

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

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S.C. Supreme Court

FAVIAN HAYES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014- 000837

APPENDIX

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS

2010-GS-23-9938; 9986

ORIGINAL

STATE OF SOUTH CAROLINA)

PLAINTIFF)

vs.)

TRANSCRIPT OF RECORD

FAVIAN ALPHONZO HAYES)

DEFENDANT)

May 16, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

WANDA ADAMS, ESQ.
Attorney for the State

CHRISTOPHER POSEY, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

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FAVIAN HAYES

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1 THE CLERK: Your Honor, this is 2010-GS-23-9986,
2 Favian Hayes, indicted for threatening death, damage
3 destruction by explosives, pleading to the same. And it
4 is a true bill. 2010-GS-23-9938, indicted for threatening
5 the life, pleading to the same. And it is a true bill.

6 Raise your right hand.

7 FAVIAN HAYES, after being duly sworn, testified
8 as follows:

9 MR. POSEY: Judge, for the record, if I might.
10 I was recently appointed Mr. Hayes. I believe, Your
11 Honor, was the one that relieved Ms. Manigault from
12 representation. This is the first time we have actually
13 met. I did have a brief phone conversation with him
14 yesterday. I have had discovery for a couple of weeks
15 now. Not a complicated issue and I believe I am fully up
16 to speed on it. Just the -- actually first day I got to
17 meet with Mr. Hayes face-to-face because he has been
18 incarcerated in the Department of Corrections.

19 THE COURT: Okay, good enough. All right. So
20 you've had a sufficient amount of time to discuss this
21 matter with Mr. Hayes and advise him of his right and the
22 ramifications his plea?

23 MR. POSEY: We went over that this morning.

24 THE COURT: All right. And you've also had the
25 opportunity to review the discovery in this case?

1 MR. POSEY: Yes, sir.

2 THE COURT: Do you agree with his decision to
3 waive his rights and plead guilty today?

4 MR. POSEY: I do.

5 EXAMINATION

6 Q All right, Mr. Hayes, how you doing this morning,
7 sir?

8 A I'm all right.

9 Q Good. Do you understand you have a right to a jury
10 trial on this charge? If you were to have a jury
11 trial, the State would have the burden of proving you
12 guilty beyond a reasonable doubt, you would not have
13 the burden of proving yourself innocent. You have,
14 under the Constitution, the right to remain silent.
15 Which means you would not have to do, say or prove
16 anything to a jury, the State has the burden.
17 However, know that you could waive your right to
18 remain silent in a jury trial. Which means that you
19 could take the stand and you can testify and tell the
20 jury your side of the story, call witnesses and
21 evidence and legal defenses. You can make motions to
22 the Court to protect your rights. You could also
23 cross-examine any of those persons who are accusing
24 you of these crimes. Do you understand those rights
25 and wish to waive them today, Mr. Hayes?

1 A I understand.

2 Q You understand them? Do you want to waive them and
3 plead guilty?

4 A Yes, sir.

5 Q Okay. All right. For threatening the life of a
6 public employee, is that what the charge is?

7 MS. ADAMS: Yes, sir.

8 THE CLERK: What's the max for that?

9 MS. ADAMS: Five years.

10 BY THE COURT:

11 Q Do you understand that you can receive up to five
12 years for that, Mr. Hayes?

13 A Yes, sir.

14 Q How do you wish to plead to that?

15 A Guilty.

16 Q All right.

17 What's the bomb threat?

18 MS. ADAMS: Fifteen.

19 BY THE COURT:

20 Q Do you understand that you can receive up to 15 years
21 in addition to and consecutive to the other charge
22 for a bomb threat? Do you understand you can get 15
23 years on that?

24 MR. POSEY: That's the max.

25

1 BY THE COURT:

2 Q Do you understand that?

3 A Yes, sir.

4 Q So in all the maximum, if I were to decide that I
5 thought it was appropriate to give you the maximum
6 sentence, it could be 20 years on both cases in the
7 aggregate; do you understand?

8 A Yes, sir.

9 Q How do you wish to plead on the bomb threat?

10 A Guilty.

11 Q Has anyone forced or threatened or made you plead
12 guilty?

13 A No, sir.

14 Q Are you pleading guilty of your own freewill because
15 you are guilty?

16 A Yes, sir.

17 Q Are you under the influence of any drugs or alcohol
18 today?

19 A No, sir.

20 Q Do you suffer from any mental sickness that would
21 effect your ability to you understand and appreciate
22 what's happening here today or have effected your
23 communications with Mr. Posey?

24 A I make medications. I take meds, medication but it
25 doesn't...

1 Q Okay. Those actually help you comprehend and
2 understand?

3 A Yeah.

4 Q They do?

5 A Yeah.

6 Q You understood all your conversations with Mr. Posey?

7 A Say that again.

8 Q You understood all your conversations with Mr. Posey?

9 A Yeah, I understand.

10 Q And you've understood all of my questions and all of
11 my explanations today?

12 A Yes, sir.

13 Q Okay. You don't -- do you think that any mental
14 sickness is effecting your ability to understand what
15 we're doing here today?

16 A No.

17 Q Okay. All right. Did you have any questions that
18 you want to ask me or Mr. Posey before we move on
19 with the facts?

20 A Yes, sir.

21 Q You do have questions?

22 A Yes, sir.

23 Q What are your questions?

24 A I was explaining to my last attorney that on offense
25 that I'm locked up for now, that I was recently PCR

1 for. And my PCR was on the 24th and 25th of March.

2 Q Yes, sir.

3 A And she explain to me that the State was willing to
4 drop one and give me five years for one. And I told
5 her I was willing to plead, I just want to take care
6 of this matter with the PCR first. But I was willing
7 to plead. But then I ain't heard nothing from her.
8 I ain't heard nothing from my PCR attorney. My
9 lawyer said he just had gotten notice that the PCR
10 attorney had just got the Order back from the Judge,
11 PCR Judge, yesterday. And but all along I was
12 willing to plead, take the lesser plea the State was
13 willing to give.

14 Q Okay.

15 A That's it.

16 Q Okay. All right, good enough. You satisfied with
17 Mr. Posey's services?

18 A Well, yes, sir.

19 THE COURT: Okay. Good enough. All right,
20 Mr. Hayes, you got 10 days to appeal my sentence. I'm
21 going to listen to the facts now. If you'll listen along
22 as well, okay. Thank you.

23 MS. ADAMS: May it please the Court. Your
24 Honor, this is a plea off the trial docket. And the facts
25 are on June 18th of 2010, the postal director at Perry

1 Correctional Center in Greenville County, intercepted a
2 letter written by Mr. Hayes and it was addressed to the
3 Warden, Florence Mauney. And that's M-A-U-N-E-Y.

4 The postal director read the letter and felt it
5 was a threat that was being made to the warden and filed
6 the incident report and recorded it to the police officer
7 who was assigned to that area. In essence that letter, if
8 I could read it, stated, and it's dated June 18th.

