, correct? That's what the  
13     transcript reflects; any issue with that?

14            MR. BOOZER:   That's what the transcript says, Your  
15     Honor.

16            THE COURT:   Okay.   All right.   Any further  
17     questioning for this witness?

18            MR. BOOZER:   No.

19            THE COURT:   Anything from the State?

20            MS. WILSON:   Nothing from the State.

21            THE COURT:   All right, sir, you may step down.  
22     Thank you.   All right.   Any further witnesses?

23            MS. WILSON:   Nothing from the State.

24            THE COURT:   Anything from the applicant?

25            MR. BOOZER:   No, ma'am.

1           THE COURT: Okay. Well, as y'all both know, we  
2 apply a Strickland analysis to a claim for ineffective  
3 assistance of counsel in the guilty plea context and in  
4 other context. And the question is whether the  
5 counsel -- the attorney at trial or the plea attorney's  
6 alleged deficiency resulted in a plea that was not  
7 voluntarily, knowingly and intelligently entered. And  
8 any prejudice from the deficiency, return any effect to  
9 the outcome of the plea process. And whether Mr. White  
10 somehow contends that he would not have pled but for  
11 the deficient performance.

12           As you both know, under Hyman vs. State, there  
13 is a strong presumption that counsel rendered adequate  
14 assistance and exercised reasonable professional  
15 judgment in making all significant decisions in the  
16 case.

17           As I review this transcript, and based on the  
18 information that's been presented, it's clear to me  
19 that this plea was made voluntarily, intelligently and  
20 knowingly. I simply do not find credible the testimony  
21 that's been presented today from the applicant in light  
22 of the -- what's presented in the actual transcript  
23 itself.

24           With respect to the issue of home detention and  
25 house arrest, first of all, the court asked the

1 defendant if there was anything else he needed to tell  
2 her. That's at page 15. He did not. But in any  
3 event, prior to the amendment of the house arrest  
4 statute or the time served statute, at 24-13-40, which  
5 happened at this past legislative session, State V.  
6 Higgins was the case that controlled that -- or that  
7 most recently that I could find, analyzed the term  
8 "time served" in section 24-13-40.

9           However, whether time served includes time spent  
10 under house arrest is an issue of first impression in  
11 South Carolina. That was in 2004. Generally penal  
12 statutes are to be construed strictly against the State  
13 and in favor of the defendant. However, all rules of  
14 statutory construction are subservient to the cardinal  
15 rule that the legislative intent must prevail.

16           House arrest in the Higgins case, as here, was a  
17 condition of the defendant's release on bond. The  
18 court there specifically found that our legislature  
19 only intended to allow credit for time served in a  
20 penal institution and found no error in the trial  
21 court's refusal to afford that credit for house arrest  
22 time while the defendant was released on bond.

23           I decline to find that it was any deficient  
24 performance on the part of Mr. Lanier in not asking for  
25 that credit. I never grant credit for house arrest as

1 time served. I've only been asked for it once.

2 Now, understanding that, the statute has been  
3 amended, but that did not happen until this past  
4 legislative session. I think it was approved on June  
5 7th of 2013. That gives a court discretion for time  
6 served spent under monitored house arrest.

7 Some judges may have done it. I think Higgins  
8 finds that there is no error if they chose not to do  
9 it. I'm certainly not going to find deficient  
10 performance on plea counsel's part because he did not  
11 ask for it here. This was a negotiated plea. This  
12 defendant could have received 25 years, had the five  
13 years for possession of a weapon been tacked  
14 consecutively on to the 20 year charge.

15 The court explained that, in addition to what  
16 Mr. Lanier explained, and I'm comfortable with the way  
17 the plea court handled this. And I decline to find any  
18 ineffective assistance, so the application is denied.

19 Counsel, if you'll draft an order to that  
20 effect, share it with Counsel for the applicant before  
21 then. Okay. That will be the order of the Court.

22 (Whereupon, the hearing adjourned.)  
23  
24  
25

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Adrian White v. State of S.C. 2013 CP-08-0007

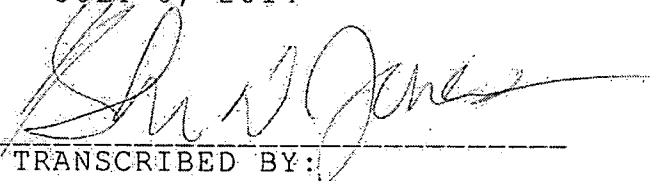
CERTIFICATE OF REPORTER

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I, SHARON D. JONES, OFFICIAL COURT REPORTER FOR THE 9TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE FAMILY COURT FOR BERKELEY COUNTY, SOUTH CAROLINA, ON THE 20TH DAY OF NOVEMBER, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

JULY 8, 2014



TRANSCRIBED BY:

SHARON D. JONES,  
OFFICIAL COURT REPORTER

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 Adrian White, #351674, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2013-CP-08-0007

**ORDER OF DISMISSAL**

FILED  
 2014 MAR 26 AM 11:34  
 CLERK OF COURT  
 BERKELEY COUNTY, SC

Presiding Judge: The Honorable Stephanie P. McDonald  
 Applicant's Attorney: Lance Boozer, Esquire  
 Respondent's Attorney: Ashleigh R. Wilson, Esquire  
 Plea Counsel: J. Mitchell Lanier, Esquire  
 Date of Hearing: November 20, 2013  
 Court Reporter: Sharon Vizer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed on January 2, 2013. The Respondent made its Return on October 10, 2013. An evidentiary hearing into the matter was convened on November 20, 2013, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Lance Boozer, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also present to testify were Ernest L. White and Adrian Dejeu, Esquire- the assistant solicitor assigned to the case.<sup>1</sup> This Court had before it the guilty plea transcript, the records of the Berkeley County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

<sup>1</sup> The Applicant's former defense attorney J. Mitchell Lanier, Esquire, passed away prior to the filing of this application for post-conviction relief.

*3/20/14  
 J. Wilson  
 L. Boozer*

*RPM  
 1*

*B*

### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the October 2009 term of the Berkeley County Grand Jury for assault and battery with intent to kill (ABWIK) (2009-GS-08-2167) and possession of a weapon during the commission of a violent crime (2009-GS-08-2168). J. Mitchell Lanier, Esquire, represented the Applicant. The Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Kristi L. Harrington sentenced the Applicant to confinement for five (5) years for possession of a weapon during the commission of a violent crime and for twenty (20) years, provided <sup>that</sup> upon the service of ten (10) years, the balance is suspended to five (5) years' probation for ABWIK. The sentences were to run concurrently. The Applicant did not appeal his convictions or sentences.

### ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. Counsel refused to request a lesser sentence.
  - b. Counsel refused to request accrued house arrest.
  - c. Counsel represented the victim's family and ~~not~~ Applicant.
  - d. Counsel failed to investigate the possibility of a plea of not guilty based on either provocation or actual innocence.
  - e. Counsel failed to investigate sentencing options short of incarceration.
2. Involuntary guilty plea.
  - a. Counsel failed to present the victim's favorable testimony to the trial court in mitigation.
  - b. Counsel failed to request leniency.
  - c. Counsel refused to request credit for time served.
3. Conflict of interest.

At the evidentiary hearing, the Applicant alleged the following:

1. Ineffective assistance of counsel.
  - a. Counsel refused to request credit for house arrest.
  - b. Counsel represented the victim's family members.
2. Involuntary guilty plea.