9 Florence, referring to the warden. Fuck you,
10 bitch, because the damage has already been done. You
11 think that because I want -- I went to medical everything
12 is all right. Fuck no, bitch, I have suffered and now
13 it's your turn to feel my pain. It ain't even about
14 medical anymore. Fuck you and your medical staff. Bitch,
15 the only pleasure I'll have is when security is wearing
16 black tape on their badges, bitch, in remembrance of your
17 rotten dead body. It's going to be a hot summer, you
18 know, for you and your grandbabies if you know what I
19 mean. Ha, ha, ha. P.S. Watch how you turn on Devin
20 Drive. Watch your rear-view and your back, bitch. That's
21 my promise to you. Happy Fourth of July, bitch.

22 This again was reported to law enforcement and
23 an administrative hearing proceeding was planned as a
24 result of that correspondence from Mr. Hayes. Then again,
25 on June 25th of 2010, he addressed another letter and it

1 was delivered to Warden Mauney. That writing stated,
2 Florence, do you think by sending your message by bush is
3 going to prevent my plans? Ha, ha. I know you conspired
4 with your staff to take my -- check my cell down and take
5 my legal work. Playing with my life, liberty and freedom.
6 I know you had your hand in it but it's all right, bitch,
7 your day is coming real soon, Florence. For emphasis, you
8 might want to check for any wiring from your motor to your
9 gas tank. Watch how you turn your ignition. Y'all make
10 it so easy. At least you won't feel no pain like the
11 official at Lee.

12 And then on June 26th of the same year, as the
13 Warden was making her rounds through the prison, Mr. Hayes
14 got her attention and at that time he verbally stated to
15 her that he planned to soon carry out the threats he had
16 made.

17 And those are the facts.

18 BY THE COURT:

19 Q All right, Mr. Hayes, is that what happened, sir?

20 A Well, in a way it did, yes, sir. But -- I can say
21 something?

22 Q Sure.

23 A In a way it did. Perry Institution and they
24 basically -- a lot of things they do is not possibly
25 [sic] that they do. And what happened with me was

1 they -- they had me on the loose loaf meals for
2 numerous days, numerous days, lost a lot of weight.
3 They come and sprayed me with gas, seven or eight
4 officers jumped on me, dislocated my shoulder. I try
5 to speak to many of the counselor. I write to the
6 official. I wrote to her. I wrote to the major
7 security, Major Bush, I wrote all of them. They
8 didn't do nothing about it. The only thing they do
9 is basically, you know, come around, they check see
10 what's going on and then they leave. Then they know
11 a lot of stuff that goes on within that dorm is
12 unjust. But they don't do nothing to justify it.

13 And it seem like nothing -- they ain't
14 nothing -- they stopping the mail, when we get no
15 legal phone calls or nothing of that nature. So
16 honestly, I ain't had no intention to hurt nobody. I
17 just wanted to leave the institution. And I said
18 whatever it took for me to get from the institution.
19 I just wanted to leave. But that's all.

20 Q All right, so what I hear you saying is you made
21 those threats because you wanted them to send you
22 some place else?

23 A That's it, sir. To the point of me being there, I
24 ain't never made no other threats like that.

25 THE COURT: Okay, fair enough.

1 All right, I'll accept the plea. Any
2 recommendation, prior record?

3 MS. ADAMS: His priors include a conviction in
4 2002 for pointing and presenting a firearm. In 2003, two
5 counts of possession of crack and resisting arrest. And
6 in 2009, armed robbery, conspiracy and possession of
7 crack, second offense.

8 THE COURT: Is that your prior record,
9 Mr. Hayes?

10 MR. HAYES: Yes, sir.

11 THE COURT: What kind of sentence is he doing
12 right now?

13 MR. POSEY: Twenty-five years down in Sumter for
14 the armed robbery, Your Honor.

15 THE COURT: All right, on the violent serious
16 offense?

17 MR. POSEY: Yes, sir.

18 THE COURT: Okay. Okay.

19 No recommendation at this point?

20 MS. ADAMS: No, Your Honor.

21 THE COURT: All right, Mr. Posey, I'll be happy
22 to hear from you.

23 MR. POSEY: Judge, like I said, I've only been
24 appointed to Mr. Hayes for a short period of time. But
25 investigating his record, I think that what he said, he

1 wanted to get transferred from the institution. I think
2 part of it was, he was not on the proper medication as
3 well. I think that situation has been addressed. And
4 he's on the proper medication now. He is -- the two times
5 I've been able to speak with him he's been cooperative,
6 lucid, no problems whatsoever with him. I don't think
7 they had any problems with him at McCormick, which is
8 where he's housed now.

9 Judge, I think what he said is true. He made
10 the threats but really had no intention nor had any means
11 to really carrying the threats out. He does not have
12 anybody located, family or friends, in the Greenville
13 area. Everybody he knew -- knows is out of state. While
14 the words should not have been uttered or written, I don't
15 think there was any means to carry them out or any
16 intention. I would ask you to consider to impose a five
17 year concurrent sentence on him. I don't think it's --
18 he's going -- I think his max out date now is 2030. He
19 told me 2030. I don't think you -- well I don't foresee
20 him being back in trouble for this type of thing while he
21 finishes out the remainder of his sentence.

22 MS. ADAMS: Your Honor, if I might add,
23 Mr. Hayes did make reference to the Warden's address.

24 THE COURT: Uh-huh.

25 MS. ADAMS: The fact that she had grandchildren.

1 And this Lee official that he referred to was another
2 correctional officer in the lower part of the state who
3 was actually ambushed at home and shot several times. So
4 it was just very disturbing for this Warden. I mean,
5 Mr. Hayes is only like 26 years old. So.

6 THE COURT: Okay.

7 All right, Mr. Hayes, anything else you'd like
8 to tell me, sir?

9 MR. HAYES: No, that's it.

10 THE COURT: What's the maximum on the bomb? Is
11 that 10 years on the bomb threat?

12 MR. POSEY: Fifteen.

13 MS. ADAMS: Fifteen.

14 THE COURT: Okay. And it's five on the
15 threatening the life?

16 MS. ADAMS: Yes.

17 THE COURT: Okay.

18 MR. POSEY: Judge, since he did bring it up, I
19 did speak to his PCR counsel, Patrick Killen, in Sumter
20 yesterday who told me his PCR had been denied but he just
21 received the Proposed Order from the Attorney General
22 yesterday. So he has not communicated that to Mr. Hayes
23 yet. So that seems to be the hold up when Ms. Manigault
24 was representing him. Because he was awaiting the outcome
25 of his PCR case.

1 THE COURT: Okay. All right. Good enough.

2 SENTENCING

3 All right, on the bomb threat 10 years,
4 concurrent. On the threatening the life of a public
5 official, five years, concurrent.

6 MR. POSEY: Thank you, Your Honor.

7 THE COURT: Good luck to you, sir.

8 (WHEREUPON, the proceedings were concluded.)

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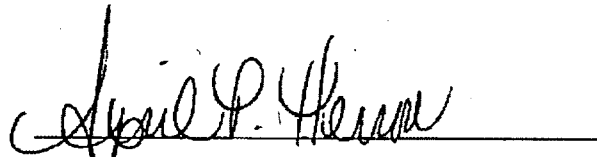
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 16th day of May, 2012.