This Court finds the Applicant waived all other grounds for relief except the three grounds raised during his evidentiary hearing.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

The Applicant testified he was represented by Lanier shortly after arrest, and that he met with counsel three or four times. He testified he bonded out of jail, was placed on house arrest, and that he was on house arrest for three years. The Applicant testified he reviewed discovery with counsel and discussed possible defenses, and that counsel never gave him a defense. He testified he discussed the plea offers made by the State with counsel. The Applicant testified he asked counsel to ask the Court for credit for his time on house arrest, but counsel refused.

The Applicant testified he found out about the possession of a weapon during the commission of a violent crime charge three days prior to trial. He testified he was never shown an indictment for possession of a weapon. The Applicant testified he was related to the victim and the victim was willing to help him. The Applicant further testified counsel also represented

the victim's brother and the victim's father, and that counsel never told him he represented the victim's family until shortly before Court.

The Applicant testified counsel informed him of the ten year plea offer by phone. He testified he did not want to plead guilty, but he did not feel comfortable going to trial. The Applicant testified he met with counsel prior to <sup>the</sup> plea and was told that if he did not plead guilty he would get twenty-five years. He testified he felt pressured to plead guilty, and that his attorney did not ask for credit for the three years he spent on house arrest. The Applicant testified it was his decision to plead guilty and he recalled waiving his constitutional rights. He testified he also recalled telling the Court he was satisfied with his attorney's representation and that he did not have any complaints and there was nothing else counsel could do for him.

Also present and called to testify by the Applicant was Ernest L. White. Mr. White testified he was the Applicant's father and has been a pastor for over twenty years. He testified he was present at the Applicant's guilty plea. He testified prior to the plea the Applicant spoke with Mr. Lanier and was told that if he did not plead guilty he would automatically be sentenced to twenty-five years. Mr. White testified further he was not present at every meeting between Mr. Lanier and the Applicant.

Also present and called to testify by the State was Adrian Dejeu, Esquire. Mr. Dejeu was the Assistant solicitor assigned to the Applicant's case. Mr. Dejeu testified he has been an assistant solicitor in the 9<sup>th</sup> Circuit since 2011. He testified the Applicant was accused of shooting the victim after an argument. He testified the evidence against the Applicant showed: the Applicant arrived at the place where the victim was present, got out of a car with a shotgun, and shot the victim twice in the back while the victim walked away. Mr. Dejeu testified the victim identified the Applicant as the shooter along with two other witnesses.

Mr. Dejeu testified the case was ready for trial and ultimately the Applicant pled guilty a few weeks prior to trial. Mr. Dejeu testified there was nothing unusual about the Applicant's guilty plea proceeding. He testified the victim and his family were onboard with the plea and came to meet with him several times. He testified he did not recall any discussions with defense counsel about credit for time on house arrest.

#### **Ineffective Assistance of Counsel**

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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 (1984); Butler, 286 S.C. 441, 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).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for

counsel's unprofessional errors, the result of the proceeding would have been different." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). 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 (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 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. 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)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court finds that counsel's representation did not fall below an objective standard of reasonableness. This Court also finds the testimony of Assistant Solicitor

OPM  
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Adrian Dejeu to be credible, while finding the testimony of the Applicant and Ernest White were less credible.

This Court finds that trial counsel was not ineffective for failing to request credit for the Applicant's time on house arrest. This Court finds counsel's failure to request credit for house arrest did not result in deficient performance. In June 2013, S.C. Code Section 24-13-40 was amended to state the following: "In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest." The Applicant pled guilty in July 2012, almost a year prior to the amending of this statute to allow for credit for time spent on monitored house arrest. Prior to the amending of this statute, the South Carolina Court of Appeals in State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (2004) held house arrest is a condition of release on bond and it was illogical to credit the defendant with time served while he was "released" on bond. This Court finds, based on the ruling of the Court of Appeals in Higgins, the controlling case law at the time of the Applicant's guilty plea, <sup>that</sup> it was not unreasonable for counsel to refuse to request credit for the time the Applicant served on house arrest. This Court finds counsel is not expected to be clairvoyant or to anticipate changes in the law. This Court also finds no prejudice resulted from counsel's performance since there was no testimony presented by the Applicant to indicate the possibility of receiving credit for his time on house arrest affected his decision to plead guilty. This Court finds that this allegation is without merit, and the Applicant has failed to carry his burden of proving counsel's performance was ineffective for failing to request credit for his time spent on house arrest.

This Court finds the Applicant has also failed to carry his burden of proving a conflict of interest existed based on counsel's alleged representation of the victim's family members. "An

actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). This Court has further stated that a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008).

Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation. Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980); see also Burger v. Kemp, 483 U.S. 776, 783 (1987)). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005). A defendant need not demonstrate prejudice if there is an actual conflict of interest." Id., 364 S.C. at 153, 612 S.E.2d at 450.

This Court finds the Applicant has failed to present any evidence to show Mr. Lanier's alleged representation of the victim's family <sup>(in a prior matter)</sup> resulted in a conflict of interest. The Applicant has failed to show that Mr. Lanier owed a duty to party whose interests were adverse to the Applicant's. This Court also finds the Applicant has failed to show that he was prejudiced from counsel's alleged conflict of interest. This Court finds in light of the Applicant's testimony that he was related to the victim and the victim was willing to help his case it is unlikely counsel's alleged prior representation of the victim's family members had any effect on counsel's representation of the Applicant. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving a conflict of interest existed.

This Court also finds and the record reflects the Applicant's guilty plea was entered

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freely and voluntarily with a full understanding of the consequences of his guilty plea. During his guilty plea proceeding, the Applicant was advised by the court of the following: the potential penalties he was facing (Tran. 7:20-23, 9:10-14), his right to a jury trial (Tran. 7:5-9), his right to remain silent (Tran. 7:10-11), and his right to confront his accusers (Tran. 7:11-12). The Applicant was also advised by the Court of the terms of his negotiated guilty plea. (Tran. 5:20-24). The Applicant told the Court he had not been promised anything or threatened to plead guilty. (Tran. 10:1-3). The Applicant told the Court he was not under the influence of drugs or alcohol and did not suffer from any mental illnesses. (Tran. 5:14-19). The Applicant also told the Court he agreed with the facts as presented by the State during the plea proceeding. (Tran. 12:10-17). Lastly, the Applicant told the Court he was satisfied by his attorney's representation, he had no complaints, and there was nothing else he wanted counsel to do for his case. (Tran. 10:7-9, 13-19). This Court finds and the record reflects that the Applicant was fully advised by the Court of the charges he was facing and the consequences of his guilty plea. This Court finds the Applicant has failed to carry his burden of proving his guilty plea was not entered freely and voluntarily.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed. This Court finds further that the Applicant's guilty plea was entered freely and voluntarily, with a full understanding of the consequences of his guilty plea.

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**All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony or argument regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations. Therefore, they are hereby denied and dismissed.

**CONCLUSION**

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

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

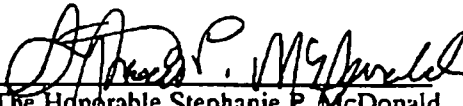
[Signature on the following page.]

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**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 14<sup>th</sup> day of March, 2014.

  
The Honorable Stephanie P. McDonald  
Presiding Judge  
9th Judicial Circuit

Charleston, South Carolina.

DCB2009-07-06397

WITNESSES

Mark Mason

Berkeley County Sheriff's Office

*[Signature]*

AGENCY CASE NUMBER

0906025311

ARREST WARRANT NUMBER

E-674185

DATE OF ARREST

June 24, 2009

ACTION OF GRAND JURY

TYPE B/M

*[Signature]*

Foreperson of Grand Jury

Date: 10-28-09

VERDICT

Foreperson of Petit Jury

Date:

INDICT

82

DOCKET NO. 2009-CS-08-2167

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term 2009

THE STATE

vs.