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

January 15, 2013



APRIL P. HERRON, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of)

Greenville

IN THE COURT OF COMMON PLEAS

Favian Hayes #29344

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

v.)

State of South Carolina)

2012-CP-23-

05862

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 McLaurie Corr Inst.
2. Name and location of Court which imposed sentence Greenville County Court House 305 E. North St. Greenville, S.C. 29601
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-23-9986; 2010-GS-23-9938

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) May 17, 2012
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty ☒
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
N/A
8. If you answered Ayes@ 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 Ano@ to (7), state your reasons for not so appealing:
 (a) Counsel Didn't Inform Applicant That He Could

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully.
- (a) Latterville Assoc. of Counsel
- (b) in violation of Guilty Plea
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel only spoke w/ Applicant about his case (time, on day
- (b) of sentence, Applicant was told if he was to plea he
- (c) would receive the 5 yr sentence.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

- iv. _____
- (c) the disposition thereof: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____

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

N/A

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

- (a) which grounds have been presented: N/A
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised: N/A
- i. _____
- ii. _____
- iii. _____

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

(a) counsel Did Not file An Appeal
 (b) on Applicant's BEHALF!
 (c) _____

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

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

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

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

i. Mr. Chris Posey SC BAR #064169.
 ii. _____
 iii. _____

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

i. Guilty Plea!
 ii. _____
 iii. _____

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

Reverse And New Trial!

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

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Hayes FARMER #293544, 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.

[Signature]

SWORN to and subscribed before me this 30th
day of August, 2012.

Penny G. Moton (L.S.)
Notary Public

My Commission Expires: Feb 25, 2018

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

I, Juan, Lujan #29354, 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.

Juan Lujan
Applicant

SWORN or affirmed to and subscribed before me this
30th day of August, 2012.

Penny G. Morton
Notary Public

My Commission Expires: Feb 28, 2018

84-293544

Juan Hayes
S 842

386 Redemption Way
McDonough, S.C. 29834



Paul S. Wiopensma
Greenville Co. Court of Court
305 E. North S.W.
Greenville, S.C. 29601

2012-CP-23-

05862

2980132121

LEGAL MAIL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-5862
COUNTY OF GREENVILLE	)	
	)	
Favian Alphonzo Hayes,	)	
S.C.D.C. No. 293544,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed September 13, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant for threatening a life (2010-GS-23-9938) and threatening death, damage, or destruction by explosive (2010-GS-23-9986). Christopher T. Posey, Esquire represented the Applicant.

On May 16, 2012, the Applicant pled guilty as indicted. The Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of five years for threatening the life of a public employee and ten years for threatening death, damage, or destruction by explosive. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel:
 - a. "Counsel only spoke w/ Applicant about his case (1) time, on day of sentence."
2. Involuntary guilty plea:
 - a. "Applicant was told if he was to plea he would receive an 5 yr. sentence."

III.

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 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, 104 S. Ct. 2052, 2064 (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, 104 S. Ct. at 2066. 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, 104 S. Ct. at 2065). 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, 104 S. Ct. 2052 (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).

IV.

The Applicant's assertion that his guilty plea was involuntary 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, 106 S. Ct. 366, 369 (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, 89 S. Ct. 1709, 1712 (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, 89 S. Ct. at 1712. 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).

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).

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.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

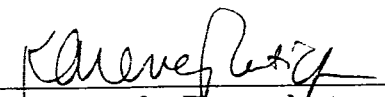
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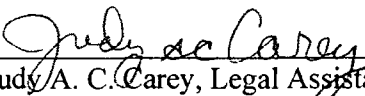
March 28, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2012-CP-23-5862
	)	
FAVIAN ALPHONZO HAYES, 293544	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

**Favian Alphonzo Hayes, 293544
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010**

DATED this 28th day of March, 2013.


Judy A. C. Carey, Legal Assistant
For Respondent

DANETTE P. HANKS
CIRCUIT COURT REPORTER

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Favian Hayes Ariail Ratigan	5	13		
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Certificate of Reporter				25

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
P-1	Letter to Dorothy Manigault dated 5/5/11 - Re: Plea offer	12	12

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1

FEBRUARY 18, 2014

2

(WHEREUPON, court convened with all parties

3

present and the following proceedings were had.)

4

THE COURT: Yes, ma'am.

5

MS. RATIGAN: Thank you, Your Honor, may it

6

please the court. This is the case of Favian Hayes

7

versus the State of South Carolina. Docket Number is

8

2012-CP-23-5862. Mr. Hayes was indicted for

9

threatening the life of a public employee and

10

threatening death, damage or destruction by explosive.

11

He was represented on these charges by Mr. Posey. On

12

May 16th of 2012, he pled guilty before Judge Stilwell.

13

He received concurrent sentences of five years for

14

threatening the life of a public employee and ten years

15

for threatening death, damage or destruction by

16

explosive. He did not file an appeal. I will note

17

that Mr. Hayes is also currently serving a twenty-five

18

year armed robbery sentence that he received in Sumter

19

County. The state is ready to proceed at this time.

20

THE COURT: Mr. Ariail.

21

MR. ARIAIL: Yes, Your Honor, we're ready to

22

proceed.

23

THE COURT: All right. You may call your

24

first witness.

25

MR. ARIAIL: I call Mr. Hayes to the stand.

1 THE CLERK: Mr. Hayes, please place your left
2 hand on the bible and raise your right hand.

3 You do solemnly swear or affirm that the testimony
4 you're about to give in this case will be the truth,
5 the whole truth and nothing but the truth, so help you
6 God?

7 THE WITNESS: Yes, ma'am, I do.

8 THE CLERK: Thank you. You may be seated.
9 Please state your full name for the record.

10 THE WITNESS: Favian Alfonso Hayes.

11 **FAVIAN ALFONSO HAYES,**

12 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

13 **DIRECT EXAMINATION**

14 **BY MR. ARIAIL:**

15 Q. Mr. Hayes, in regard to this -- the last time we
16 were here we asked for a continuance in this matter
17 because you were going to get some documents and we
18 were going to get some records that were going to be
19 sent to me. Did we get those -- I sent that letter, I
20 guess, to Warden Bush, and we received back limited
21 information; correct?

22 A. What took place was they brought me out -- the
23 only thing I could send you was what I already had.
24 And then in property, they lost my whole legal box
25 which I brought to the institution in regards to my

1 case and the research I already done studied regarding
2 this case right here. They lost my whole legal box.
3 So the only thing I sent you was whatever I had at the
4 moment.

5 Q. Okay. Let's go through a little bit about what
6 you're charged with here in regards to this. Now, you
7 were represented by Mr. Posey; correct?

8 A. Yes, sir.

9 Q. I think you had Dorothy Manigault at one time; is
10 that right?

11 A. Yes, sir.

12 Q. Okay. And Mr. Posey came in and represented you
13 and you pled guilty to these charges; correct?

14 A. Yes, sir.

15 Q. Okay. Now, you got ten -- I guess it was ten
16 years for the bomb threat; is that correct?

17 A. Yes, sir.

18 Q. And five years for the threat on the life of a
19 public employee; is that right?

20 A. Yes, sir.

21 Q. Okay. Now, and those were concurrent; is that
22 correct?

23 A. Yes, sir.

24 Q. Okay. Now, during your -- I guess during this
25 case, had you talked with or gotten evidence from Ms.

1 Manigault or understood what the charges were?

2 A. Yes, sir. I had a mental evaluation and then she
3 spoke with the solicitor, Ms. Adams, and we agreed to a
4 five year sentence, five year non-violent sentence, and
5 it was going to run concurrent to the time that I'm
6 currently serving now.