Adrian White

DOB: 1986-08-19

B/M

Indictment for

Assault & Battery With Intent to Kill

§16-03-0620

CDR: 0014

MAJOR BRUNN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

2009 OCT 28 PM 12:32

FILED

*[Signature]*



84  
STATE OF SOUTH CAROLINA

COUNTY OF Berkeley  
STATE VS. Adrian White

AKA:  
Race: BLACK Sex: M Age: 25  
DOB: SS#: [REDACTED]  
Address: [REDACTED]  
City, State, Zip: Pineville, SC 29468  
DL#: SID#:

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: ABWIK/Assault and Battery with Intent to Kill (0-20 yrs.)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-08-2167  
A/W#: E674185  
Date of Offense: 6/23/2009  
S.C. Code §: 16-03-0620  
CDR Code #: 0014

SENTENCE SHEET

CONVICTED OF or  PLEADS

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  § 17-25-45 w/minor 1st or Lewd Act)

The charge is:  As Indicted.  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation, by the State.

ATTEST: Dejeu, Adrian (SC Bar# 76571) Defendant; DuSchell, Laura (SC Bar# 3129) Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 20 days/months/years or  under the Youthful Offender Act not to exceed years  
and/or to pay a fine of \$ 10, provided that upon the service of 10 days/months/years and/or payment  
of \$ 5 (five); plus costs and assessments as applicable\*; the balance is suspended with probation for 5 (five)

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: 2009-GS-08-2167  
 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.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
Total: \$ plus 20% fee: \$  
Payment Terms:  
 Set by SCDPPPS

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment

Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
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: \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$3.90
TOTAL	\$133.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clrk: Linda J. Hill  
Court Reporter: Melinda S. [REDACTED]  
SCCA/217 (03/2011) Sharon Vye Banks

Presiding Judge: Kristo Smith  
Judge Code: 2147-2151  
Sentence Date: 7/13/12

DCB2009-07-06397

WITNESSES

Mark Mason

Berkeley County Sheriff's Office

*[Signature]*

AGENCY CASE NUMBER

0906025311

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DATE OF ARREST

June 24, 2009

ACTION OF GRAND JURY

True Bill

*[Signature]*

Foreperson of Grand Jury  
Date: 10-28-09

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009-GS-08-2168

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term 2009

THE STATE

vs.

Adrian White

DOB: [REDACTED]

B/M

Indictment for

Possession of Weapon During Commission  
of Violent Crime

\$16-23-0490

CDR: 0549

MARTIN E. BRIDGMAN  
CLERK OF COURT  
BERKELEY COUNTY, SC

2009 OCT 28 PM 12:32

FILED

*[Handwritten mark]*

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STATE OF SOUTH CAROLINA )

COUNTY OF Berkeley )  
STATE VS. )

Adrian White )

AKA: )

Race: BLACK Sex: M Age: 25 )

DOB: [REDACTED] SS#: [REDACTED] )

Address: [REDACTED] )

City, State, Zip: Pineville, SC 29468 )

DL#: SID#: )

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  
TO: Possession of a Firearm During Commission of a Violent Crime ( 0-5 yrs.)

IN THE COURT OF GENERAL SESSIONS 87

INDICTMENT/CASE#: 2009-GS-08-2168

A/W#: 09GS082168

Date of Offense: 6/23/2009

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

CONVICTED OF or  PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The pleas:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Dejeu, Adrian 70541 SC Bar# Defendant d. Vertheloe Garcia 3128 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 5 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: 2009-GS-08-2167  
 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.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
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	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED   
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
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: \_\_\_\_\_

Clerk of Court/ Deputy Clerk Linda J. Hill  
Court Reporter: Melissa S. Magister  
SCCA/217 (03/2011) Sharon Vizeu Hankins

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.  
Presiding Judge Christina  
Judge Code: 21172151  
Sentence Date: 7/23/09