7 Q. That was when you were with Ms. Manigault;
8 correct?

9 A. Right.

10 Q. It was five years and you actually have a plea
11 offer that you said you got that was sent to Ms.
12 Manigault; is that right?

13 A. Yes.

14 Q. Five years. And it was dated May 5th, 2011; is
15 that correct?

16 A. That's correct, sir.

17 Q. So what happened with that plea offer?

18 A. I don't know. Me and her, we had like, you know,
19 like a conflict, I guess. She would be off the case.
20 Mr. Posey, he proceeded to represent my case. However,
21 I only spoke with him via the telephone once. That was
22 at the institution that very next day I was brought up
23 to my PCR hearing. He represented my case. I mean,
24 basically I only spoke to him once. There wasn't no
25 investigate as far as on his own or his behalf. I only

1 seen him once, that was when he brought me to the
2 courthouse right here. Then he was telling -- I
3 brought to his attention about the five year plea. He
4 was like he don't know what they're going to do. If
5 you don't plead guilty to these charges, they going to
6 -- jury's in, they're going to hit you in the head.
7 Basically leading me to a point where I had -- making
8 me believe that I had no other choice but to plead
9 guilty and take an open plea.

10 Q. I know you've got a lot of stuff you want to say
11 here in regards to it, but I want to kind of go through
12 it. Was the plea offer that you had on May 5th, 2011
13 for five years, was it still on the table when Mr.
14 Posey took over?

15 A. Well, no -- I don't know. Not to my knowledge.

16 Q. Okay.

17 A. Only thing I know that I was supposed to see
18 that, but when he came up here and told me that it's an
19 open plea and if you don't plea, you know, they was
20 going -- they're going to take you to trial and give
21 you the max.

22 Q. Okay. So you -- okay. So he never told you that
23 you were going to get five years. Is that what you're
24 saying?

25 A. Well, he just told me it was going to be an open

1 plea where the judge can give five. He can give you

2 ten. Give you fifteen.

3 Q. Okay.

4 A. But I -- go ahead.

5 Q. Okay. So that's -- so there was no plea offer

6 that you were going to come in and get five is what

7 you're saying? It was an open plea?

8 A. Yes, sir.

9 Q. Now, in regards to the investigation, you say you

10 wanted him to investigate certain matters or to look

11 into certain things. I mean, did you ask him to do

12 anything?

13 A. Yes, sir. I asked him in regards to certain

14 individuals at that time that was at Perry Corrections

15 had wrote affidavits. I had a couple of officers at

16 the time also willing to come to court to attest on my

17 behalf in regard to this matter.

18 Q. Okay. Let me stop you. What were these

19 individuals going to say on your behalf?

20 A. That the request form that was written, it wasn't

21 my handwriting at all. Ain't no investigation done as

22 far as analyst, handwriting analyst or anything of that

23 nature. I mean, period.

24 Q. Well, I mean, if you had these defenses, did you

25 raise these to Mr. Posey and tell him about them?

1 A. I told him about it all. He said we -- you have
2 to go in here today anyhow. If you don't go and if you
3 don't plead guilty, the trial is ready -- I mean,
4 excuse me, the jury is ready to come in and they're
5 going to give you the max if they find you guilty.

6 Q. Okay. So I guess at that point in time -- you're
7 saying you're not guilty of this; is what you're
8 saying?

9 A. Yes, sir.

10 Q. Okay. So if you're not guilty, then why -- what
11 was the reason that you went forward and did a guilty
12 plea?

13 A. I went forward with a guilty plea due to the fact
14 that he was telling me that if you don't go to trial --
15 I mean, excuse me, if you don't plead guilty and you go
16 to trial, they going to give you the max. However, he
17 didn't lead me to believe that he wanted to investigate
18 the case, I mean, as far as representation or anything
19 of that nature. He just wanted me to plead guilty.

20 Q. Okay. So your understanding today, if you're
21 successful in this PCR, you could go back -- you're not
22 going to have a sentence reduction. You're not going
23 for five years. This opens it all back up. You got
24 ten years. You understand all that?

25 A. Yes, sir.

1 Q. And you could get more?

2 A. I understand that.

3 Q. And you could get consecutive sentences?

4 A. I understand that, sir.

5 Q. Okay. Now, is there anything else that -- I know

6 Mr. Posey was on your case for roughly ---

7 A. A day.

8 Q. A what?

9 A. One day.

10 Q. Well, I mean, I think he had been appointed prior

11 to that. But you're saying you only had one

12 conversation with him; is that right?

13 A. Yes, sir.

14 Q. And that was the date of the ---

15 A. The day before I'm going for PCR; that's it.

16 Q. Before you're going to trial or before you went

17 in and pled guilty?

18 A. Yes, sir.

19 Q. What other things are you saying that Mr. Posey

20 was ineffective in your representation?

21 A. In regards to the lack of investigation of this

22 case. Because he led me to believe that I had no

23 defense. It was only -- I mean, only thing I had to do

24 was plead guilty. I mean, he had a lack of interest in

25 my case as far as not representing me properly, due to

1 the fact that he didn't want to represent my case at
2 all. He just wanted to lead me to plead guilty and
3 just get the case over with.

4 Q. Okay. I mean, did you go over the defenses or
5 discuss that with him?

6 A. He didn't want to hear it. The only thing he
7 wanted me to do is plead guilty.

8 Q. Okay. But I mean, are you saying -- I mean, I
9 can go through your plea transcript. Are you saying he
10 forced you to plead guilty?

11 A. He led me to believe that -- not knowing the law,
12 not knowing what's going on, but he led me to believe
13 that I had no other choice but to plead guilty, sir.

14 Q. Okay. Is there anything else you're saying that
15 he did that was ineffective that you need to tell this
16 court about?

17 A. That's basically it.

18 MR. ARIAIL: Okay. I have no further
19 questions. Actually, Your Honor, if I could make an
20 exhibit his plea offer of May 5th, 2011.

21 THE COURT: Without objection, it'll be
22 marked and admitted as Exhibit 1.

23 (WHEREUPON, Plaintiff Exhibit Number 1 was marked
24 and admitted into evidence.)

25 MR. ARIAIL: No further questions, Your

1 Honor.

2 THE COURT: You may cross examine.

3 MS. RATIGAN: Thank you, Your Honor.

4 **CROSS EXAMINATION**

5 **BY MS. RATIGAN:**

6 Q. So, Mr. Hayes, you testified you had one meeting
7 over the phone with Mr. Posey before you pled; is that
8 right?

9 A. Yes, ma'am. That's it.

10 Q. And what did y'all talk about when you had that
11 meeting over the telephone?

12 A. Basically that I'm going up the next day and is
13 there anything that he want to speak to -- I need to
14 speak to him about. And the part that I just attested
15 to in regards to the affidavit from the other inmates
16 and correction officer. And the analyst, due to the
17 fact it wasn't my handwriting. Things of that nature.

18 Q. Okay. So you told him you thought you had some
19 defenses with these affidavits and with your
20 handwriting not being the same?

21 A. Yes, ma'am. Excuse me. And also about the five
22 years plea negotiations.

23 Q. And then you met him again the day you pled
24 guilty?

25 A. Yes, ma'am.

1 Q. Did you have anymore discussions about the case
2 or was it ---

3 A. Next day.

4 Q. Okay. Did you have anymore discussions at that
5 point or were you just there to plead?

6 A. Say that again.

7 Q. Did you have anymore discussions with him about
8 the case at that point or did you just basically go
9 right in and plead guilty?

10 A. Yeah, I had discussions with him right before we
11 came in.

12 Q. Okay. What did y'all talk about right before you
13 pled guilty?

14 A. Further discussions was, if you don't plead, I
15 mean, I'm telling you right now -- and I quote: I'm
16 telling you right now the jury's in and they're going
17 to bust your head. They find you guilty, they're going
18 to bust your head. I explained to him everything about
19 the plea; I was supposed to get five years. I didn't
20 really want to plea. I wanted to go to trial.

21 Q. Uh-huh (affirmative).

22 A. And he showed lack of interest in my case as far
23 as the representation. He just wanted me to proceed
24 and plead guilty.

25 Q. Okay. Why didn't you tell the plea judge that

1 you didn't want to plead guilty, that you wanted a
2 trial?

3 A. Due to the fact that he led me to believe that if
4 I didn't go ahead and accept this -- accept the plea,
5 I'm going to trial. And just go ahead with the flow.
6 Due to the fact on the law at that time, I didn't know.
7 I was relying on my counsel as far as representation.
8 I was doing what he asked me to do.

9 Q. And why didn't you tell Judge Stilwell about this
10 five year plea offer?

11 A. Same reason why he had told me that I was getting
12 fifteen or ten or five, he don't know, but -- so we was
13 going open plea and I was basically just hoping for the
14 best and paying for the worst.

15 Q. But did Mr. Posey tell you not to mention it or
16 did he just tell you to go along with the plea?

17 A. Go along with the plea because if I go to trial,
18 they was going to bust my head.

19 Q. But you didn't think it might be helpful to tell
20 Judge Stilwell that at some point the state had made
21 you a five year offer?

22 A. Well, at the time, ma'am, I was -- like I said I
23 was a layman of the law and I'm relying on my counsel's
24 representation. And he's telling me that maybe you can
25 get this and maybe you can get that.

1 Q. Okay. Mr. Posey did ask the judge to give you
2 five years; didn't he? Do you recall that?

3 A. Ma'am, I was -- honestly I don't recall it.

4 Q. And you're telling Judge Welmaker today that
5 you're not guilty?

6 A. Yes, ma'am.

7 Q. Well, why did you tell Judge Stilwell that you
8 were guilty?

9 A. I said that?

10 Q. You told the judge you were guilty. Do you not
11 recall telling him that?

12 A. (No verbal response.)

13 Q. If you don't recall, that's fine.

14 A. I don't, I don't recall.

15 Q. Well, why did you tell the judge that day that,
16 you know, I'm innocent on my trial, just for the same
17 reasons you've already stated, just to go along with
18 the open plea?

19 A. Yes, ma'am. Relying on my counsel's advice.

20 Because I didn't want fifteen years concurrent. I
21 mean, excuse me, consecutive, which is what the
22 attorney was telling me that I would get.

23 Q. And you admitted to Judge Stilwell that you made
24 the threats; didn't you? That you made those threats
25 in order to be transferred out of Perry, didn't you

1 admit that to the plea judge?

2 A. It's in the transcript?

3 Q. Uh-huh (affirmative). Do you not recall that?

4 A. No, ma'am.

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

6 THE COURT: Any redirect?

7 MR. ARIAIL: No, Your Honor.

8 THE COURT: All right. Thank you, sir. You
9 may step down.

10 MR. ARIAIL: Your Honor, that is our case.

11 THE COURT: All right. Anything from the
12 state?

13 MS. RATIGAN: Yes, Your Honor, we would call
14 Mr. Posey.

15 THE CLERK: Mr. Posey, you do solemnly swear
16 or affirm that the testimony you're about to give in
17 this case will be the truth, the whole truth and
18 nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Please state your
21 full name for the record.

22 THE WITNESS: Christopher Todd Posey.

23 **CHRISTOPHER TODD POSEY,**

24 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

25 **DIRECT EXAMINATION**

1 **BY MS. RATIGAN:**

2 Q. Mr. Posey, do you recall representing Mr. Hayes
3 in this case?

4 A. I do.

5 Q. And were you appointed?

6 A. Yes.

7 Q. And based on both Mr. Hayes' testimony and the
8 transcript, it appears you were appointed pretty soon
9 before the plea; is that correct?

10 A. I think ten days to two weeks at the maximum
11 beforehand. He had some issues with Ms. Manigault.
12 Judge Stilwell relieved Ms. Manigault and this case was
13 on the May trial docket when I was appointed.

14 Q. And did you have time to file the discovery
15 motions or did you receive those from Ms. Manigault?

16 A. I received them when I was appointed.

17 Q. And do you recall how many times you would have
18 met with Mr. Hayes prior to the plea?

19 A. I talked with him once by phone. And if I
20 remember correctly, they brought him up the day before
21 his trial to give me a chance to meet face to face with
22 him. And we met that day and I think he may have
23 entered the plea that day.

24 Q. So the day they brought him up to meet with you
25 is the day he ultimately pled?

1 A. Yes.

2 Q. Okay. And did you review with Mr. Hayes the
3 discovery materials and state's evidence?

4 A. Yes.

5 Q. Did you explain to him the elements of the
6 charges?

7 A. Yes.

8 Q. Did you explain to him the sentence ranges of
9 those charges?

10 A. Yes.

11 Q. Did Mr. Hayes tell you his version of what had
12 happened with the associate warden?

13 A. Mr. Hayes' big issue, and I think it had been the
14 issue with Ms. Manigault, is the reason he did not want
15 to go forward at the time was he had just had a PCR
16 hearing on his armed robbery charge in Sumter County.

17 No official order had been issued at that time. But I
18 contacted his attorney in Sumter -- I believe his name
19 is Patrick Kimbal or Kimbrell -- and he advised me to
20 -- that the PCR had, in fact, been denied in Sumter;
21 that they were just waiting on the formal order to come
22 back from the judge. And basically when I relayed that
23 information to Mr. Hayes is basically when the tide
24 turned and he was willing to go forward at that time.

25 Q. Did Mr. Hayes ever tell you that he had

1 affidavits from other inmates and from officers out at
2 Perry?

3 A. I don't remember that. I think he did talk about
4 some officers would testify to his character. And I
5 think part of the issue he did have during this time
6 was he was not properly taking his medication that had
7 been prescribed for him. He did tell me some officers
8 would be willing to talk about that. But not to
9 exonerate him.

10 Q. Did he ever -- did Mr. Hayes ever talk to you
11 about this issue about his handwriting not being the
12 same as what was on the form?

13 A. I don't recall there ever being an issue ever
14 coming up over the handwriting.

15 Q. Okay. Were you aware that there had been a prior
16 five year plea offer?

17 A. Yes. I was aware of that. But as I told him,
18 once the case reached the trial docket, those plea
19 offers were no longer valid. Basically we were past
20 the negotiating stage at that point in time, to a large
21 extent.

22 Q. Did you explain to Mr. Hayes the concept of an
23 open plea or a straight-up plea?

24 A. Yes.

25 Q. And what would you have told him when you

1 explained what a straight-up plea would be?

2 A. I would have told him that, you know, basically
3 Judge Stilwell, since he was the judge, he was going to
4 plea in front of, either plea or trial. But if he went
5 in for a plea with those recommendations, Judge
6 Stilwell could give him anywhere within the sentence
7 range. He could either run it concurrent or
8 consecutive to his current sentence. I explained the
9 ramifications of both to him.

10 Q. In your opinion did Mr. Hayes have any viable
11 defenses you could have argued at trial?

12 A. The evidence, I thought, was fairly overwhelming
13 as to guilt.

14 Q. Did Mr. Hayes ever tell you that he wanted to go
15 to trial?

16 A. He wanted to keep pushing it off until he knew
17 the PCR result. And like I say, once he found out that
18 his PCR was denied, that kind of turned all the tides.
19 Because he thought he was going to be successful on his
20 PCR in Sumter.

21 Q. Did you ever instruct Mr. Hayes about how to
22 answer the questions during the plea colloquy?

23 A. Other than saying yes, sir and no, sir, no.

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

25 THE COURT: You may cross examine the

1 witness.

2

CROSS EXAMINATION

3 **BY MR. ARIAIL:**

4 Q. Yes. Mr. Posey, in regards to Mr. Hayes, were
5 there any mental health issues that you were concerned
6 about in regards to him?

7 A. Not at the time. Apparently during the course of
8 when this took place, he was not properly taking his
9 medication for a previously diagnosed mental illness.
10 And he even acknowledged to me himself that he wasn't
11 taking his medicine like he was supposed to. So I
12 didn't think it rose to the level of competency; just
13 basically his willingness not to take his medication as
14 ordered or prescribed.

15 Q. So on the date of that you didn't think there was
16 any issues with him understanding what he was doing?

17 A. No. I thought he was very clear-headed.

18 Q. We've been provided a copy of a -- I guess an
19 evaluation he had. Was that -- I guess that was done
20 by Ms. Manigault?

21 A. Ms. Manigault.

22 Q. Okay. In regards to the defenses, I know he's
23 raised, I guess, questions as to others coming in and
24 testifying on his behalf. No one, to your knowledge,
25 has ever -- I guess, was going to be able to testify

1 that he didn't do this; that this was someone else?

2 A. Like I say, I think he had a couple of guards
3 that may have been willing to talk to his character a
4 little bit and that he wasn't taking his medicine. But
5 nobody to exonerate him.

6 Q. Okay. Now, did he -- I guess he clearly
7 understood the ranges and what he could be getting, and
8 he was looking at substantially more time than ten
9 years that he got, I guess?

10 A. Yes, sir.

11 Q. And this was run concurrent with that Sumter
12 sentence, too; correct?

13 A. Yes.

14 MR. ARIAIL: I have no further questions,
15 Your Honor.

16 THE COURT: Any redirect?

17 MS. RATIGAN: No, Your Honor. The state
18 would rest.

19 THE COURT: Thank you, Mr. Posey. You may
20 step down.

21 Well, I've had a chance to hear the testimony and
22 I've reviewed the file and certainly the hearing and
23 the comments made by both Mr. Hayes, the judge and Mr.
24 Posey. I believe that the applicant has failed to
25 present sufficient evidence. I'll ask the state, if

1 you would, to prepare me an order to that effect. And
2 certainly in light of the guidelines of *Marlar v. State*
3 *of South Carolina*, my findings are that the evidence is
4 just not sufficient on the argument about the
5 investigation, about the misunderstanding about what he
6 was pleading to. I think the evidence is certainly
7 clear from weighing all the evidence that he understood
8 the plea, that he was properly advised by Mr. Posey,
9 and that he knew it was a stand-up plea and he even
10 told the judge he was guilty. I find there's been a
11 failure to prove, so if you'll prepare me an order.

12

13 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Thirteenth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Greenville County, South Carolina, on the 18th day of
10 February, 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 June 23, 2014

16

17

18

19

20

A handwritten signature in cursive script, reading "Danette P. Hanks", is written over a horizontal line.

Circuit Court Reporter

COURT OF COMMON PLEAS
EXHIBIT RECORD AND RECEIPT FORM
Favian A. Hayes -vs- State (2012-CP-23-5862)

Page 1 of 1

PLAINTIFF'S/ EXHIBITS

NO	DESCRIPTION	ID	EV
P-1	Letter to Dorothy Manigault dated 5/5/11 - Re: Plea offer	x	x

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

Donette Hanko 2-19-14
COURT REPORTER DATE

Jan White 2-19-14
CLERK OF COURT DATE

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610



Solicitor
W. Walter Wilkins

5/5/2011

DOROTHY MANIGAULT
P.O. BOX 392
GREENVILLE, SC 29602

RE: Plea Offer for State v. Favian Alphonzo Hayes

Dear Dorothy Manigault :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
1522060	Bomb/threat, conspire to threat, solicits another to threat real or personal pro

The State will dismiss the following:

<i>Warrant Number:</i>	<i>Charge:</i>
1522061	Threat / Threatening life, person or family of public employee

The State will make the following sentence recommendations/negotiation:

5 Yrs.

57

13th Circuit Public Defender

MAY 13 2011

Initials:

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185



STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Favian Alphonzo Hayes,
S.C.D.C. No. 293544,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-23-5862**ORDER OF DISMISSAL**FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2014 APR -9 P 3:00

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 13, 2012. The Respondent made its return on March 28, 2013. An evidentiary hearing into the matter was convened on February 18, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Christopher T. Posey, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant at the April 2011 term for threatening the life of a public employee (2010-GS-23-9938) and threatening death, damage, or destruction by explosive (2010-

1 

GS-23-9986). He was represented by Christopher T. Posey, Esquire.

On May 16, 2012, the Applicant pled guilty. The Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of five years for threatening the life of a public employee and ten years for threatening death, damage, or destruction by explosive.¹ The Applicant did not file an appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "Counsel only spoke w/ Applicant about his case (1) time, on day of sentence."
2. Involuntary guilty plea:
 - a. "Applicant was told if he was to plea he would receive an 5 yr. sentence."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his

¹ The Applicant was already serving a twenty-five year sentence for armed robbery (2008-GS-43-0646). This sentence was imposed in Sumter County on June 1, 2009.

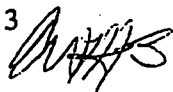


allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated plea counsel was the second attorney on his case. The Applicant stated that his first attorney had him evaluated. The Applicant stated his first attorney conveyed a five-year plea offer but that he did not know what happened to that offer. The Applicant stated he had one telephone conversation and one meeting with plea counsel before he pled guilty. The Applicant stated they discussed the following: the five-year plea offer; that the Applicant

3 

asserted corrections officers would testify on his behalf, and that handwriting on the threatening letter was not his. The Applicant stated plea counsel told him the five-year offer was not available and that he could plead guilty without a recommendation. The Applicant stated he decided to plead guilty because plea counsel said he had no defense and would receive the maximum sentence if he went to trial. The Applicant stated that, while he wanted a trial, he did not express this to the trial judge because plea counsel led him to believe he would receive the maximum sentence at trial.

Plea counsel testified he was appointed approximately 10-14 days before the plea hearing and that the case was already on the trial docket. Plea counsel confirmed the Applicant had been evaluated while being represented by his first attorney and that he was clearheaded on the day of the plea hearing. Plea counsel confirmed he had one telephone and one in-person meeting with the Applicant before he pled guilty. Plea counsel testified they reviewed the discovery materials, the elements of the charges, and the sentence ranges. Plea counsel testified there were no defenses in this case and the State had overwhelming evidence of guilt. Plea counsel testified the Applicant's chief concern was that he did not want the case to go forward until his Sumter County PCR had been ruled upon. Plea counsel testified he called the Applicant's PCR attorney in Sumter, who told him the case had been denied. Plea counsel testified he relayed this to the Applicant, who was willing to proceed. Plea counsel testified he was aware of the prior five-year plea offer, but that he told the Applicant it was no longer available and that he would be pleading guilty without a recommendation. Plea counsel testified the Applicant told him the corrections officers could testify as character witnesses. Plea counsel testified he did not recall an issue regarding the handwriting on the letter.

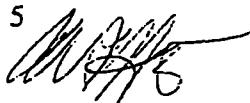
Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the

⁴ 

Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.6). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.4-6; p.8). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was misadvised about entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly review his case prior to the plea hearing. Plea counsel testified he and the Applicant discussed the discovery materials and the elements and sentencing ranges for the offenses. Plea counsel testified he was aware of the prior five-year plea offer but that he informed the Applicant this offer was no longer available and that he would be pleading guilty without any sentence recommendation from the State. This Court finds plea counsel's testimony is credible. This Court finds plea counsel adequately discussed and reviewed the Applicant's case with him before the guilty plea hearing. This Court finds plea counsel was not deficient in informing the

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Applicant that he could receive a twenty-year sentence if he was unsuccessful at trial because this was an accurate statement.² See Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived"). In any event, this Court finds the Applicant cannot prove he was prejudiced as a result of plea counsel's preparation of his case because: (1) there was overwhelming evidence of his guilt and (2) the Applicant admitted making the threats at the plea hearing. (Plea transcript, pp.8-10; pp.10-11).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have investigated his case. The Applicant testified plea counsel failed to speak to corrections officers who would testify on his behalf and also failed to look into the handwriting issue. Plea counsel testified the officers would have been character witnesses and would not have exonerated the Applicant. Plea counsel testified he did not recall discussing the handwriting issue. This Court finds plea counsel's testimony is more credible. This Court cannot speculate as to what the corrections officers would have testified to because they did not testify at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original). This Court also cannot speculate as to whether investigating the handwriting on the threatening letter would have made a difference because neither the letter nor

² Regardless, this Court notes plea counsel asked the plea judge to impose a five-year sentence. (Plea transcript, p.13).

6 

a handwriting expert were presented at the PCR hearing. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

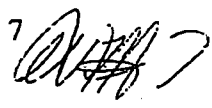
This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not



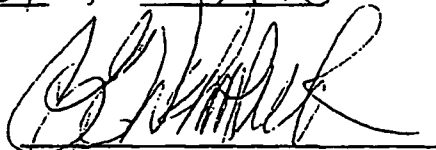
prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

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

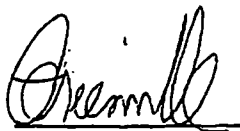
IT IS THEREFORE ORDERED:

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

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



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit



Greenville, South Carolina.

ARREST WARRANT

I-522061

5609

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

10-26-10

Greenville

THE STATE

30-0383

Favian Alphonzo Hayes S C D C 293544

Address: 430 Oaklawn Rd

Pelzer, SC 29669-

Phone: ()

SSN: ()

Sex: M

Race: B

Height: 5

Weight: 190

DOB: ()

Agency ORI #: ()

Prosecuting Agency:

Prosecuting Officer:

Offense: Threat / Threatening life, person or family of public employee

Offense Code: 2605

Code/Offense Sec: 16-03-1040(B),(D)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Favian Hayes on 10-19-10

RETURN WARRANT TO:

South Greenville Summary Court
8150 Augusta Road.
Piedmont, SC 29673-8610

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant Inv. James M. Shugar/ S C D Cbeing duly sworn deposes and says that defendant Favian Alphonzo Hayes S C D C 293544did within the county and state on or about 06/18/2010in the following particulars: ☒ County/ ☐ Municipality of Greenville

DESCRIPTION OF OFFENSE: Threat / Threatening life, person or family of public employee

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

THE DEFENDANT, FAVIAN ALPHONZO HAYES, AN INMATE AT PERRY CORRECTIONAL INST., DID ON JUNE 18, 2010 COMMIT THE CRIME OF THREATENING LIFE, PERSON OR FAMILY MEMBER OF A PUBLIC EMPLOYEE IN THAT HE DID, IN A WRITTEN COMMUNICATION SENT TO THE VICTIM ASSOCIATE WARDEN FLORENCE MAUNEY THREATEN HER LIFE AND THE LIFE OF HER IMMEDIATE FAMILY MEMBERS. IN VIOLATION OF SECTION 16-3-1040 (B) OF THE SC CODE OF LAWS. SAID INCIDENT OCCURRED AT PERRY CORRECTIONAL INST. 430 OAKLAWN ROAD PELZER, GREENVILLE COUNTY, SC. CASE 39-0383

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 430 Oaklawn Rd.

Pelzer, SC 29669-

Affiant's Telephone (864)243-5963

ARREST WARRANT

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

If appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/18/2010defendant Favian Alphonzo Hayes S C D C 293544did violate the criminal laws of the State of South Carolina (for offense of Threat / Threatening life, person or family of public employee) as set forth below:

DESCRIPTION OF OFFENSE: Threat / Threatening life, person or family of public employee

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

Sworn to and subscribed before me on 06/30/2010Signed and sworn before me by Judge Thomas E. Taylor

Judge Code: 5609

Judge's Address

8150 Augusta Road

Piedmont, SC 29673-8610

Judge's Telephone

(864)277-9555

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

WITNESSES

James M. Shugart

James M. Shugart

SCDC

10/19/2010

DOCKET NO. 2010-GS-2309938
WIA

The State of South Carolina

County of Greenville

1515

COURT OF GENERAL SESSIONS

April TERM 2011

THE STATE

VS.

FAVIAN ALPHONZO HAYES

ARREST WARRANT NUMBER
1522061

ACTION OF GRAND JURY

GRAND JURY
1515

Foreperson of Grand Jury

VERDICT

2605

Shugart
Indictment for

THREATENING A LIFE

VIOLATION §16-03-1040

Foreperson of Petit Jury
Date:

RECEIVED

DEC 17 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
THREATENING A LIFE

At a Court of General Sessions, convened on

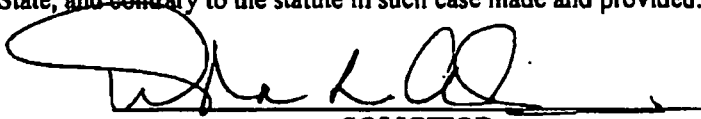
APR 12 2011

the Grand Jurors of Greenville

County present upon their oath:

That FAVIAN ALPHONZO HAYES did in Greenville County, on or about the 18th day of June 2010, knowingly and willfully deliver or convey to ASSOCIATE WARDEN FLORENCE MAUNEY, a threat to inflict bodily harm upon or take the life of ASSOCIATE WARDEN FLORENCE MAUNEY or members of her immediate family and the threat was directly related to ASSOCIATE WARDEN FLORENCE MAUNEY's professional responsibilities. This is in violation of §16-3-1040 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
STATE VS.)
Favian Alphonzo Hayes)
AKA:)
Race: BLACK Sex: M Age: 26)
DOB: SS#)
Address:)
City, State, Zip: Pelzer, SC 29669)
DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS2309938
A/W#: 1522061
Date of Offense: 6/18/2010
S.C. Code § : 16-03-1040(B),(D)
CDR Code #: 2605

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Threat / Threatening life, person or family of public employee

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-1040(B),(D) of the S.C. Code of Laws, bearing CDR Code # 2605
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.
ATTEST: Wanda L. Adams 65750 SC Bar# Christy S. D. 064169 SC Bar#
Adams, Wanda L. Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 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 ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ 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 ☐ DeL Waives Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:
☐ Set by SCDPPPS
Recipient:
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:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2993 (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
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5
3% to County (if paid in installments)		\$
TOTAL		\$

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

Clerk of Court/ Deputy Clerk Paul B. Wislizenus
Court Reporter: Heum
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2158
Sentence Date: 5/16/12

ARREST WARRANT

1-522060

5609

STATE OF SOUTH CAROLINA

10-26-10

☒ County/ ☐ Municipality of

Greenville

THE STATE

39-0383

Favian Alphonzo Hayes S C D C 293544

Address: 430 Oaklawn Rd

Pelzer, SC 29669-

Phone: (864) [redacted] SSN: [redacted]

Sex: M Race: B Height: 5 10 Weight: 190

DL State: [redacted] DL #: [redacted] Agency ORI #: [redacted]

DOB: [redacted]

Prosecuting Agency: [redacted]

Offense: Bomb/threat, conspire to threat, solicits another to

threat real or personal pro

Offense Code: 2937

Code/Ordinance Sec: 2937

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be

dealt with according to the law.

(L.8.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Favian Hayes on 10-19-10James M. Shugart #251
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

South Greenville Summary Court
8150 Augusta Road,
Piedmont, SC 29673-8610

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE

☒ County/ ☐ Municipality of

Greenville

Person: [redacted] appeared before me the affiant

being duly sworn deposes and says that defendant Favian Alphonzo Hayes S C D C 293544 did within this county and state on or about 06/25/2010 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville) in the following particulars:

DESCRIPTION OF OFFENSE: Bomb/threat, conspire to threat, solicits another to threat real or personal pro

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

THE DEFENDANT, FAVIAN ALPHONZO HAYES, AN INMATE AT PERRY CORRECTIONAL INST., DID ON JUNE 25, 2010 COMMIT THE CRIME OF THREATENING TO USE DESTRUCTIVE DEVICE IN THAT HE DID, IN A NOTE SENT TO THE VICTIM, ASSOCIATE WARDEN FLORENCE MAUNEY THREATEN OR CONSPIRE TO THREATEN TO CAUSE DAMAGE, INJURY OR DEATH TO HER OR TO CAUSE DAMAGE TO PERSONAL PROPERTY BY MEANS OF A DESTRUCTIVE DEVICE. IN VIOLATION OF SECTION 16-23-720 OF THE SC CODE OF LAWS, SAID INCIDENT OCCURRED AT PERRY CORRECTIONAL INST. 430 OAKLAWN RD, PELZER, GREENVILLE COUNTY, SC CASE 39-0383

Signature of Affiant

James M. Shugart

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 430 Oaklawn Rd

Pelzer, SC 29669-

Affiant's Telephone (864)243-5963

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/25/2010defendant Favian Alphonzo Hayes S C D C 293544did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Bomb/threat, conspire to threat, solicits another to threat real or personal pro

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

Sworn to and subscribed before me on 06/30/2010

Signature of Affiant

Thomas E. Taylor

Judge Code: 5609

Judge's Address 8150 Augusta Road

Piedmont, SC 29673-8610

Judge's Telephone (864)277-9555

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

DOCKET NO. 2010-GS-23- WLA 009986

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April 2011 TERM 2810

THE STATE

vs.

FAVIAN ALPHONZO HAYES

SCDC

WITNESSES

James M. Shugart James M. Shugart

SCDC

10/19/2010

ARREST WARRANT NUMBER 1522060

ACTION OF GRAND JURY
TRUE BILL
Cody Lane
FOREMAN GRAND JURY
Foreperson of Grand Jury

VERDICT

Indictment for

2937

THREATENING DEATH, DAMAGE, OR
DESTRUCTION BY EXPLOSIVE

VIOLATION §16-23-0720

RECEIVED

DEC 17 2010

Clerk of Court
Greenville County

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
THREATENING DEATH, DAMAGE, OR DESTRUCTION BY
EXPLOSIVE

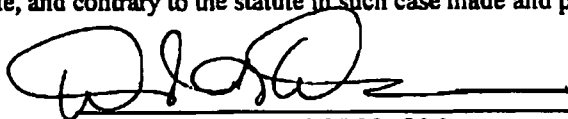
At a Court of General Sessions, convened on **APR 12 2011**

the Grand Jurors of Greenville

County present upon their oath:

That FAVIAN ALPHONZO HAYES did in Greenville County, on or about the 25th day of June 2070, willfully and unlawfully threaten or solicit another to threaten to cause damage, injury or death by means of destructive device or did destroy a building or other real or personal property by means of a destructive device. This is in violation of §16-23-0720 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Favian Alphonzo Hayes

AKA:

Race: BLACK Sex: M Age: 26DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Pelzer, SC 29669DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Bomb/threat, conspire to threat, solicits another to threat real or personal proin violation of § 16-23-0720 of the S.C. Code of Laws, bearing CDR Code # 2937☒ 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.Adams, Wanda L. SC Bar# 65780 Defendant Christy D. B. Attorney for Defendant 041169 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ 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 ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS 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 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

Clerk of Court/ Deputy Clerk

Court Reporter: Hess

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS 73

INDICTMENT/CASE#: 2010GS2309986A/W#: 1522060Date of Offense: 6/25/2010S.C. Code § : 16-23-0720CDR Code #: 2937

SENTENCE SHEET

PTUP

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge 2158Judge Code: 5/16/12Sentence Date: 5/16/12